LEGISLATIVE COUNCIL

Wednesday, March 1, 1972

The PRESIDENT (Hon. Sir Lyell McEwin) took the Chair at 2.15 p.m. and read prayers.

QUESTIONS

RURAL RECONSTRUCTION

The Hon. R. C. DeGARIS: I seek leave to make a statement prior to asking a question of the Minister of Lands.

Leave granted.

The Hon. R. C. DeGARIS: Yesterday, when I asked two questions of the Minister of Lands on rural reconstruction and unemployment relief, I was somewhat surprised when he adopted the attitude of blaming the Commonwealth Government rather than supplying the information I sought. Will the Minister study the questions I asked with a view to supplying to the honourable members the information I requested?

The Hon. A. F. KNEEBONE: I thought I answered fully the honourable member's questions. However, I will study the replies I gave and the questions asked and see whether they were adequately answered.

FLAMMABLE CLOTHING

The Hon. V. G. SPRINGETT: I seek leave to make a statement prior to asking a question of the Minister of Lands, representing the Minister of Labour and Industry.

Leave granted.

The Hon. V. G. SPRINGETT: In 1967, I asked my first question on flammable clothing and, since then, I have asked similar questions. The reply I received last July emphasized, as previous replies had done, that the other States were investigating this matter, together with South Australia, and that, as soon as something satisfactory and uniform could be arranged, the necessary legislation would be introduced. Nevertheless, tragedies still continue to occur and flammable material is still being used, especially in the manufacture of children's clothing. Reference to the press in the past few weeks shows that children are still becoming human torches. Will the Minister ascertain what is the present position and how many more tragedies must happen before legislation dealing with this awful matter can be enacted?

The Hon. A. F. KNEEBONE: I appreciate the seriousness of this matter. I think that when I was Minister of Labour and Industry I saw a group of slides showing the effects of flammable material that had caught fire. At that time, a problem existed in regard to reaching agreement on the standard of testing for conditions in Australia as compared to conditions in other countries. I also know that there was a considerable delay while efforts were made to prepare uniform legislation on this matter. I am not sure what the exact position now is, but I know that experiments have been conducted in an effort to arrive at a satisfactory standard. I shall take the honourable member's question to my colleague and bring back a reply as soon as I can.

PORT WAKEFIELD ROAD

The Hon. L. R. HART: I seek leave to make a short statement before asking a question of the Minister of Lands, representing the Minister of Roads and Transport.

Leave granted.

The Hon. L. R. HART: Motorists have been very pleased with the progress made in rebuilding the main road from Port Wakefield to Adelaide. The work on the road progressed satisfactorily until a point south of Dublin was reached when, for some reason, the work came to a standstill. I am informed that the reason for the work coming to a standstill was that provision was not made in the redesigning of the road for floodwater culverts in the areas north and south of the Light River, notwithstanding the fact that that river has flooded frequently during the last 200 years or more. The Highways Department gang that was stationed in the Port Wakefield area has recently shifted to the Two Wells area and is now virtually out of work. To keep the gang employed, the Highways Department has taken over from the Mallala District Council some of the work that it had planned for the coming 12 months. This is a very serious situation for the council. To keep the Highways Department gang employed, the council may have to dismiss some of its own gang, because the Highways Department has taken over some of its work. Can the Minister say, first, what the cost is of resurveying, redesigning and replanning the road? Secondly, how long will it be before the work on the road from Port Wakefield to Adelaide will be recommenced? Thirdly, will disciplinary action be taken against the person responsible for designing the road without floodwater culverts? Fourthly, will the Mallala District Council be compensated because the Highways Department has taken over part of its programme?

The Hon. A. F. KNEEBONE: I shall convey the honourable member's question to my colleague as soon as possible and see whether the statements made by the honourable member are, in fact, correct. If they are correct, the question can then be answered.

POLLUTION WARNINGS

The Hon. H. K. KEMP: I seek leave to make a short statement before asking a question of the Minister of Lands, representing the Minister of Environment and Conservation.

Leave granted.

The Hon. H. K. KEMP: This morning there was a most unattractive smog that practically obscured the city for a considerable time. Such a smog is most undesirable, particularly when the city is rapidly filling with visitors for the Festival of Arts. The smog gives the visitors a most undesirable welcome. For a considerable time air pollution potential warnings have not been given, and I believe that it is not intended for them to be given during the summer months; however, there is certainly a need for them. Can the Minister say whether it is really technically impossible for predictions of the degree of air pollution to be given during the summer months? If this is not the case, can warnings be issued in circumstances such as those existing today?

The Hon. A. F. KNEEBONE: Although I represent my colleague, the Minister of Environment and Conservation, in this Council I understand the Minister of Agriculture has liaised with him on this subject. Perhaps the Minister of Agriculture would care to reply to the question.

The Hon. T. M. CASEY: This matter was discussed before the fire ban warnings were implemented. I took the matter up with the Meteorological Department, with Mr. Hogan, who has just retired, and it was discussed quite fully between Mr. Hogan, Mr. Broomhill and myself. It would have been utterly confusing to the public if A.P.P. alerts had been issued in conjunction with total fire bans. We could see the problems attaching to this, so it was resolved that during the summer months when the total fire bans were issued the A.P.P. alert would be covered anyway, because the ban on the lighting of fires in the open would help the pollution problem. These were some of the things we had to look at to see that the public was not confused, but I can assure the honourable member that as soon as the fire season finishes the A.P.P. alerts will be given again.

WHITE SNAIL

The Hon. E. K. RUSSACK: I seek leave to make a statement prior to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. E. K. RUSSACK: During recent years there has been a spread of a pest in the rural areas, apparently commencing in the vicinity of Yorke Peninsula, and spreading now over wider areas in the Mid North and even farther afield. The pest is the white snail, which is causing quite a problem, particularly at harvest time. Gn being crushed in the machinery it becomes mixed with the grain and also produces a foul-smelling odour. I understand farmers may have their properties treated at a cost of $3 an acre, but that 100 per cent eradication costs $12 an acre. Can the Minister give me any information as to the extent of the spread in South Australia in recent years of the creature commonly known as the small white snail? Can he inform me what action is being taken by his department to control or eradicate this pest?

The Hon. T. M. CASEY: I cannot give specific answers now, but I will get the information the honourable member requires. On Yorke Peninsula last year I was told by one farmer that the best way to eradicate the snails is for every farmer to keep a few ducks. I believe he has got something there. If the honourable member has not got any ducks it might be in his interests to get some! All jokes aside, I believe this is one way in which the snails can be eradicated.

SOCIAL WELFARE OFFICE

The Hon. E. K. RUSSACK: It was reported in the *Advertiser* of February 4, 1972, that the Premier, when opening the Social Welfare Department's new Norwood office, said that it was planned in the next few months to open Social Welfare Department offices in Woodville, Campbelltown, Murray Bridge and Mitcham, and also on Yorke Peninsula. Will the Minister of Lands, representing the Premier, say whether the department has yet determined the area or town on Yorke Peninsula in which such an office will be set up?

The Hon. A. F. KNEEBONE: I will refer the honourable member's question to the Premier and bring back a reply as soon as possible.

FLINDERS UNIVERSITY OF SOUTH AUSTRALIA ACT AMENDMENT BILL AND UNIVERSITY OF ADELAIDE ACT AMENDMENT BILL

The Hon. F. J. POTTER (Central No. 2) brought up the report of the Select Committee, together with minutes of proceedings and evidence.

Report received and ordered to be printed.

The Hon. F. J. POTTER moved:

That The Flinders University of South Australia Act Amendment Bill be withdrawn.

The Hon. H. K. KEMP (Southern): I trust that honourable members will study in detail the report and the minutes of proceedings of this Select Committee. As a member of the committee, I concur in the motion to withdraw the Bill amending The Flinders University of South Australia Act, which I introduced in this Chamber. The committee has had put before it evidence which, to my mind, undoubtedly indicated and, as much as possible, proved that certain practices have occurred within the university that cannot in any way be condoned. Although we have only scanty evidence, it is quite certain that there has been a concerted movement to suppress evidence or to prevent it from reaching the Select Committee. A former member of the Judiciary appeared before the committee and said, in so many words, that he had evidence put before him that students had been failed in certain subjects because they had presumed to hold opinions different from those of the lecturers from whom they had taken instruction. It has been stated that the persons concerned are fearful of coming forward because of the reprisals that they are sure their children will suffer if their names are revealed.

These are indeed serious matters. I am sure that there is urgent need for the universities to take cognizance of what is happening. Although some people realize what is happening, I am sure that many faculty members do not. They certainly do not condone what is happening in certain sections of both universities. I do not think we need indulge in any flights of oratory in this matter, but I am sure it has been proved to the Select Committee that this is the case. It has also been brought to the attention of the committee that it is the university's own business to set its house in order and, although we have been assured by the highest representatives of those universities that they consider that their house is in order, there is no doubt whatsoever in my mind that these irregularities exist today.

Surely the university convocation must realize that its vital need for autonomy, for self-determination of its own laws, which no-one can deny (no-one can direct the university from outside) is being endangered when such matters are allowed to occur, with the apparent concurrence of the university itself. There is need of a dire warning that the universities themselves are endangering their liberties if they do not clean up these matters.

My purpose in introducing this Bill was to ventilate this matter. I sincerely hope that people will peruse the matter and the evidence that has been put before the Select Committee and realize that present circumstances are so bad that people are frightened to complain, because of the vengeance that may be exacted from their dependants, who are answerable to the faculties concerned.

Motion carried.

BUILDING REGULATIONS

Adjourned debate on the motion of the Hon. R. C. DeGaris:

(For wording of motion, see page 860.)

(Continued from November 3. Page 2692.)

The Hon. C. R. STORY (Midland): I rise to speak to this motion. Anyone perusing the Notice Paper will see that the motion has been before the Council for some time. The matter was before the Joint Committee on Subordinate Legislation for a considerable time, and much evidence was taken. I think that very little unanimity has been reached in this whole matter even over that long period. As a matter of fact, my reason for joining in this debate now is that, as a member of the Joint Committee on Subordinate Legislation, I think I should survey the situation a little in retrospect.

This legislation passed through both Houses of Parliament after a long and arduous meeting of managers at a conference in 1967, when the members of this Council warned the housing industry that it was buying itself severe trouble. The Hon. Mr. DeGaris, the Hon. Mr. Hill and I, together with two of the then Labor Ministers, spent many hours at that conference. During the evening we were subjected to long interruptions when the Attorney General of the day retired to consult with members of the various unions on whether the propositions put forward were or were not acceptable to them. The housing industry seems to be obsessed with the idea, as are so many other people, that it must put its own name in the hat and become absolutely tied by regulations and rules,

each one of which costs considerable money because every time a restriction is placed on anything it must be policed. The moment policing starts, the Government is up for a considerable sum. If one wishes to peruse the number of regulations that have been laid on the table of Parliament in the last two days and total up the sum of money the Government will exact as a result of these, mainly concerning boards where people have asked for restriction, and where people have asked to be placed under control, one will be absolutely staggered at the sum that is falling on the community as a whole to pay. This is a typical example.

Added to the problem of this matter there is some evidence at least that the board is usurping more power than Parliament expected it to have when the legislation was finally passed. It was felt that, as was predicted by most honourable members here, the regulations would be the place where the sting usually is, namely, in the tail, and that is precisely what has happened. Regulations prepared during the term of the Government of which I had the honour of being a member allowed for certain parts of the Builders Licensing Act to be acted on, but we decided that we should not go the whole hog. However, as soon as the present Government was re-elected it introduced regulations, which were subsequently withdrawn in favour of the regulations now under discussion.

After lengthy consideration by the Subordinate Legislation Committee and after a number of deputations to the Premier (as Minister of Housing) and other representations, some changes were agreed to, but these changes have not really altered the situation very much in regard to many of the obnoxious parts of the regulations and the parts to which the industry has objected. Unfortunately, at present the committee is unable to take any further evidence. The Leader of the Opposition wrote to the committee on February 18 asking that members of the housing industry be invited to submit further evidence on this matter so that the Council and another place might be better informed regarding the notices of disallowance which are on the Notice Papers of both Houses.

However, as a result of a Joint Standing Orders ruling it is impossible for the committee to reopen the matter in order to take further evidence. It is futile, as far as I can see, for any other action to be taken. The building industry has now reached complete agreement on this matter, whereas at one time there was some divergence of opinion. It is on the strength of that agreement that the Leader of the Opposition, having been asked, was trying to get this additional evidence before the committee, but that was not possible. I believe it would be futile for the building industry to approach the Government again on this matter because it has been a closed book for about two or three months. Representations have been made and the opinion has been expressed that the Government has gone as far as it need go or should go and that the board should retain the powers it has. Several disquieting things have occurred since the Council rose prior to Christmas and I think they ought to be ventilated here.

The Hon. R. C. DeGaris: There were some before Christmas.

The Hon. C. R. STORY: Yes, a number of them, particularly regarding brickmakers who, in two cases, were people of high integrity, were well respected in the industry for a long while and whose first-quality bricks have been accepted by the Housing Trust and by other authorities. These brickmakers were brought into disrepute. The board's inspectors were quoted as saying that, as their bricks were not up to standard, they were not able to meet the specification, as a result of which complete walls would have to be pulled down. This seems to be outside the scope of the board's jurisdiction.

The Hon. A. F. Kneebone: There's no foundation for that.

The Hon. C. R. STORY: No foundation for the complaints. These things were inspected by members of my Party.

The Hon. A. F. Kneebone: Would they be experts?

The Hon. C. R. STORY: No, but the evidence that came forward to them was that these bricks had been tested by the appropriate authority (which would have been the Ceramics Section of Amdel, I imagine, or a similar authority) and they met every specification and qualification they were expected to meet. They went further than that: they were even better than the specification. It seems to me that that is interfering with the day-to-day operations of the builder. Since then, there have been other complaints of interference. What I want the Minister to do, and why I am giving him the opportunity to do this, is to put the facts clearly and precisely before the Council on whether there is any foundation in what I am saying, because it will depend entirely on the Government's reply and on the board's reply whether these regulations stand or fall.

Being a fair man, I think the Minister will agree that that is the proper approach to make. This matter cannot go through the Subordinate Legislation Committee again. This is the only way it can be done. I draw to the Minister's attention a letter dated February 22 from the Dale Building Company Proprietary Limited, master builders, 141A Glengyle Terrace, Plympton, addressed to the Deputy Leader of the Opposition in another place. The letter states:

Further to my previous correspondence with you regarding ourselves and the Builders' Licensing Board, I wish to inform you of the recent developments that have taken place. The general opinion of members of the industry and many outside, is that this company, and particularly myself, have been deliberately victimized because of my previous organized opposition to the licensing of builders and subcontractors in the manner proposed by the Government. This is proved by the fact that the board's inspectors still come on to the jobs weekly looking for any minor faults they can find.

In the first instance, the Noarlunga council did not complain about the work; it was the board's inspector who asked it to lodge a complaint with the board. In the opinion of the board, the houses built by this company were inadequately constructed, the main disagreement being in the roof construction, yet all timber sizes, spacings and strutting, etc., complied with the Building Act regulations and were constructed in the same manner and method used by the majority of builders including Jennings, Jaxon, Rialto and the South Australian Housing Trust builders, yet the board stated that in their opinion the design and construction did not meet modern engineering requirements. . . .

As the board cancelled our licence, this company was unable to operate and such as it is barred from doing any further work it has now been forced into voluntary liquidation, one result being that considerable hardship has been caused to owners who have had homes built by this company in the past, as they can no longer get any repair or maintenance work done on their properties. In fact, instead of the public being protected, as claimed by the Government they are made to suffer.

If, as it appears likely, more builders are to be delicensed, not only will the home owners suffer but in many cases so will creditors and workmen engaged by these builders, as neither may be able to get paid. It is obvious that every effort should be made to have this bad legislation rescinded.

There are many other letters to back up the argument. Some honourable members pointed out earlier that the Builders Licensing Act would lead the building industry into great trouble; that legislation needs amending, but the regulations, too, need amending. That is why I ask the Minister to let the Council have the benefit of having the board's reasons for its attitude, particularly in regard to the Dale Building Company Proprietary Limited and the Hallett brick company. The Legislative Council Liberal and Country League Party is agreeable to there being some form of licensing. The Party believes that some form of protection is necessary where it is possible that people will exploit the public, but the Party does not believe that the whole building industry ought to be hamstrung to the point where it will almost grind to a halt. That is why I, on behalf of several honourable members, am ventilating these feelings on the matter. We expect, and I am sure we will receive, a factual reply from the Minister when he has an opportunity of replying.

The Hon. M. B. DAWKINS secured the adjournment of the debate.

MISREPRESENTATION BILL

Received from the House of Assembly and read a first time.

The Hon. A. F. KNEEBONE (Minister of Lands): I move:

That this Bill be now read a second time.

It is designed to overcome a number of deficiencies in the law relating to misrepresentation. The Bill arises out of recommendations made to the Government by the Law Society and the Law Reform Committee. This Bill contains provisions that form part of the Government's programme of consumer protection and general legislative protection to members of the public in their dealings with commercial organizations. It is designed to give the public additional and more effective protection against commercial misrepresentation. Experience has shown that the present law of misrepresentation does not provide adequate protection for the general public. A victim of misrepresentation cannot claim damages for his loss unless he can prove that misrepresentation was made fraudulently. Fraud is often very difficult to prove.

The Bill enables damages to be claimed for a misrepresentation by which a person is induced to enter into a contract, without proof of fraud. This will make it immensely more difficult for those who impose on the public by dishonest methods to escape liability by reason of difficulties of proof. A further deficiency in the present law is that it enables commercial organizations to take advantage of their superior bargaining power to insert clauses in a contract that exonerate them from liability for misrepresentation. This defeats the whole

purpose of protective legislation. This Bill provides that such a clause is to be of no effect unless the Court thinks that in the circumstances of the case it was a reasonable provision to insert in the contract. I assume that, in cases where a member of the public is dealing with a large commercial organization, the court will not regard an exclusion clause as reasonable. Where the parties are on equal bargaining terms and the contract is arrived at after a process of genuine negotiation, the court may well regard an exclusion clause freely agreed upon with full knowledge of its effect as reasonable.

Civil remedies are not of themselves sufficient to protect the public against exploitation by way of misrepresentation. Unscrupulous traders rely on their experience that most members of the public do not follow up their legal rights and do not take the necessary legal proceedings to enforce them. Criminal sanctions are required to give real teeth to legislation designed to protect the public against misrepresentation. This Bill therefore creates offences and imposes penalties on those who use misrepresentation as a method of business to cheat the public. The enactment and enforcement of this legislation will do much to improve the standards of honesty and integrity in business and will give the public a much needed protection against unscrupulous business methods. The substantive provisions of the Bill are divided into three separate Parts, and I shall generally deal with each Part before turning to the provisions of the Bill in more detail.

Part II of the Bill provides for criminal sanctions against misrepresentation in commercial transactions. The need for such sanctions was recently highlighted by a case in the Supreme Court, *Athens-McDonald Travel Service Proprietary Limited v. Kazis.* In that case a Cypriot migrant to Australia planned and saved over many years for a holiday in his native land for his family and himself. Instead of an enjoyable respite from the cares of his daily work, he suffered protracted uncertainty and worry as a result of the inadequacy of the travel arrangements. In fact, the actual holiday bore very little relationship to the representations of the travel agent. Similar cases occurred in England prior to the enactment of the Trade Descriptions Act in 1968, but the incidence of such cases in that country was greatly reduced after the enactment of that Act. The possibility of criminal action has very substantially reduced the fraudulent propaganda that had previously been used by unscrupulous travel agencies to deceive the unwary. Part II of the Bill, which is based on the Law Reform Committee's recommendation, does not follow the same form as the English legislation, but should accomplish effectively the same result. The Bill provides that, where a misrepresentation is made in the course of a trade or business for the purpose of causing or inducing any person to enter a contract, or to make over or transfer any real or personal property, the person by whom the business is conducted and the person by whom the misrepresentation is made shall each be guilty of an offence. The Bill provides, however, appropriate defences where the defendant is innocent of any blameworthy act or omission.

Part III of the Bill arises from a recommendation made by the Law Society to the Government. The Law Society recommended that the United Kingdom Misrepresentation Act should be enacted in this State with certain suggested amendments. The purpose of this proposal is to expand the remedies available at common law and in equity for misrepresentation. It has long been recognized that there is a number of inadequacies and deficiencies in this area of the law, and it is hoped that the new provisions will go some distance towards eliminating them. Where a contracting party is induced by misrepresentation to enter into a contract, he may be entitled to rescind the contract on the ground of that misrepresentation. The law, however, recognizes certain bars to the exercise of this right of rescission. For example, if the contracting party has affirmed the contract by acting as if the contract were subsisting after he has discovered the misrepresentation, or if a third party has for valuable consideration obtained an interest in the subject matter of the contract, the right of rescission may be lost. There are, however, certain bars to rescission which are generally recognized as being technical rather than arising from the necessity to protect persons who might be adversely affected by the rescission. The Bill removes these technical impediments.

Part III of the Bill also provides for a contracting party the right to seek damages for misrepresentation that has induced him to enter into a contract on a false basis. A complementary provision empowers a court or arbitrator to award damages in lieu of rescission where a right to rescission has been established. It is felt that damages may be

a simpler and more appropriate remedy in many instances. Part III also contains a provision to restrict the right of a contracting party to exclude the consequences of his misrepresentation by placing an exclusion clause in the contract. Such a provision is to be of no effect unless the court thinks that in the circumstances of the case it was a reasonable provision to insert in the contract. Thus, a large organization with bargaining power that overwhelms the free negotiation of contractual terms by the other party to the contract is prevented from imposing conditions that will exonerate it from liability for misrepresentation.

Part IV makes a number of technical amendments to the Sale of Goods Act which I shall explain in dealing with the provisions of the Bill in more detail. The provisions of the Bill are as follows: Clause 1 is formal. Clause 2 provides for the new Act to come into operation on a day to be fixed by proclamation. Clause 3 deals with the arrangement of the Act. Clause 4 imposes criminal sanctions against misrepresentation made in the course of a trade or business for the purpose of inducing a person to enter into a contract or to make over or transfer any real or personal property. Where it is proved that a misrepresentation in fact acted as a material inducement to any person to enter into a contract, or to pay any pecuniary amount, or to make over or transfer any real or personal property, and some consideration passed as a result to the representor, or the trade or business in which he was engaged, a presumption arises, in the absence of proof to the contrary, that the misrepresentation was made for the purpose of achieving that end. Under subclause (3) the defendant is given a defence if he proves that the person making the representation believed upon reasonable grounds that it was true, or, if the defendant is not the person by whom the representation was made, that he took all reasonable precautions to prevent misrepresentations being made by persons acting on his behalf, or in his employment. Subclause (5) provides that, where a body corporate is guilty of an offence under the section, each member of the governing body of the body corporate who knowingly authorizes, suffers or permits the commission of the offence shall be guilty of an offence and liable to the same penalty as the body corporate. Subclause (7) provides that the new section does not apply to an advertisement that is subject to the provisions of the Unfair Advertising Act, 1970.

Clause 5 deals with interpretation. It makes it clear that in Part III of the new Act a reference to a court will include a reference to an arbitrator acting in pursuance of the Arbitration Act. Clause 6 removes certain bars to the exercise of a right of rescission. It provides that the fact that a misrepresentation has become a term of the contract, the fact that a contract has been performed, or the fact that conveyances, transfers or other documents have been registered at a public registry office in pursuance of the contract, shall not act as an impediment to rescission. There is some authority in the case of *Leaf the International Galleries* (1950) 2.K.B.86 for the proposition that, where a misrepresentation has attained the status of a contractual term, the right to rescission is lost, and the party subjected to misrepresentation has to rely on a common law action for damages. This principle seems to create an unjustifiable distinction between cases in which the misrepresentation has become embodied in the contract and cases in which it has not. The distinction is accordingly removed by this clause. The second bar to rescission removed by this clause arises from the case of *Seddon v. North-Eastern Salt Co. Ltd.* (1905) 1 Ch. 326. This case held that, although a contract may be rescinded after it has been fully executed where the misrepresentation has been made fraudulently, it cannot be so rescinded in the absence of fraud. This distinction has been criticized on many occasions by judges and academic writers and, in view of the fact that there seems no adequate justification for the distinction, it is removed by the Bill. The third bar to rescission dealt with by the Bill, namely, that conveyances, transfers or other documents have been registered at a public registry office in pursuance of the contract, is largely an expansion of the second ground. In view of the fact that it is separately referred to as a distinct bar to rescission in certain authorities, the Bill deals specifically with it in order to make it clear that it has no further validity as a bar to rescission. Subclause (2) of clause 6 is inserted as a precautionary measure in order to ensure that the new clause will not be construed as creating a right of rescission where the exercise of such a right would affect the interest of a third party who has in good faith and for valuable consideration acquired an interest in the subject matter of the contract. Subclause (3) provides that the remedies available under the Land Agents Act and the Business Agents Act are unaffected by the new provisions.

Clause 7 is designed to expand the remedies at present available at common law and in equity for misrepresentation. Subclause (1) provides that, where a contracting party is induced by a misrepresentation to enter into a contract and any person would, if the misrepresentation had been made fraudulently, be liable for damages in tort to the contracting party subjected to the misrepresentation in respect of loss sustained by him as a result of the formation of the contract, that person is to be so liable to the contracting party in all respects as if the misrepresentation had been made fraudulently and were actionable in tort. However, under subclause (2) a defence is established if the person by whom the representation was made had reasonable grounds to believe, and did believe, that the representation was true or the defendant was not the person by whom the representation was made and did not know, and could not reasonably be expected to have known, that the representation had been made, or that it was untrue.

Thus, where a person loses money by reason of a contract that he has been induced to make in consequence of misrepresentation, he may, if the misrepresentation resulted from inadequate inquiry or caution on the part of the representor, recover damages. Subclause (3) expands the powers of a court or arbitrator when dealing with proceedings relating to the rescission of a contract. It provides that where a right to rescission is proved to exist, the court may, in lieu of giving effect to the right of rescission, award damages to compensate the party who has suffered loss by reason of the misrepresentation. Subclauses (4), (5) and (6) deal with incidental matters.

Clause 8 seeks to control a contractual device by means of which a contracting party may seek to escape the legal consequences of misrepresentation. It provides that a clause in a contract purporting to exclude liability for misrepresentation shall not be effective except to the extent that the court or arbitrator may think that a reliance on it is justifiable in the circumstances of the case. This question will no doubt be determined by reference to the relative bargaining power of the parties to the contract. Clause 9 provides that Part III of the Act is not to apply in respect of a misrepresentation or a contract made before the commencement of the new Act.

Part IV of the Bill contains amendments to the Sale of Goods Act. These amendments were suggested by the United Kingdom Law Reform Committee in its tenth report as being necessary to make the Sale of Goods Act consistent with its proposals for amending the law relating to misrepresentation. First, the amendments make the right to reject specific goods for breach of a condition depend on whether the buyer has accepted the goods and not on whether the property has passed to him and, secondly, ensure that the buyer shall not, by doing an act inconsistent with the seller's ownership, be deemed to have accepted goods until he has had an opportunity of examining them.

Clause 11 amends section 11 of the Sale of Goods Act. Subsection (3) at present provides that where a contract of sale is for specific goods and the property has passed to the buyer, the breach of a condition to be fulfilled by the seller can be treated only as a breach of warranty and not as a ground for repudiating the contract. This is clearly inconsistent with the principle asserted by the Bill that a right to rescission should exist notwithstanding that a contract has been executed. Clause 12 amends section 35 of the Sale of Goods Act. This section deals with the time at which a buyer of goods is to be taken is to have accepted them. The amendment merely makes it clear that, where the buyer has not had a reasonable opportunity to examine the goods subject to the contract, the legal consequences flowing from acceptance of the goods do not operate until that opportunity has been afforded.

The Hon. F. I. POTTER secured the adjournment of the debate.

PACKAGES ACT AMENDMENT BILL

The Hon. A. F. KNEEBONE (Minister of Lands) obtained leave and introduced a Bill for an Act to amend the Packages Act, 1967-1969. Read a first time.

The Hon. A. F. KNEEBONE: I move:

That this Bill be now read a second time.

As some honourable members will recall, the principal Act, the Packages Act, 1967, was enacted to ensure that as far as possible packaging law would be uniform as between the States of the Commonwealth. During the lengthy consultations that took place between the States preceding the introduction of the uniform Act, the views of the packaging industry in this State were canvassed and the needs of that industry were kept to the fore. As a result, the South Australian Act in some particulars departed from the principles embodied in the uniform proposals. In most of its departures this State's attitude was clearly vindicated to the extent that,

following the 1969 conference of authorities in Papua and New Guinea, the South Australian proposals were, almost without exception, adopted by the other States.

However, almost five years experience with the Act has suggested that in some particulars at least the legislation may be deficient in procedural matters. The general area of deficiency is in the dealing with offences that have an interstate flavour usually characterized by a movement of goods from one State to another. Few, if any, problems appear to arise where the movement of goods is entirely intrastate. The effect of the proposed amendments should be to put the packer whose place of business is outside the State on the same footing as a South Australian packer. At the same time, opportunity has been taken generally to re-examine the Act and to effect such other minor amendments as appear desirable.

I will now deal with the Bill in detail. Clauses 1 and 2 are formal. Clause 3 at paragraph (a) corrects what is clearly an incorrect word in the definition of "article". The word in question obviously should be "foods", not "goods". At paragraph *(b)* the definition of "pack" is clarified and, again in the interests of clarity, an explanation of the concept of a "pre-packed article" is provided by new subsections (2a), (2b) and (2c). Clause 4 is a drafting amendment. Clause 5 provides for the permitted variation from what might be called true correct weight to be calculated by reference to metric units as well as English units in certain cases. Clause 6 amends section 21 and provides for the marking of articles described as having a "net weight when packed" with an indication of the day on which they were packed.

Clause 7 amends section 32 at paragraphs *(a)* and *(b)* and makes an amendment not dissimilar in intention to that proposed by clause 5 except that whereas clause 5 dealt with "packing offences" this amendment deals with "selling offences". The amendment proposed by paragraph (c) is of considerable importance and merits a detailed explanation. It is common knowledge that in these days of pre-packaged goods the actual retailer has little control of the weight or measure of those goods and it would be absurd to suggest that he would bear prime responsibility for their correctness. In practical terms he accepts the goods, and displays them and sells them, relying on the technical efficiency of the packer, who is usually the manufacturer, to ensure that the goods are not short weight. In keeping with this view, the Act does not bear heavily on the prudent shopkeeper who inadvertently sells a short weight pre-packed article. The Act seeks to place the responsibility where it properly lies, that is, with the packer who actually packed the article.

Where the packer carries on business in this State, no difficulty arises since the packing offence is clearly within the jurisdiction of the courts of this State. However, when the packer carries on business outside the State certain constitutional and practical difficulties may arise in prosecutions for a packing offence. Accordingly, this new provision provides that, in the circumstances set out, the packer will be deemed to have sold the article to the inspector at the time and place where the article was found to be deficient. This provision is based on corresponding provisions in the law of the other States and has, I understand, worked well in practice. An illustration of the difficulty that this provision will overcome occurred here recently where a number of packs of a nationally advertised product that had been packed outside the State were on examination found to be deficient in weight and the deficiency was of the order of 8 per cent to 12 per cent.

Since the correct weight of the product was in the vicinity of three ounces, it is clear that in the case of each unit the difference in weight would be imperceptible to the average retailer. However, the total deficiency in a number of units would be significant. From a practical point of view no real fault lay on the part of the retailer in selling the product before the deficiency was brought to his attention. However, the packer of the product could not, on the face of it, be proceeded against because that packing offence occurred outside the State. Thus, it is in these circumstances that the proposed amendment will be of use in sheeting home to the packer the responsibility that is properly his.

Clause 8 provides for a selling offence in connection with articles not sold by net weight or measure. The effect of this provision will prohibit the sale or marking of articles marked "gross weight" unless the sale or marking is specifically authorized. In addition, provision is made for the delivery of an invoice showing the weight or measure of articles sold by weight or measure delivered away from the premises of the seller unless, of course, those articles are already marked with their weight or measure.

Clause 9 deals with offences, and the effect of subsection (2) of proposed new section 42a is to extend the period within which proceedings for offences against the Act may be brought. It is felt that this extension is justified because of the peculiarity of weights and measures administration. In the nature of things, for instance, a considerable period often elapses between the time that goods are packed and the time that they come to the attention of the authorities; the period of time between the formal commission of the offence and its impact on the public can run into some months. Subsection (3) is intended to facilitate proceedings against a person at fault without the necessity of involving *de facto* innocent parties in proceedings. This clause and clause 8 have been discussed with representatives of the industry and it was agreed that they are necessary and desirable.

Clause 10 is designed to facilitate proof of certain formal matters in prosecutions for offences against the Act and follows fairly closely a similar provision in the Weights and Measures Act, 1971. Clause 11 in general provides for the regulation of sales by vending machines, these being sales where the actual vendor is not physically present at the time of sale. In addition, a general power of exemption is given by regulation. In accordance with the established practice, regulations made under these powers will, in common with other regulations made under the Act, be subject to Parliamentary scrutiny.

The Hon. V. G. SPRINGETT secured the adjournment of the debate.

RURAL INDUSTRY ASSISTANCE (SPECIAL PROVISIONS) ACT AMENDMENT BILL

The Hon. A. F. KNEEBONE (Minister of Lands) obtained leave and introduced a Bill for an Act to amend the Rural Industry Assistance (Special Provisions) Act, 1971. Read a first time.

The Hon. A. F. KNEEBONE: I move:

That this Bill be now read a second time.

The purpose of this short Bill is to ensure that rehabilitation loans payable, pursuant to the principal Act, to former farmers who have been obliged to leave the industry for economic reasons are not subject to the claims of creditors of those former farmers. Loans of this nature cannot, in the terms of the agreement between the Commonwealth and this State, exceed $1,000 and it is clear that, unless they can be protected from the claims of creditors, the purpose of granting the loan—to give some assistance in the rehabilitation of the impoverished farmer—would in most, if not all, cases be entirely frustrated. The operative clause of the Bill, clause 4, inserts two new sections in the principal Act, sections 24a and 24b. Proposed section 24a merely defines the loan in the terms of the agreement under the States Grants (Rural Reconstruction) Act of the Commonwealth. Proposed section 24b sets out the circumstances in which a creditor of a former farmer will not have recourse to the moneys comprised in the loan in satisfaction of any debt owing by the former farmer. Honourable members will note that the protection applies only to debts or obligations contracted before the loan moneys became payable.

The Hon. R. C. DeGARIS secured the adjournment of the debate.

BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from February 29. Page 3476.)

The Hon. G. J. GILFILLAN (Northern): I support this Bill, which is relatively simple. It amends section 24 of the Births, Deaths and Marriages Registration Act, 1966, subsection (1) of which provides:

> A person who has attained the age of twenty-one years, or has previously been married, and—
>
> *(a)* whose birth is registered in the register of births; or
>
> *(b)* in respect of whom an entry has been made in the Adopted Children Register under the provisions of the Adoption of Children Act,
>
> may, by signing an instrument in accordance with the form in the tenth schedule, change his surname or any of his names.

That is quite clear, but subsection (4) deals with a child under the age of majority (in this case, under 21 years) and provision is made there for the parents (or one parent if only one is living or if the child is illegitimate) also to change the surname of that child.

The Hon. Sir Arthur Rymill: Is it not now 18 years of age?

The Hon. G. J. GILFILLAN: Yes; but no provision is specifically spelled out there for an adopted child. What this amending Bill seeks to do is to define specifically the position of an adopted child in subsection (4). This is set out in the second reading explanation, but there is one other point that

was not emphasized in the second reading explanation—that the age of 21 years mentioned in the section is to be changed to 18 years, to conform, no doubt, to the age of voting and other alterations to the age of majority in various Acts, where it has been reduced from 21 to 18 years. I see no objection to this. I am not sure that it is wise, because often young people of 18 are living within the family, and wielding authority over a child at this age may lead to some difficulty or friction in the family; but generally, as the age of 18 has been accepted for voting, drinking and other activities, it does not seem unreasonable to adopt it in this legislation.

It is now proposed that a child over the age of 18 may change its surname or other names, but I notice that in section 24 (4) of the principal Act, where the parent has the right to have the surname of the child changed, the written permission of the child must first be obtained if that child is over 16 years of age. So, between the ages of 16 years and 21 years in the original Act the parents may change the surname, but only with the child's consent. The upper limit has now been reduced from 21 years to 18 years, but nothing has been done about the age of 16 years as the age above which the child's consent must be obtained. If a child of today, as has been claimed, is much wiser at 18 years than were his predecessors (in fact, it is claimed that he is as well informed as the person of 21 years was a few years ago), it would seem that a child of 14 years or 15 years should be as well informed as a child of 16 years some years ago. I make that point, but I do not believe that it is of any real importance. As the Bill's provisions are straightforward, I support it.

Bill read a second time and taken through Committee without amendment. Committee's report adopted.

PUBLIC SUPPLY AND TENDER ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from February 29. Page 3476.)

The Hon. C. R. STORY (Midland): I support this very short Bill. The title under which we have known the officer-in-charge of the Public Supply and Tender Act, 1914, is to be changed from Chief Storekeeper to a much more important sounding title, namely, Director, State Supply Department. However, I do not think that that will make much difference to the Government's operations.

The Hon. F. J. Potter: Will it make any difference to his salary?

The Hon. C. R. STORY: I am not sure about that, because the Bill provides:

> The chief storekeeper in office under this Act immediately before the commencement of the Public Supply and Tender Act Amendment Act, 1971, shall, on the commencement of that Act, be deemed for the purposes of this Act to be a Director, State Supply Department, appointed under subsection (1) of this section.

I take it that that is in the interests of uniformity, which is the in thing at present. I do not think that the drafting in this Parliament has improved one iota since we changed the title from Parliamentary Draftsman to Parliamentary Counsel, but I do think the salary in that case has gone a little higher in conformity with Parliamentary Counsels' salaries paid in the rest of Australia. I think that that is one of the very good reasons why the Government is bringing this matter into uniformity. We seem to be becoming terribly uniform now, so much so that the Commonwealth Government will probably put in a take-over bid and we will be sucked in by it. I am sure that the Minister cannot give me any undertaking whether the incumbent, having had his title changed, will have his salary increased by $2,000 or $3,000.

The Hon. A. F. Kneebone: I'll not interfere with the arbitration process.

The Hon. C. R. STORY: Neither would I. I like to see the arbitration system operating, but we are not seeing it operate at present, because there is too much direct action by far. We are not seeing arbitration working in the true and proper way for which it was designed. I might even withdraw my support for the Bill if I thought this matter would not be properly arbitrated.

Bill read a second time and taken through its remaining stages.

COMPANIES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from February 29. Page 3479.)

The Hon. C. M. HILL (Central No. 2): This very lengthy and complex legislation has been a long time coming forward. I read with interest that the Minister said, after the original 1962 Act was passed, that within four or five years some revision would take place. After that, the Eggleston committee brought down a series of reports, each of which have, over the years, been incorporated into this one measure. The legislation has either been considered by the other States or is with their Parliaments now.

I support the second reading of the Bill because I believe it is essential that throughout Australia the commercial and industrial world and the professions whose members work within the framework of the various Companies Acts must have modern, up-to-date legislation within which to operate. In saying that I support the second reading, I point out that I intend to take part in the debate in the Committee stage because I believe some changes should be made to improve the Bill.

I commend the Hon. Mr. Potter for the concise way in which he dealt with the Bill yesterday. In principle, I support the amendments of which he gave notice. The main principle to be sought is the principle of uniformity. I recall that a few moments ago the Hon. Mr. Story commented on the question of uniformity. When we accept, as we undoubtedly must, that the whole business and commercial world throughout Australia is interwoven at a national level, we realize that it is surely desirable that there should be uniformity between the various Companies Acts that apply throughout Australia—or at least as much uniformity as it is possible to achieve.

I read with interest that changes were made as the corresponding Bills were dealt with in the Parliaments of New South Wales and Victoria. Whilst I am not yet certain whether each of those States has made changes in regard to the question of auditors for exempt proprietary companies, I believe that in Victoria the change was made, and it is that change that the Hon. Mr. Potter has proposed in the amendments of which he has given notice.

The Hon. F. J. Potter: There is a similar change in New South Wales.

The Hon. C. M. HILL: Yes. I believe that at least one other honourable member is making certain of the exact position there. I heard one report that the New South Wales Parliament had gone much further than the Victorian Parliament; indeed, that it had gone so far that it had provided for the principal accounting officer in the various companies to certify the correctness of accounts and that the certification could be lodged in the Companies Office in New South Wales in lieu of the auditor's certificate. I am not certain that that was the change, but I shall satisfy myself about it before the Bill reaches the Committee stage.

I stress the importance of uniformity, and I believe that this Council should make every endeavour to reach as much uniformity as possible between the States, so that the professions and business people in the various States have similar legislation under which to work. I do not think there should be a need for auditors in companies in the private sector. I believe that more than 90 per cent of all companies registered come within that group. The innocent investing public is not, in the main, concerned with private companies; it is mainly concerned with public companies.

Also, business creditors have in their power the opportunity to take full precautions before they lend money and before they enter into transactions with private companies, and it is incumbent upon such creditors to take all possible precautions. Whether or not the compulsory auditing of such companies' accounts would, in fact, help the people I have referred to is highly questionable.

I believe the savings derived by such people would be far outweighed by the cost of the audit work that would be required. It would be a very costly business indeed. Even the figures given by the Hon. Mr. Potter yesterday may well be exceeded, but there is also the question of the availability of time and the availability of qualified auditors to do all the work that would be necessary if the Bill passed in its present form.

The Hon. F. J. Potter: The availability of auditors affects the fee.

The Hon. C. M. HILL: Yes. Also, we must remember the need to have the work done within a specified time. The responsibility of auditors to give this work priority would have to be borne in mind. All these factors would play a part in the determination of the audit fee. There are companies in the private sector of which we have all had experience from time to time. One is the normal private family investment company where only family members are concerned and where the operations are very small.

To compel such companies to go to the expense of employing an auditor seems to be quite unnecessary. However, as an alternative, the private accounts of these companies could well be lodged, as the Hon. Mr. Potter said yesterday, with the Registrar of Companies. That should be a means of ensuring that at least some course is taken that is different from the present practice (assuming, of course, that there is a need for a change of some kind).

I fully appreciate that in some family affairs the members of a family may believe that it is an infringement of their privacy to lodge accounts, because those accounts could

become public through searching in the Companies Office. Under the proposal, the alternative in cases such as this would be to have the books audited; then, the family's privacy would not be infringed.

Another group of companies of which I had experience some years ago was the group that could be called non-profit home unit companies. They are private companies that exist in cases where home units are owned under the old system. The owners of the units are involved in a company ownership, and each shareholder is a lessee or occupant of a unit. That system applied before strata titles came into existence. These small companies involve only the unit holders.

In many cases one of the unit holders, who may be a retired person who has had accountancy experience, acts as the secretary. The financial affairs of the company involve only the collection of a service charge to cover rates and taxes and the cost of exterior maintenance of the buildings. To force a company of that kind, as this Bill does, to appoint an auditor would involve the shareholders of the company, many of whom may be pensioners or people on low incomes, in completely unnecessary expense.

There must be hundreds, if not thousands, of such companies in existence today. So one could go on talking of the various groups of exempt proprietary companies, and the further one delves into the subject the more unnecessary it appears to have before us a measure in which auditors must be appointed, as a change from the old system under which such action was not necessary. I believe a change should be made along the lines suggested yesterday by the Hon. Mr. Potter.

I note with interest that clauses 14, 16 and 17 of the Bill deal with control over property syndication in South Australia. I have been greatly concerned for some time past to see property syndication in this State developing in the way that such promotional work has developed. There is nothing wrong with this form of investment if it is expertly managed, but time and time again we see in the press examples of very high returns being assured or promised. Only in today's press one could see mention of returns of 16 per cent, 14 per cent, and also one return of up to 19 per cent per annum. The assurances given in such advertisements leave the reader in no doubt that these are promises the promoters fully guarantee.

I do not criticize all those who promote this form of investment, but there are some who are making promises and who, I believe, will be unable to fulfil those promises. It seems that the legislation in the past has not provided sufficient power for a Government department to exercise proper control in cases where these matters have been in the hands of those who, although they might be acting in good faith, are acting in such a way that they cannot fulfil the promises they are making publicly.

More importantly, from the point of view of those who are taken in by such promises, is is quite evident to me that some small investors in South Australia will get their fingers burnt if they invest without a great deal of inquiry into this form of investment. These people need some protection and the Bill, in its present form, will give the Government the power to supervise and to carry out some surveillance over this sector of our business activity to avoid unfortunate losses to many people who cannot afford such losses. I favour the change, which gives the Government power to supervise and control these operations.

The work will be carried out by the Companies Office, the officers of which, especially the senior officers, are to be complimented on the splendid service they give the public. They are not only efficient, but they are extremely helpful to members of the public and to members of the accountancy and legal professions who contact them regarding everyday inquiries. With the improved legislation that is proposed the department will not only be able to carry on such splendid service but will be able to give more effective service, because it will be working under a modern and up-to-date Act.

I reiterate my support of the second reading. I have no objection to the Bill to that stage, although I feel very strongly that alterations should be made regarding the need or otherwise for auditors to be appointed in the field of the exempt proprietary companies, but I will have more to say about that in the Committee stage.

The Hon. Sir ARTHUR RYMILL secured the adjournment of the debate.

ADJOURNMENT

At 3.58 p.m. the Council adjourned until Tuesday, March 7, at 2.15 p.m.