LEGISLATIVE COUNCIL

Thursday, March 16, 1972

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

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Births, Deaths and Marriages Registration Act Amendment,

Law of Property Act Amendment,

Public Supply and Tender Act Amendment,

University of Adelaide Act Amendment.

QUESTIONS

AMOEBIC MENINGITIS

The Hon. R. C. DeGARIS: Has the Minister of Health a reply to my question of last week concerning swimming pools?

The Hon. A. J. SHARD: Amoebae live in water and wet surroundings; they enter through the nose, and their entry appears to depend on forced entry of water into the nose. Their multiplication is aided by warm conditions, and they are destroyed by salt and chlorine. Therefore, it seems likely that swimming pools in areas where the disease has occurred could be an important source of infection. The Queensland case appears certain to have been infected in a swimming pool. There is no definite evidence incriminating a swimming pool in any South Australian case. Some of the oversea cases have been associated with heated swimming pools.

LEADER OF THE OPPOSITION

The Hon. D. H L. BANFIELD: My question is addressed to the Chief Secretary. Will he convey the congratulations of Government members in this Council to Dr. Bruce Eastick on his appointment to the arduous position of Leader of the Opposition in another place, and wish him a long tenure of office in that position?

The Hon. A. J. SHARD: I have already extended my personal congratulations to Dr. Eastick. I have also conveyed to him my sympathy in the arduous work he has taken on and my hope that he will have a long and successful term as Leader of the Opposition in another place.

LAWNMOWERS

The Hon. M. B. CAMERON: I seek leave to make a short statement prior to addressing a question to the Minister of Lands, representing the Minister of Roads and Transport.

Leave granted.

The Hon. M. B. CAMERON: Recently I was informed by a constituent in Mount Gambier that self-propelled lawnmowers of the type people sit on to operate are required by law, if used in cutting a grass strip immediately outside a residence, to have turning lights and to be driven by a person who holds a driver's licence. This man was informed that, if he walked behind the mower (where he would be in a dangerous position) and guided it by hand instead of sitting on it, under the terms of the Act he would not be required to have a driver's licence and to comply with all the other conditions. The result is that this man is now having to cut his lawn while his 15-year-old son watches television. Will the Minister consider having these machines exempted from the restriction, since they serve the very useful purpose of keeping down the grass immediately in front of a home, they create a neat appearance in the city areas, and I do not think it is necessary to have them covered by these wide restrictions?

The Hon. A. F. KNEEBONE: I will be happy to convey the honourable member's question to my colleague and bring back a reply as soon as it is available.

PORT WAKEFIELD ROAD

The Hon. L. R. HART: On March 1, I asked the Minister of Lands, representing the Minister of Roads and Transport, a question regarding work on the rebuilding of the Port Wakefield Road coming to a standstill at a point south of Dublin. Has the Minister a reply to that question?

The Hon. A. F. KNEEBONE: My colleague reports that the work of reconstructing the road between Dublin and Two Wells was commenced before the design of the whole length was completed. Although this is an undesirable course of action, and is avoided wherever possible, it is nevertheless forced on the department on some occasions as an expedient to early commencement of construction.

When reconstruction commenced on this road, it was known that extensive investigation would be needed to determine a suitable design to avoid flooding in the vicinity of the Light River. Although the time involved in the design investigation could not be determined, nor could the extent of necessary construction work be ascertained, there appeared to be a reasonable chance that the design would be

completed in time to allow the gang to work through without a break. Alternatively, if a break in operations was necessary, there appeared a good possibility of transferring the gang to work elsewhere in the State. Unfortunately, design considerations (which are currently in hand) indicate that more work is necessary than originally was anticipated, and a break in the continuity of operation of the construction gang was inevitable. At the same time, unexpected developments precluded the gang from being transferred to other works elsewhere in the State.

Accordingly, to avoid retrenchment of employees, it was necessary to rearrange the programme of works planned in the Two Wells area, and the departmental gang is temporarily deployed on works that would otherwise have been carried out over a period of years by the District Council of Mallala. In order to avoid hardship to the council, funds have been allocated to it to undertake work on other roads in the area. It is understood that the council is satisfied with the arrangements, and that there is no question of retrenchment of its employees. The answers to the specific parts of the question are:

(1) The section adjacent to the Light River is still in the process of being surveyed, designed and planned.

(2) It is not possible at this stage accurately to predict when work adjacent to the Light River will commence, because this will depend on the progress of the design. Although some work on drainage structures could be carried out next summer, it may still be necessary to transfer the gang away for a short time and commence roadworks in about two years.

(3) There is no question of any disciplinary action being taken because the design was not completed without the provision of floodwater culverts.

(4) As mentioned above, funds are being made available to the council to carry out other roadworks. The net result for the council, of course, is earlier completion of sealing works than would otherwise have been possible.

MINING LEASES

The Hon. A. M. WHYTE: On March 7 I asked the Minister of Lands, representing the Minister of Development and Mines, a question regarding a situation that had arisen at the Coober Pedy mining field, where certain miners had been evicted by Commonwealth security officers, despite their having registered their claims with the Mines Department, and I asked whether the Government would negotiate on their behalf with the Commonwealth authorities. Has the Minister of Lands received a reply from his colleague?

The Hon. A. F. KNEEBONE: The Minister of Development and Mines reports that the restriction on opal mining in the area south of Coober Pedy known as Penryn or June field has been imposed by the Weapons Research Establishment authorities at Woomera. No official notification has been received in writing, but at a meeting with Mines Department area officers at Coober Pedy on February 17, 1972, the Range Administrator stated that no mining would be allowed farther south than 4½ miles from Coober Pedy. The reason given for the prohibition was that the area was in a direct line of rocket fallout and was, therefore, potentially dangerous. As the whole of the area between Kingoonya and Coober Pedy is within the Woomera prohibited area, the honourable member's question will be referred to the Minister for Supply.

The Hon. A. M. WHYTE: Will the Minister again confer with his colleague and make a point of the significant fact that the main Alice Springs road runs within two miles of this area and that, at present, no restricted hours of travel apply to that road? I raise this matter just as a point of inconsistency, as the Minister might think the situation should be altered.

The Hon. A. F. KNEEBONE: I shall be happy to convey the honourable member's additional question to my colleague.

RAILWAY FINANCES

The Hon. M. B. DAWKINS: I seek leave to make a statement prior to asking a question of the Minister of Lands, representing the Minister of Roads and Transport.

Leave granted.

The Hon. M. B. DAWKINS: Last month there appeared in the *Railway News* an open letter from the Railways Commissioner (Mr. Fitch), in which he drew attention to the alarming drift in railway finances and the serious deterioration in recent years in these finances despite higher tonnages being carried on some sections. Mr. Fitch said it might be argued that rail freights in South Australia suffer by comparison with those on the road but that the main aim of the railways is to provide the best service for the community as a whole. He also asked whether or not

the railways were required. Will the Minister say whether these comments by the Commissioner indicate that this Government is considering closing some country lines?

The Hon. A. F. KNEEBONE: As this is a policy matter affecting my colleague, the Minister of Roads and Transport, I will convey the honourable member's question to him.

STATUTES AMENDMENT (MISCELLANEOUS PROVISIONS) BILL

Second reading.

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

That this Bill be now read a second time.

It is based very largely on the twelfth report of the Law Reform Committee and is designed principally to remove anomalies in the law relating to limitation of time for bringing actions, although it does deal with certain other matters as well. The Bill first abrogates the rule in *Yonge v. Toynbee,* (1910) 1 King's Bench, page 215, so far as it applies to legal practitioners. This rule provides that, where an agent is proceeding on behalf of his principal and the principal becomes of unsound mind, the authority of the agent is forthwith extinguished. This rule may result in the legal practitioner innocently acting without authority and, perhaps more importantly, may prejudice the proper conduct of proceedings on behalf of the mentally unsound client. Where the client is subject to mental unsoundness that occurs sporadically—for example, epilepsy—a very confused and uncertain situation may result. The Bill accordingly abrogates the rule in *Yonge v. Toynbee* as it applies to a legal practitioner. The legal practitioner will, of course, still be bound to act in the best interests of his client by the laws of agency and the ethics of his profession.

Section 45 of the Limitations of Actions Act provides that the time limited for bringing an action does not run against a person while he is an infant or of unsound mind. This is clearly a desirable provision. It is anomalous, however, that it does not extend to periods of limitation arising under other Acts. The Bill accordingly extends the provisions of section 45 to cover those other periods of limitation. A further amendment to the Limitation of Actions Act provides that, where a cause of action survives for the benefit of the estate of a deceased person, the time limited for the commencement of the action shall be extended by the time between the deceased's death and the grant of probate or letters of administration or by 12 months, whichever is the lesser period. A further amendment to this Act enables a court to extend a limitation period where facts material to the plaintiff's case were not ascertained by him until after, or shortly before, the expiration of that period. Certain medical conditions do not manifest themselves in positive symptoms until long after the injury to which they relate. This section should prevent miscarriages of justice arising where the plaintiff is not aware of the factors upon which his claim is to be based until an unusually late date.

The Bill repeals section 719 of the Local Government Act. This provision establishes periods of limitation for proceeding against officers of municipal and district councils. The provision is largely unnecessary because of the provisions of the Justices Act. In so far as it has been construed as establishing special limitation periods for instituting civil proceedings against councils, it is thought to be undesirable.

The Bill clarifies the provisions of the Motor Vehicles Act relating to the giving of notice prior to proceeding against the nominal defendant. The notice ceases to be an absolute condition precedent in a hit-run case. The court may, however, strike out an action where a notice is not given as soon as practicable after it becomes apparent that the proceedings will have to be brought against the nominal defendant and the court is satisfied that the nominal defendant has, in consequence, been prejudiced in the conduct of his defence. The special period of six months within which notice must be given where damages are sought from the nominal defendant for injury caused by an uninsured vehicle is removed. The normal limitation period of three years will apply to personal injury claims under this section.

Finally, the Bill amends the Wrongs Act. Section 25 of that Act enables a person who is responsible for a tort to claim contribution from any other person who is jointly liable for the same tort. The Chief Justice of the Supreme Court has in recent years criticized the rather complicated provisions establishing time limits for the commencement of these proceedings between tort-feasors. The Bill does away with these complicated provisions and inserts a simple provision in their place under which proceedings for contribution must be commenced by a tort-feasor within two years after his own liability has been determined by a court, or by settlement of the claim against

him. The second amendment to the Wrongs Act does not arise from the report of the committee. Its purpose is to abrogate a rule under which an employer who is vicariously liable for the tort of his employee can claim indemnity from the employee in respect of that liability.

This indemnity may be claimed on the basis of an express or implied term in the contract of employment or pursuant to the provisions of the Wrongs Act for contribution between tort-feasors. A prudent employer can always protect himself by insurance where there is any real likelihood of liability arising by reason of the acts or omissions of those engaged in his employment. There can be no justification for continuing this right of indemnity which is of such dubious value to an employer that it is rarely enforced but which may in isolated cases cause considerable hardship to an employee. The Bill contains protections for the employer. Where the employee is insured and the proceedings are brought against him, he must seek indemnity from the insurance company and not from the employer. Where the employee is insured and proceedings are brought against the employer, the employer is to be subrogated to the rights of the employee under the policy of insurance. The provisions of the Bill are as follows:

Clauses 1 to 5 are formal. Clause 6 provides that the authority of a legal practitioner to act on behalf of a client is not to be abrogated by the fact that the client becomes of unsound mind. Clause 7 is formal. Clause 8 repeals sections 45 and 46 of the Limitation of Actions Act and enacts new sections 45, 46 and 46a. New section 45 provides that the suspension of limitation periods during the infancy or insanity or mental infirmity of the person in whom a right of action is vested applies equally to limitation periods established under the Limitation of Actions Act and under other Acts. New section 46a provides that, where a cause of action survives for the benefit of the estate of a deceased person, the period of limitation appropriate to that action shall be extended by the period between the death of the deceased, and the grant of probate or letters of administration, or by 12 months, whichever is the lesser period. Clause 9 inserts new section 48 in the principal Act. The new section empowers a court to extend a limitation period where facts material to the plaintiff's case were not ascertained by him until after or shortly before the expiration of that period. Clause 10 is formal.

Clause 11 repeals section 719 of the principal Act. As a result of this repeal, no special periods of limitation will apply to actions against local government bodies. Clause 12 is formal. Clauses 13 and 14 make the amendments to which I have referred dealing with actions against the nominal defendant in hit-run cases and where the driver is uninsured. Clause 15 is formal. Clause 16 removes the present provisions of the Wrongs Act establishing periods of limitation for the commencement of contribution proceedings between tort-feasors. A general provision is inserted providing that such proceedings may be commenced at any time within two years after the liability of the tort-feasor who seeks contribution has been determined by judgment of a court or by settlement of the claim against him. Clause 17 inserts new section 27c in the principal Act. This new section does away with the right of an employer to seek indemnity from an employee where the employer is vicariously liable for the tort of the employee. The new section contains the incidental protections for the employer that I have explained above.

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

UNORDERED GOODS AND SERVICES BILL

Adjourned debate on second reading.

(Continued from March 15. Page 3876.)

The Hon. C. M. HILL (Central No. 2): I support the Bill on the principle that it is carrying on the general train of Bills concerned with consumer protection in this State. Both major Parties in this State support the principle of consumer protection. However, one may reach a point where one begins to ask oneself whether all the Bills on consumer protection that Parliament is considering do, in fact, really cure all the evils that apparently exist. We may reach the point where we ask ourselves whether it is really possible to protect by legislation people in the whole area of their economic lives.

If we go to extremes we will be terribly cluttered up with restrictions and Bills that are very difficult to understand. As I sense public opinion, the community generally is starting to complain that it is being subjected to too much restriction. So, it is not with very much enthusiasm that I support the Bill. Another reason why I am cautious in dealing with the Bill is that some aspects of it are very difficult to understand. Further, we have not been told whether we can see copies

of the false invoices and confused order forms that the Chief Secretary referred to in his second reading explanation.

I have never received any of that kind of correspondence from the type of firm that is being outlawed by this Bill. Whilst I have read about such correspondence in the daily press, no complaints have been directly brought to my notice by constituents, yet the Chief Secretary tells us that two of the three practices referred to in his explanation have become quite common. However, we must accept that the Commissioner for Prices and Consumer Affairs is able to justify that claim and the claim that many people have complained about the practices being outlawed by the Bill. I accept the fact that the Government has perused the Commissioner's statement and decided that there is a sufficient number of people who need further protection.

I would be very interested to have a close look at the type of document that has confused those who received it and caused them to lose money or to be treated unfairly. The Bill deals, first, with inertia selling. According to the Minister, this is a practice by which firms send goods and an account for the goods to a person who has not requested them. It seems remarkable that some people, according to the Government's investigations, simply pay for those goods whether they need them or not, but apparently this is happening. The Government says that it is not common but it will happen to a greater degree unless this Bill is passed. It seems that the Government is trying to beat the gun in regard to this matter.

I do not object to legislation controlling this practice, but I wonder how far we will go in attempting to close every possible gap. The second matter dealt with in the Bill can best be explained by my reading the following paragraph from the Chief Secretary's second reading explanation:

> However, at least two related practices have become quite common and have given rise to many complaints. The first of these relates to entries in so-called business or trade directories. Here a business firm receives a document which looks remarkably like an invoice and which sets out a charge for a directory entry, often the general design of the document gives the impression that it emanates from a reputable directory publisher or agent. In a sufficiently large number of cases to make it profitable for the promoters, a payment is made in response to the false invoice.

I think it is fair to conclude, from that description of the problem, that it is very difficult to understand the matter, unless someone has had first-hand experience of it.

The Hon. A. J. Shard: I have.

The Hon. C. M. HILL: I shall be very interested to hear more details about it in due course. I have never had any problem connected with this matter, and no-one has ever brought a complaint to me about it. It seems that those who complain must be business firms, not individuals.

The Hon. A. J. Shard: They are business people.

The Hon. C. M. HILL: So, the complainant is not an individual, who, in my view, is the first person we should be keen to protect: it is a business firm that needs protecting.

The Hon. A. J. Shard: It was in a business firm where I saw it.

The Hon. C. M. HILL: I shall be pleased to discuss the matter further with the Chief Secretary. If one has not experienced it, it is very difficult to understand the matter simply by reading the Chief Secretary's description of it. The same can be said about the third matter that the Bill sets out to cover. In his second reading explanation the Chief Secretary said:

> The second of these related practices concerns what may be called confused order forms; in this case the purchaser signs an order or otherwise indicates his adoption of the order and later finds that he is committed to buying something that was not in his mind when he made the order. It is easy to say that consumers should not sign orders unless they are sure of what they are ordering; however, an examination of some of these order forms leads one to the conclusion that those who send them out, on some occasions at least, frame them in such a way that the mind of the average recipient will be turned away from the real purpose of the order and the obligations he will incur by signing it.

That paragraph deals with confused order forms, and I think it is fair to say that it is rather a confused paragraph. What does it really mean? The same kind of confusion permeates the whole Bill. If this Bill is passed, the legislation will never be understood by the ordinary man in the street. When one looks at the Bill itself one finds that it is just as confusing as the Chief Secretary's description of the confused order forms, to which I have referred.

So, I freely admit that I am somewhat in the hands of the Government in regard to this matter and the Government, in turn, is in the hands of the Commissioner for Prices and Consumer Affairs. A problem exists, and apparently the Government believes that the

problem is serious enough to warrant legislation. Of course, it can be said in defence of the Government that, if the Bill saves a few business firms from losing money, it has some worth. We are reaching the point, however, where we must realize that it is difficult to try to plug up every problem that arises in this area. Whilst giving this Bill some support and being willing to support the second reading, I am not certain that it really cures any evil that exists.

I notice that, in the latter stages of the Bill, the Government seeks wide controls in relation to regulations. Under clause 16 the Government can regulate to name people, firms and services which are involved and to which it wants the legislation to apply. I wonder, when I read all the complex clauses that go before, whether the Government is certain that this is a worthwhile measure. It seems there is a strong possibility that the Misrepresentation Bill, if it becomes law, could do exactly the same job. If that is so, we are passing two Bills when one could well suffice.

I am pleased that the Government has made allowance for reputable retail stores to continue the practice of sending goods which are not specifically ordered but which, in the view of the store, are the nearest comparable goods to those ordered by the purchaser. This was an essential requirement, because otherwise reputable retail stores in South Australia would have been caught up in this legislation.

I will privately satisfy myself about these directory forms, or confused order forms, as the Government calls them, because I want to be sure that this is a common practice. I do not think it is our place to obstruct legislation of this kind, and I have never known any occasion on which this Council has done that. I support the second reading.

The Hon. A. J. SHARD (Chief Secretary): I thank the Hon. Mr. Hill for his support of the Bill, and I shall cite a couple of instances of the type of practice this legislation will control. The first instance concerns my own home. I am a keen gardener, and a certain person from a firm in Port Adelaide came to my home and said he had the best manure in the world and that it would make vegetables grow out of stone. My wife said she would tell me about it. The next night, without any order having been placed, along came a 28lb. bag of manure. I had to waste my time in making a telephone call to tell the firm to take it away.

The Hon. C. M. Hill: But the firm contacted your wife in the first place before the goods arrived.

The Hon. A. J. SHARD: She did not order anything. She simply said she would mention the matter to me. That sort of practice goes on day in and day out in the outer suburbs, particularly at the moment. Another case concerns a one-man business in Rundle Street, the proprietor of which received from a firm in Sydney a publication containing an advertisement accompanied by an account and the date on which it had to be paid. He knew nothing whatever about it. That sort of practice, too, goes on frequently. While I know of those two specific cases, I know, from my colleagues and others, that these things are prevalent within the State. They become worse in times when there is unemployment.

I thank the Hon. Mr. Hill for his remarks. If this legislation does overlap the legislation dealing with misrepresentation, it will not matter. The intention of the Government is to do nothing to injure the genuine and sincere business man in his business, but there are many sharpshooters around who will do anything, and that is the type of person we are after. think this Bill will take care of that situation.

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

PACKAGES ACT AMENDMENT BILL

Returned from the House of Assembly with the following amendment:

Page 4, line 21 (clause 9)—After "later" insert "but no such prosecution shall be presented more than two years after the day on which the offence is alleged to have been committed".

Consideration in Committee.

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

That the House of Assembly's amendment be agreed to.

Under the Bill as it left this Chamber, a prosecution for a breach of the legislation could be launched at any time in the future. It was considered in another place that a prosecution should have to be launched within a specified period and, accordingly, passed this amendment, limiting the time in which a prosecution could be commenced to the period of two years.

The Hon. C. R. STORY: I support the amendment. I consider that the explanation given by the Minister is sufficient to convince

honourable members that this is a necessary provision.

Motion carried.

PHARMACY ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

RURAL INDUSTRY ASSISTANCE (SPECIAL PROVISIONS) ACT AMENDMENT BILL

Returned from the House of Assembly with the following amendment:

Insert new clause as follows:

5. Enactment of new section 25a of principal Act—The following section is enacted and inserted in the principal Act immediately after section 25 thereof:

25a. Exemption from stamp duty and registration fees. Stamp duty shall not be payable upon—

(a) any document made or executed by any applicant for assistance under this Act or under the scheme in connection with an application for such assistance;

or

(b) any document made or executed by any person for the purposes of giving security for the repayment of any advance under this Act or under the scheme,

and no fees shall be payable under any Act for the registration of any document in relation to which pursuant to this section stamp duty is not payable.

Consideration in Committee.

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

That the House of Assembly's amendment be agreed to.

It is similar to a provision in the Primary Producers Emergency Assistance Act, which has been in operation in South Australia for about 50 years. It seems ludicrous for the Government on the one hand to provide funds to assist people under the rural reconstruction scheme and, on the other hand, to subject that money to the payment of stamp duty. This amendment received the wholehearted support of all members in another place. I therefore ask honourable members to support it, so that those who are being helped under the legislation can be assisted to the greatest possible extent.

The Hon. C. R. STORY: I accept the Minister's explanation. I think all honourable members should accept the amendment, which is a logical one. As the Minister has said, it seems ludicrous that those who are in financial hardship and who are receiving assistance under the Act should be subjected to the payment of stamp duty.

Motion carried.

MOCK AUCTIONS BILL

Adjourned debate on second reading.

(Continued from March 15. Page 3877.)

The Hon. C. M. HILL (Central No. 2): I support this relatively short Bill, which deals with a problem that has apparently arisen where some people have been conducting auction sales that can be termed "mock auction sales". I have not experienced this activity, and no complaints have been brought to my notice about it.

I recall about 12 months ago seeing a small auction sale being conducted in a shop in King William Street. I noticed through the doorway of the shop that trinkets and other articles of jewellery, glasses, chinaware, pictures, books and so on were being auctioned. It appeared to me to be a normal auction sale, and I have seen the same form of selling being conducted in Melbourne.

However, according to the Government, the promoters or auctioneers involved have widened their practice and have formulated a scheme by which, first, they give away some small items to those who congregate; secondly, they conduct some form of auction and not only hand over the goods but also give a refund of money; and, finally, they put under the hammer some goods on which no refund is made. It is in the final process, according to the Government, that some people get carried away and pay too much for the goods they purchase.

As explained by the Minister, this would appear to be a form of confidence trick. No-one can tolerate this kind of business practice. Therefore, the Commissioner for Prices and Consumer Affairs has submitted his report to the Government and has, no doubt, given the Government the full details of the problem that has arisen in this area, as a result of which the Government has seen fit to introduce this legislation. I hope this is not the only kind of shop that is receiving some attention from the Government in regard to legislation and being closed.

We may hear of some attention to that matter at some time in the future during the term of this Government, because it is very active in this area of the protection of people's social and economic affairs. Unfortunately, however, for the people in the street, the Government is not very active when it comes to assisting people in moral affairs.

The Hon. A. I. Shard: That is not going by unnoticed.

The Hon. C. M. HILL: I am pleased to hear that.

The Hon. A. J. Shard: Let me assure the honourable member that it is not going by unnoticed.

The Hon. C. M. HILL: I thank the Chief Secretary for his interjection. I hope, from what he says, that we shall see action at some time in the future. I support the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—"Prohibition on mock auctions."

The Hon. C. R. STORY: I note that the penalty under this clause is $1,000, which is a lot of money when we consider that in other Acts dealing with serious matters the fine is not nearly as great as $1,000. It is an extremely high penalty. I suppose that, as very few people will be prosecuted under this Act, this big penalty should not worry us very much. I do not think that mock auction is common practice. Of course, it may get worse if something is not done about it, but it is certainly not a nation-rocker at the moment.

The Hon. D. H. L. Banfield: Would $1,000 be the maximum penalty?

The Hon. C. R. STORY: As I read it, that would be the penalty that could be imposed.

The Hon. D. H. L. Banfield: It could be, but not necessarily?

The Hon. C. R. STORY: It could be imposed for a first offence.

The Hon. D. H. L. Banfield: Could it be as low as $1?

The Hon. C. R. STORY: No, it could not.

The Hon. D. H. L. Banfield: Why not?

The Hon. C. R. STORY: Because, if a magistrate fined a person $1 and a fine of $1,000 was provided for, he would be neglecting his duty.

The Hon. D. H. L. Banfield: But otherwise he could do that?

The Hon. C. R. STORY: That would indicate a definite lack of responsibility on the part of the magistrate. A fine of $1,000 is provided for and, when we provide for such a heavy penalty, it indicates virtually that Parliament believes this to be a very serious offence. For instance, there are some very serious offences under the Road Traffic Act and the Motor Vehicles Act, many of them involving the probable taking of life, where the fine would be very much lower than this one. I am wondering why the Government thinks it is necessary to impose such a very steep fine as $1,000 because, after all, this is virtually window-dressing legislation. It looks good on the Statute Book but I do not think it will be used very much. I do not object to the principle of it but the Government has been notorious, in its regulations and legislation, for the size of the penalties and fees it has imposed on the public. As Parliamentarians, we must consider this matter closely. Will the Chief Secretary explain the $1,000 penalty, because other more important legislation does not provide for such a high penalty?

The Hon. A. J. SHARD (Chief Secretary): I admit that some other penalties are too low and that magistrates take notice of the maximum penalty. Mock auctioning is an undesirable practice. I used to walk along Rundle Street and see a mock auction taking place almost every day; they also take place in other parts of the city. We do not want auctions of this kind. One can see them taking place in other cities on any day of the week. The Government wants the magistrates to consider mock auctioning as a serious offence and to give them ample scope in imposing penalty. I agree with the Attorney-General and the Government that we do not want this type of auction to be conducted in this State. If a person knows that he can be fined $1,000 he may have second thoughts before deliberately taking people for a ride.

The Hon. L. R. HART: Although I have not studied the Bill closely, perhaps it contains a provision covering the auctioning of livestock at the metropolitan abattoirs, where the bidding is taken in 10c bids but where the stock is knocked down at 5c lower than the last bid.

The Hon. T. M. Casey: The buyer knows that before he starts to bid.

The Hon. L. R. HART: Is that situation covered in the Bill?

The Hon. A. J. SHARD: I cannot say. However, no intention is sought to include that kind of auction under the Bill and the honourable member need have no fear that that system will be interfered with.

The Hon. C. M. HILL: The matter is covered in the definition of "prescribed articles" in clause 3, and "prescribed articles" does not include stock.

The Hon. L. R. HART: What will be the situation if a charity conducts an auction to raise money? Will it be protected under the legislation?

The Hon. A. J. Shard: Yes.

Clause passed.

Remaining clauses (5 to 8) and title passed.

Bill read a third time and passed.

COMMERCIAL AND PRIVATE AGENTS BILL

Adjourned debate on second reading.

(Continued from March 15. Page 3879.)

The Hon. V. G. SPRINGETT (Southern): The second reading explanation of the Bill, which contains about 50 clauses, was given only late yesterday afternoon. About 23 hours after the second reading explanation we are now beginning to debate the Bill. Therefore, I am obliged to say, as the Hon. Sir Arthur Rymill said twice this week, that there is limited time in which to cover what is complex legislation. Because of that and because so much of the Bill has legal overtones and requires a legal mind to unravel some of the points in it, I shall restrict what I have to say to a few generalities and one or two points which might turn out to be minor points but points which I have noticed, and I will leave it to other honourable members with more experience, particularly in legal matters, to discuss other points that require further amplification.

I have studied the Bill with care. The first thing that strikes me is that it lists classified agents. That seems to be the only thing in common with many of the classifications. The Bill includes "commercial agent", being a person who is concerned with collecting debts and other factors regarding money. It also includes "inquiry agent", who seeks information and it covers personal character, habits and behaviour. It also includes "loss assessor", who is concerned with claims under the motor vehicles legislation and under the Workmen's Compensation Act. It also includes "process server", who serves writs and summonses. It also includes "security agent", who acts as a guard. The Bill also includes "commercial subagent" and people who are security guards and who act under security agents.

In his second reading explanation the Minister said the Bill dealt with delicate areas of human relationship and in matters in which there was danger. Regarding inquiry agents, one thinks of some of the tragic circumstances in which their services are required; yet their work will be made more difficult as a result of the Bill because they will be denied the right of entry and passage in various ways—measures which at present are essential, to their way of thinking, for the carrying out of their duties.

Regarding loss assessors, these are a group of people with whom I have come in contact, because almost all doctors come in contact with them by reason of the Workmen's Compensation Act. Before becoming a Parliamentarian I was a medical referee for the State of South Australia and often came in contact with loss assessors, as they are called in the Bill, or loss adjustors, as they call themselves. I understand that these people undergo a course of training and are employed by insuring bodies and make recommendations to them. Having received their recommendation, the insuring body can seek arbitration, if it wishes; so, too, can the person whose injury is being investigated.

It can be gathered from the Bill that in some areas there is considerable opportunity for fraud or undue influence to abound. The longer I live, the more I am aware that there is opportunity for fraud and undue influence in almost every walk of life. One wonders what one should do to reduce the incidence of fraud and undue influence unless we pass strict legislation applying to almost all walks and purposes of life. The Bill establishes a board to act as a licensing authority and to investigate applications for licences.

The board, which will also investigate complaints regarding the conduct of agents once licensed, may implement discipline and disciplinary action, if required, as a result of complaints regarding agents. The board is also concerned with commercial agents' requirements to enter into a fidelity bond and to ensure that they keep their collected money in trust accounts; to me, as a layman, that seems to be a reasonable provision.

The board will comprise four members, one of whom, the Chairman, must be a legal man of seven years standing; this length of time is, I understand, exactly the same as the time required for consideration for appointment to a judgeship in the Supreme Court. Therefore, the board will comprise the Chairman and three other members of suitable status, but only two members are needed to form a quorum. If the Chairman and one of the members are absent, the matters to be discussed, the reputations to be considered, and the complaints to be regarded (these important things to the people concerned) will be in the hands of a quorum of two who may have no legal guidance at all. This seems to be a very unhappy state of affairs.

Clause 6 excludes some people, including clerks of legal practitioners, from having to be licensed. I believe that some legal firms employ clerks who are engaged in investigating loss assessment cases. If such people are

sent to investigate those cases and workmen's compensation cases, should they be excluded from the licensing system, whilst a full-time loss assessor has to be licensed? Or, should they, too, come under the legislation? All-in or all-out is a good principle sometimes. Clause 48, too, deals with loss assessors. Under this clause the loss assessor may not have anything to do with a claim after legal action has been commenced in court, although he may still be involved in arranging details of the claims. It will be in the interests of good legislating if this Bill receives more detailed investigation by those with a legal background, not a medical background.

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

WILLS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from March 15. Page 3872.)

The Hon. F. J. POTTER (Central No. 2): I support the second reading of this Bill, which is one of the batch that has come to us from the Law Reform Committee. The Bill seems to be thoroughly sensible. It deals with the question of a will that is witnessed by a person or the spouse of a person who is to receive some interest in the property disposed of under the will. Under existing law such a person is deprived of his legacy. This Bill provides that there is nothing wrong with the situation I have described, provided everything is fair and above board. So, a will that is witnessed in that way is not in any way made invalid.

New section 17 (2) provides for a procedure that will enable the court to satisfy itself that no improper influence has been brought to bear on the testator. It is not always possible for wills to be drawn up at leisure and executed in the office of a solicitor or trustee company. Sometimes it is essential for a will to be prepared or executed at home or in hospital. In such circumstances it is not always possible to arrange satisfactorily for two witnesses to be on hand, excluding a person interested under the will. I do not object to the procedure provided for in new section 17 (2). The investigations that the Registrar of Probate will carry out seem to be quite adequate in all the circumstances. I support the second reading.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—"Repeal of section 17 of principal Act and enactment of section in its place."

The Hon. Sir ARTHUR RYMILL: This Bill makes an important amendment to our law. As honourable members know, up to the present a beneficiary who witnesses a will is disqualified from receiving any benefit from the estate in any circumstances. I have always believed that that situation was very harsh; it probably stems from long ago, when the protections were not as great as they are today. In very many cases it must have resulted in injustice as a result of a mere lack of knowledge or oversight or carelessness. A person may have failed to realize that, by witnessing the will, he disqualified himself from receiving any benefit under it. I think the safeguards provided in the Bill are as good as can be devised. The Bill will result in injustices being minimized, yet it will not remove protections for those who need them. I therefore support the clause.

Clause passed.

Title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (LAW OF PROPERTY AND WRONGS) BILL

Adjourned debate on second reading.

(Continued from March 15. Page 3874.)

The Hon. F. J. POTTER (Central No. 2): I support the second reading of this Bill. In introducing it, the Minister gave quite a lengthy dissertation upon some of the archaic things that have existed in our law, particularly dealing with various legal aspects of the husband and wife relationship. I am sure all honourable members would have been interested to hear some of that ancient history. I should imagine much of it would be most abhorrent to the women's liberation movement which seems so active these days—and rightly so, because we have moved away from particularly some of the old concepts in the law relating to seduction, enticement and harbouring.

There is little I need say about the matter. This is another of the Bills that have come to us through the work of the Law Reform Committee, and in this brief session since we resumed at the end of last month honourable members have begun to see the fruits of the long and rather exhausting work of the committee, because we have had a series of Bills arising purely and simply as a result of the research and advice given by the committee.

The provisions in the Bill are divided into two parts, the first dealing with the matter of amendments to the Law of Property Act, and the second with amendments to the Wrongs Act. The matter was fully explained by the Minister in his second reading explanation, and he said why it was felt the law should be brought up to date. The principal matter involved in relation to the Law of Property Act is the doing away with the old notion of the law which came up from Biblical times that husband and wife were one flesh and that, as a result, it was impossible for one to sue the other in tort. Actually, the interpretation of this old principle has not been quite so hidebound as perhaps the Minister might have given the impression, because from time to time it has been whittled down. A husband cannot assault his wife, or *vice versa,* without running the risk of prosecution in a magistrates court or a criminal court for such an offence. A husband can be ordered, in a court of summary jurisdiction, to pay compensation for an assault on his wife. A husband or wife can be summoned, if necessary, to give evidence in certain cases against the other. There has been some whittling down for various reasons, but this Bill will remove those distinctions entirely.

The Minister referred to the very important alteration made in connection with motor vehicle accidents. Honourable members will recall with some pride that this was the subject of an amendment moved by a private member in this Council and adopted in another place. I hope some honourable member will move to have the debate adjourned so that further consideration can be given to the question of actions in tort. I have looked at this fairly carefully and I cannot see much difficulty. I am a little concerned, perhaps, about the question of loss or injury suffered by loss or impairment of the consortium of husband and wife. The concept is a difficult one to explain in detail; it is a somewhat mystical concept of the law, and I am a little doubtful at the moment as to how far that may go. The rest of the Bill seems quite beyond question in the matter of efficacy or need.

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

EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from March 15. Page 3881.)

The Hon. R. C. DeGARIS (Leader of the Opposition): I do not intend to speak at length on this Bill except to agree with the view of the Hon. Sir Arthur Rymill, who spoke to the Bill yesterday, that it is a Committee Bill. The clauses cover a number of matters, each of which must be looked at separately. As I see it so far, the ideas behind the changes in the Bill are reasonable, although I feel that as a Legislature we must be cautious in any changes we make in legislation dealing with the question of evidence. The laws of evidence have stood the test of time. Admittedly, in a changing world, we possibly have to look at changes in Acts such as this; nevertheless, I emphasize that there are principles involved in the law of evidence that should not be lightly put aside.

Part of this Bill came before the Council in a previous session. I refer to the part relating to computer evidence. As I understand it, there is no alteration to that part of the Bill; the Government has reintroduced in its entirety a clause which was amended, if I remember correctly, as the result of an amendment moved by the Hon. Jessie Cooper. I think we all agree that computers are playing an increasing role in our lives. The Bill provides that evidence coming from a computer must be accepted as being accurate. I think the original amendment, as moved by the Hon. Jessie Cooper, asked that the original material placed on the computer should be kept for a certain time to provide a check on the evidence. The Council at that time supported this, but the Government decided it could not accept it and the Bill lapsed, so we are back once again to square one in that at present the same type of clause, with no notice being taken of the approach this Council made to it when the Bill was previously before it, is contained in this measure.

I think there is a great deal of merit in the amendment the Council passed. I am sorry that the Government has not seen fit to include in the clause suggestions made by honourable members of this Council. Although I have not checked this matter thoroughly, I will do so. The Council should seriously consider incorporating in the Bill the amendment moved by the Hon. Mrs. Cooper previously. I support the second reading, indicating that I may say more in Committee.

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

INHERITANCE (FAMILY PROVISION) BILL

Adjourned debate on second reading.

(Continued from March 14. Page 3792.)

The Hon. F. J. POTTER (Central No. 2): This Bill is in many respects similar to the

Bill which came before this Chamber in 1965 and which was amended fairly extensively in two or three vital clauses. The amendments made by this Council were not then accepted by another place. When the Bill was returned to this Chamber with amendments, the Council considered that it was futile to debate the matter further, and the Bill was eventually laid aside in this Chamber.

This Bill is similar to the previous Bill, except that it includes at least two important amendments that were made at that time by this Council, and to some extent those amendments, because they are so important, perhaps now leave honourable members free to concentrate on one aspect of the Bill, namely, the categories of people entitled to claim under clause 6. Having looked up *Hansard,* I found that in 1965 I made a long speech on this matter and examined certain aspects of it. I reiterate some of the portions of that speech, because the Bill has not changed in respect of the categories of person in clause 6. Before I do so, it is important for all honourable members to understand what this Bill does. As has already been stated, it comes to this Chamber as another improvement that has been suggested by the Law Reform Committee. In introducing the Bill, the Minister said:

> The present Act—
> which is the Testator's Family Maintenance Act—
> applies only in the case of a person who dies leaving a will, and the Bill, which covers cases of intestacy, will bring our law into line with that of England, New Zealand and certain other States.

If the Minister intended by that statement to say that the legislation was introduced to bring our laws relating to cases of intestacy into line with those of other places, I agree with him. However, if he meant that the Bill brings the classes of person who may claim into line with the legislation in other States, England and New Zealand, that is simply not so. This was the point that I had to demonstrate at length last time. I took the opportunity to recheck the information that was given then and, except in one or two minor instances, I found that the illustrations I made then can be made now with exactly the same force. It is obvious for one reason or another that the Government or the Law Reform Committee (and I do not know from the Minister's remarks which) has, regarding extending the categories of people who claim, pioneered legislation in this field. How far it is willing to go, I will demonstrate shortly.

The present Act is, as I have said, the Testator's Family Maintenance Act, and most of the other Acts dealing with this law adopt that title. This seems to me to be a different concept entirely, because the Council now has before it the Inheritance (Family Provision) Bill. That change of title is a rather descriptive way of showing the basic difference between the new legislation and the existing law. To enable honourable members to know something about the way in which the existing Testator's Family Maintenance Act is administered and the concepts behind it, it can safely be described in this way: if a person within the categories laid down by the Act is left without adequate provision (and that is an essential condition that must be fulfilled; the Act makes it clear that adequate provision should not have been made for this person), he has the right to apply to the court and, as I understand the law, the court must put itself in the shoes of the testator.

I have heard it said that the court must, as it were, sit in the armchair of the testator and ask itself whether, having regard to all the circumstances of the case, it would have made provision in the will for the person concerned. If the court considers that a just and wise man making his will would have made provision for the person claiming in those circumstances, then it can order that provision be made out of the will of the deceased for that purpose. I quoted from two cases in the law reports on the last occasion, and I think it is worth while repeating the attitude taken by courts in connection with testator's family maintenance, if only for the benefit of those five or six honourable members in the Chamber who were not present at the debate in 1965. I read a report of the judgment given by the Chief Justice of the High Court, Sir Owen Dixon, in a case known as Scales's case; it is reported in 107 *Commonwealth Law Reports* at page 9. His Honour, in dealing with the principles that the court should apply, said:

> Much has been written about the principles which should guide the court in administering the provisions of the Testator's Family Maintenance legislation. But I do not think any of the chief expositions give any foundation for applying the provisions to a case like this. It has often been pointed out that very important words in the Statute are "adequate provision for the proper maintenance and support" and that each of these words must be given its value.

I emphasize that "adequate" is the principal word used in this Bill. The judgment continues :

"Adequate" and "proper" in particular must be considered as words which must always be relative. The "proper" maintenance and support of a son claiming a statutory provision must be relative to his age, sex, condition and mode of life and situation generally. What is "adequate" must be relative not only to his needs but to his own capacity and resources for meeting them. There is then a relation to be considered between these matters, on the one hand, and on the other the nature, extent and character of the estate and the other demands upon it, and also what the testator regarded as superior claims or preferable dispositions. The words "proper maintenance and support", although they must be treated as elastic, cannot be pressed beyond their fair meaning. The court is given not only a discretion as to the nature and amount of the provision it directs but, what is even more important, a discretion as to making a provision at all.

Then His Honour went on in another interesting passage to say this:

All authorities agree that it was never meant that the court should rewrite the will of the testator . . .. An observer of the course of development in administration in Australia of such statutory provisions might be tempted to think that, unchecked, that is likely to become the practical result.

So His Honour was saying that, although the court was not supposed to rewrite the will of a testator, that was developing out of the statutory provisions and that in fact was what the courts were tending to do. Later, His Honour says:

The decision which the court may properly make in default of testamentary provision is that which a just and wise father would have thought it his moral duty to make in the interests of his widow and children had he been fully aware of all the relevant circumstances.

Then His Honour pointed out that the Privy Council had subsequently said that the court was required to put itself in the position of the testator, requiring it to assume him to be a just and wise man fully aware of all the circumstances. He went on to say that the difficulty was that the court itself could not be sure that it knew all the circumstances: that more often than not one may be sure that the court knows very few of them. Those are extracts from the cases I read last time. I think they stand today just as they were when first uttered. Honourable members should be clear that before a claim can be considered a person must bring himself within the categories stipulated in the Bill; then, having done that, if he is within the categories and it is considered that, by reason of the testamentary disposition or the operation of the laws of intestacy, he has been left without adequate provision for "proper maintenance, education or advancement in life" (those being the words of the Bill), he may then apply and the court must consider whether or not in these circumstances he has a case.

Of course, it is perfectly true that, if he brings an application to the court, he may have to pay costs if his claim is entirely unjustified and he does not succeed in any way. However, there are, of course, as I said last time, many instances where dealing with a matter before the court does not arise. In hundreds of cases (I have had personal experience of some of them) people within the categories set out in the Act threaten to make claims, and it is the threat of making a claim by a person in those categories that so often leads to a case being settled and met by an offer made by the executors with the consent of the beneficiaries so that the matter will not have to go to court. Family quarrels and dissensions about whether some member of the family got more than someone else while the testator was alive are thus kept, as it were, within the family, without going to court.

Many people do not want family affairs to be the subject of court action, causing even more bitterness between members of a family. It is a strange quirk of human nature (I have observed it myself) that members of a family can fall out amongst themselves over matters of inheritance, even over trifling things like furniture—whether or not somebody should have the old armchair or mother's favourite wardrobe. It is amazing, but unfortunately true, that this happens. It is undeniable that people, once they are within the categories where they may be able to claim, will exert pressure to enable them to get something out of an estate where previously they got nothing. This is often done without their having to go to court.

The Hon. T. M. Casey: What happens when they do go to court?

The Hon. F. J. POTTER: That is an interesting point. Perhaps I can give the Minister a couple of examples. These are two that I mentioned previously. It must not be thought that the operation of this Act has been interpreted as providing purely for members of a testator's family who are in some desperate or needy plight. For instance, in one case (the case from which I quoted earlier) an

application for a share and interest in a farmer's estate was made by an adult son who, at the time of the application, was himself earning £2,000 a year and whose wife had a separate income of £800 a year. Honourable members will know that back in the days of pounds, shillings and pence those were not inconsiderable sums.

The applicant in the case had not lived with his father since he was four years old. The Queensland Supreme Court judge awarded the applicant £3,000 out of his father's estate, plus another £10,000 on the death of his mother. In that case, when the matter went on appeal to the High Court of Australia, the High Court upset the Supreme Court's original decision and dismissed the claim by a majority of three judges to two judges. When we study that case and another case to which I shall refer later, we see that division of the highest court of the land in that way shows that there is a considerable variance of legal opinion on how one should apply the provisions of the Act.

The second case *(Blore and Lang,* reported in volume 104 of *Commonwealth Law Reports* at page 124), was an application by a married daughter aged 41 years whose husband was receiving a salary of £1,500 a year in 1960. This lady was awarded £5,000 out of her father's estate. That was a case in the Supreme Court of New South Wales which also went on appeal to the High Court, and on that occasion the High Court did the opposite: it did not disturb the verdict. Again, it was only a three to two majority.

It is important to know that these matters are by no means as clear cut as one might perhaps wish. Having said that and having indicated to honourable members some of the problems involved in the administration of this kind of legislation, I turn to the categories of people who are allowed to make a claim and who are *prima facie,* as it were, the people with whom we are involved. These categories, which I think are the only matters with which we need concern ourselves in the Bill, are set out in clause 6.

The Hon. R. C. DeGaris: Have any amendments that we moved previously been accepted in this Bill?

The Hon. F. J. POTTER: Yes, those amendments are in clause 7. The Government has incorporated in the Bill the fact that the final order is to be in the court's discretion; that is the first important amendment the Government has included in the Bill which was dealt with last time. To some extent, I think it places this measure in a much better light than was the position previously. The Leader will remember that only a few days ago he commented in this Chamber on legal writers who had said that in another Bill the question of the court's discretion left it wide open and that there was no clear way in which one could be sure that the court would act—either in favour of or against an applicant.

That criticism could perhaps be made regarding this legislation; in other words, we are leaving it wide open to the courts. I suggest what I have suggested before, namely, that, where we leave it wide open to the court regarding what it can do, it may be sensible and reasonable in those circumstances that the categories of people who can apply ought to be somewhat restricted. If we are going to narrow the discretion and the right of the court to interfere and make it a narrow gate through which one can get, perhaps it is not so bad to expand the categories of people who can attempt to bring themselves through the narrow gate. When the gate is wide and the categories are also wide, we must look carefully at the legislation.

I now proceed to deal with the point I made in starting, namely, that this provision dealing with the categories of people who can apply does not agree with but differs entirely from the provisions that exist in other States. I will briefly refer honourable members to what exists in other States. First, in New South Wales there is an Act known as the Testator's Family Maintenance and Guardianship of Infants Act, section 3 of which provides:

> If any person disposes of property either wholly or partly by will in such a manner that the widow, husband or children of such person are left without provision for their proper maintenance, education and advancement in life, as the case may be, the court may in its discretion taking into consideration all the circumstances of the case . . . order such provision for maintenance, education and advancement.

In New South Wales it is only the widow, husband or children of the deceased who are within the categories.

The Hon. T. M. Casey: Does it refer to illegitimate children?

The Hon. F. J. POTTER: I do not have that provision with me, but I would not be surprised if it did cover them; it would depend on the definition of "children". I emphasize that there is no definition of "children" or "child" in this legislation. I think it is a mistake for honourable members to think of

a child as being a person under 18 years or even under 21 years. In the case I have mentioned, the child who was successful in the application was aged 41 years.

The Hon. T. M. Casey: She is still a child.

The Hon. F. J. POTTER: Yes. We could go quickly astray if we thought of children as being young children requiring maintenance. In Queensland the Act is known as the Testator's Family Maintenance Act. The definition of "child" includes an adopted child. The Queensland Act provides:

If any person . . . dies whether testate or intestate and in terms of the will or as a result of the intestacy adequate provision is not made from the estate for the proper maintenance and support of the deceased person's wife, husband, or child, the court may, in its discretion, on application by or on behalf of the said wife, husband, or child, order that such provision as the court thinks fit shall be made out of the estate of the deceased person for such wife, husband, or child.

In Western Australia the Act is the Testator's Family Maintenance Act; it provides for a widow, widower or children of the testator left without adequate and proper provision. The term "widow" is defined to include:

any woman who has been divorced by or from her husband and who, at the date of death of such husband, was receiving or entitled to receive permanent maintenance from such husband by order of the court.

Section 3 of the Tasmanian Testator's Family Maintenance Act enables provision to be made for some people—a widow, children, and the parents of the deceased person if the deceased person dies without leaving a widow or any children. The latter is an additional new category that we have not struck before, but it applies only in limited circumstances. Again, the definition of the term "wife" includes:

A divorced wife of the deceased person . . . if she has not remarried and if she is receiving, or is entitled to receive, maintenance from him under or by virtue of any order of the court or under or by virtue of any agreement in writing entered into between the divorced wife and the deceased person before his death.

The Victorian Administration and Probate Act provides for a widow, widower, or children of the deceased. Again, the term "widow" includes any former wife of the deceased who, at the date of his death, was in receipt of or entitled to receive payments of alimony or maintenance whether pursuant to a court order or otherwise. The term "children" is defined to include illegitimate children totally or partially dependent on or supported by the deceased before his death.

I think I have given honourable members information about the people who come within the categories in the other States. One has only to look at clause 6 to see what an enormous expansion exists there, compared to the provisions in the legislation of other States. In England the Inheritance (Family Provision) Act provides:

Where, after the commencement of this Act, a person dies domiciled in England leaving—

(a) a wife or husband,

(b) a daughter who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining herself,

(*c*) an infant son, or

(d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself . . .

the court may order that such reasonable provision as the court thinks fit shall . . . be made.

New Zealand has been pretty far ahead in this type of provision. The New Zealand Family Protection Act, 1955, adopts a slightly different philosophy, as one can tell from its title. I shall deal with the categories provided for in New Zealand. The New Zealand Act provides:

An application for provision out of the estate of any deseased person may be made under this Act by or on behalf of all or any of the following persons:

(a) The wife or husband of the deceased . . .

(*d*) The stepchildren of the deceased who were being maintained wholly or partly or were legally entitled to be maintained wholly or partly by the deceased immediately before his death.

(e) The parents of the deceased,

Provided that no claim under this Act may be made by any such parent, unless—

(i) the parent was being maintained wholly or partly or was legally entitled to be maintained wholly or partly by the deceased immediately before his or her death; or

(ii) at the date of the claim, no wife or husband of the deceased is living.

There is also a provision that defines a child of the marriage; the definition includes a stepchild, children of the deceased, whether legitimate or illegitimate, and the grandchildren of the deceased who were living at his death. Even those categories do not go as far as the categories in clause 6 of this Bill, because they are limited in some very important respects. I think I have covered the relevant statutory field, and I think I have proved that what was said (that this Bill merely brings the law into line with the position in other States) is not true in this respect. Actually, clause 6 goes

much further than any other Act in Australia, England or New Zealand.

The Hon. R. C. DeGaris: Would it be possible for a person to be included in the categories if he was unknown to the deceased?

The Hon. F. J. POTTER: I think so. Indeed, in the case I mentioned earlier, the Leader will remember that the deceased had not seen the person since he was four years of age.

The Hon. R. C. DeGaris: But under this Bill that would be possible.

The Hon. F. J. POTTER: In this Bill we have the position of illegitimate children to whom the father has had no legal access; he might not know of the children's whereabouts and he might not even have seen them.

The Hon. T. M. Casey: Do you think that such children should be a charge on the State?

The Hon. F. J. POTTER: I am not saying that: I am saying that the deceased may never have seen the children. The Leader referred to the case of a child by a former marriage of a surviving widow, which is even further removed—there is no blood relationship of any kind. In considering this Bill honourable members will have to ask themselves whether they are willing to allow such a wide category of people to come within the wide discretion. If they are not prepared to do this then some amendments of these categories, restricting them to people more directly related to the testator and relying upon him for maintenance of some kind, would be fair and reasonable, having regard to the provisions in the other Statutes.

I am pleased the Government has made this a discretionary matter and widened the circumstances which the court may take into consideration. Because of this I am willing to look again, perhaps with a less critical eye than last time, at the categories of people. I still think a very cogent argument can be made for restricting these categories even further than at present. It may be argued that in some remote case some injustice might be done. The old saying is very true that hard cases make very bad laws. This Bill is so drawn as to include every possible case for consideration, and I doubt whether that is the wise and proper way to tackle the matter.

I support the Bill because it contains some very important matters which deserve to be put on our Statute Book. I took a leading part in the debate last time, but I was personally very disappointed that the Bill did not pass in 1965, because, as I said then, I thought the extension of the provisions to cover the law of intestacy was long overdue. Because a certain stubborn attitude was adopted by the Attorney-General of the day to some of the very important amendments, the Bill foundered. In my view, and I think other members felt also, it was unnecessary for the Bill to have reached that crisis stage in 1965. I hope that does not occur this time, but it would not deter me from again looking with some criticism at the categories contained in clause 6.

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

MOTOR VEHICLES ACT AMENDMENT BILL (LICENCES)

Adjourned debate on second reading.

(Continued from March 15. Page 3883.)

The Hon. M. B. DAWKINS (Midland): I rise to support the second reading of this Bill in general terms, and also to assist in getting it into Committee. I have some queries and some objections which I intend to raise. The first is a query concerning clause 6. I do not call it an objection, because I understand there was no provision of this sort in the Bill previously. It concerns in particular clause 6 (3), which amends section 20 of the principal Act and provides:

> It shall not be competent for a person under the age of sixteen years to apply for, or be granted, registration in respect of a motor vehicle.

I understand there has been no restriction regarding age in this matter hitherto, but I believe some restriction on the age of owning and registering a motor vehicle is a wise provision. My only query is whether the age of 16 years is the correct one. I remember very well some years ago trading in a motor car which was in good order, and which then had the normal wheels taken off, wider and lower wheels put on, and some young man bought the car, ruined it, and just about killed himself. That story could be repeated time and time again. I do not query the provision, but I query the age; it could well be a higher age. I am aware that there are some difficulties about this, because in the case of an estate it may be that a vehicle could pass into the ownership of a person younger than, say, 18 years of age, but on the other hand it might be possible to overcome that by the estate continuing to own the vehicle until the

My next query relates to clause 10, which seeks to amend section 46 of the principal Act and inserts after subsection (8) a new subsection (9):

After a date to be fixed by proclamation for the purposes of this section, a person shall not sell a number plate for attachment to a motor vehicle under this section unless the number plate has been manufactured by a person licensed under this section.

I underline the word "sell". A fairly stiff penalty of $100 is provided, no doubt the maximum penalty. Subclauses (10) and (11) are also inserted, adding further qualifications. I believe this is an unnecessary control. I do not think it is necessary to license manufacturers of number plates and I hope that the Council, in Committee, will vote for the deletion of this clause. I have underlined the word "sell" because I take it this does not preclude the owner from repainting or repairing his own number plates. There may be few people who wish to do this, but in the country it could be some considerable time, if a set of number plates happened to be ruined, before new plates could be obtained from a licensed manufacturer. The suggestion that the number plates must be manufactured by a licensed person is an unnecessary restriction and should not meet with tne approval of members of this Council.

At some stage reflectorized number plates may become obligatory. I understand some problems have been experienced in this regard, but until reflectorized number plates do become obligatory a person should not be stopped from repainting or repairing his own plates, provided that the repainting or repairing complies with the existing requirements of the Act.

The Hon. Mr. Hill referred to reflectorized plates and I agree that this type of plate would be a great improvement. I understand, too, that the Government may have changed its mind about the introduction of such plates. There may be difficulties here. I would be in favour of the introduction of reflectorized number plates if it was a gradual introduction. I certainly would oppose anything which imposed upon the community the obligation to replace at fairly short notice perfectly good number plates with reflectorized plates. Any improvement such as this (and I believe this would be an improvement) should be introduced gradually as new number plates are required and new cars are registered.

I refer now to clause 11 of the Bill, which repeals section 72 of the principal Act and enacts a new section in its place. I note that the Government intends to introduce no fewer than five classes of licence. I query the necessity for this, although I can understand that it would probably be advisable for the Government to have three classes of licence. I am at present awaiting a reply to a question I asked before this legislation was introduced regarding provisions relating to truck drivers. Subclause 11 (8) provides as follows:

Subject to this section, where the Registrar is satisfied that an applicant for the grant or renewal of a licence has held a licence under this Act (other than a licence endorsed with a restrictive condition that the holder is authorized to drive motor cycles only) within the period of three years immediately preceding the date of the application, a licence, if granted upon the application—

(*a*) shall, where the applicant prior to the commencement of this section passed a practical driving test under this Act appropriate to a licence of class A—

and that means that he would have done this after 1961—

be endorsed with the classification "class 2".

That means that a person with such a licence can drive vehicles up to 35cwt. and large trucks, but not semi-trailers. This means that a person who has received his class A licence since the introduction of tests will automatically be transferred to a class 2 licence, and he will probably be able to drive practically any vehicle that he would need to drive, provided that the person involved was not a professional semi-trailer driver or the like. However, the legislation goes on to provide that in any other case the licence shall be endorsed with the classification "class 1". This means that a person with a class A licence, and who received that licence before 1961, can drive vehicles only up to 35cwt. in weight. In that category there would be literally thousands of experienced drivers who will have to make an effort to be transferred from class 1 to class 2.

There are four people on my property, including my son and I, who can drive with some competence trucks of three-ton, five-ton and seven-ton capacity, only one of whom would be permitted to drive this type of vehicle, unless evidence was produced to the Registrar that the others were competent to drive this type of vehicle. I believe that circumstances such as these would be repeated in many places all over the State. This means one of two things: either that the person concerned has to produce written evidence of his competence to the Registrar, or that he must undergo a practical test. In either case, I

can foresee the possibility, not necessarily the probability, of a backlag in the receipt of the necessary permission for one to be transferred to class 1 because, if tests for drivers have to be conducted, the local police will certainly be extremely busy. If one has to write to the department and provide evidence in this respect, I can imagine that there will be so many letters in the Registrar's office that there will be considerable delay in drivers obtaining the necessary transfer of their licence to class 2.

Some people in the country have only one person on a property able to drive a three-ton or a five-ton truck and, if that one person is forced to wait some time in order to obtain his endorsement, real hardship could be caused. I have asked the Minister to clarify this point, which should be examined further in Committee. I do not wish to deal at length with other provisions of the Bill that have been dealt with by other honourable members. However, I should like briefly to deal with clause 20, to which the Hon. Mr. Hill referred. This clause does something that I consider to be quite premature: it seeks to amend the third schedule of the Act, and it then refers to an offence under the Motor Vehicles (Hours of Driving) Act. However, that Act is not yet an Act of this Parliament and, by including that provision in this Bill, the Government is presuming that the legislation regarding hours of driving will be passed.

Personally, I can foresee certain problems with that legislation, not only regarding getting stock to market in reasonable time but also regarding the possibility of forcing road transports on to a ferry. Clause 20 is premature and should be deleted. With those qualifications, and with the suggestion that the Council should consider deleting clauses 10 and 20, I support the second reading.

The Hon. A. M. WHYTE (Northern): I have previously made certain observations regarding the right of 16-year-olds to be able to register and drive motor vehicles, as I have considered that age to be perhaps a little too young. However, on closer investigation, I have found that there are instances in which a 16-year-old son of a farmer could be left a property and it could be necessary for him to be able to register and drive a vehicle. There are, therefore, exceptional cases that perhaps make it impossible for me to move an amendment in this respect. Had this point not been made to me, I would have moved an amendment to increase the driving age from 16 years to 18 years, which is plenty young enough for a person to register and drive a vehicle. I have known cases of hardship; in one instance, a widowed mother was faced with the problem of paying for a wrecked car that had been sold to and registered by her young son. However, it has become evident that, if I moved an amendment, I could create hardship in certain cases. For that reason I indicate that I will not move any amendment.

The Hon. Mr. Dawkins and the Hon. Mr. Hill have both covered the Bill thoroughly. I agree with the Hon. Mr. Dawkins that it is confusing to have five categories of licence to classify drivers. The people involved can drive and, indeed, some are able to drive semi-trailers. In fact, most of our bus drivers have graduated from semi-trailer schools.

I think that three categories would have been sufficient. However, I have been informed that this matter has been discussed at Commonwealth level by several of the various organizations concerned, and it is stated that this legislation could become uniform throughout the Commonwealth. If that is so, perhaps I am wrong about what I have said but, if I were drafting the legislation to suit my requirements, I think three categories would have adequately covered the position. Referring to clause 20, I think it does seem that the Government is presumptuous in suggesting that the Motor Vehicles (Hours of Driving) Bill will be passed. Indeed, I hope that some major alterations will be made to that measure before it is passed. As the Bill has been so closely examined and thoroughly debated by my competent colleagues, I support the second reading.

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

SOLICITOR-GENERAL BILL

Adjourned debate on second reading.

(Continued from March 14. Page 3797.)

The Hon. A. J. SHARD (Chief Secretary): I thank honourable members for the attention they have given to the Bill. The Government has noted the Hon. Sir Arthur Rymill's remarks regarding what, to him, appears an unnecessary restriction in the qualification for appointment as Solicitor-General. In the Government's view this restriction is likely to be of little practical importance, since in its choice of principal counsel the Government would necessarily be restricted to practitioners of considerable experience in the law as applicable to this State, and this experience would not, in all probability, be gained in less than seven years.

The provisions of clause 6 *(b)* are, I can assure the Hon. Sir Arthur Rymill, not intended to permit the Solicitor-General to undertake private practice as such. They are intended to permit him to perform for remuneration such other duties consistent with his office as seem desirable. Examples that come readily to mind are service on law reform committees or service in some part-time academic capacity. These additional duties have always been allowed for in this State, and it seems reasonable that they should be allowed for in the case of the Solicitor-General. The attention that the Hon. Sir Arthur Rymill gives to this measure as with all others that he considers, is exemplified by his attention to the marginal notes. His expertise has again been demonstrated, and the matter will be rectified.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—"Appointment of Solicitor-General."

The Hon. Sir ARTHUR RYMILL: I move:

To strike out "practitioner of the Supreme Court" and insert "legal practitioner".

This amendment adopts the words used in the Motor Vehicles Act Amendment Bill that we have just been discussing, and I think these words are more appropriate. I thank the Chief Secretary for making known the Attorney-General's comments on what I said about this clause and I agree largely with what he says. However, I see no reason why the Government should restrict itself in this matter by including the restrictive words in this provision. I concede that in 99 cases out of 100 any Government would appoint a local person to be Solicitor-General, provided a suitable applicant were available locally. However, seven years is a long time. It is possibly not a long time at the Chief Secretary's or my time of life, but certainly to younger people it is a long time. As I said in the second reading debate, we have Parliamentary Counsel who are excellent lawyers, yet I doubt whether one or two of them would still be qualified under the existing provision.

The Chief Secretary, quoting the Attorney-General, says that it would take seven years for anyone to gain sufficient experience, but it did not seem to take the Parliamentary Counsel long to gain it and, in my experience, they do a splendid job in short periods. This is not the usual sort of amendment: the usual amendment in this Chamber is to limit what Governments propose, whereas this amendment really gives the Government more scope. I think it is a good amendment, and I hope other members think so, although I have not consulted anyone on what they think about it. I instanced the appointment of the Commissioner of Police, and I can conceive that a Solicitor-General may be sought outside. A person with, say, 10, 15 or 20 years experience in the law but with only five years experience in South Australia would represent a desirable appointment in some circumstances but he could not be appointed under the present provision. However, such a person could be appointed under my amendment, which I commend to honourable members.

The Hon. A. J. SHARD (Chief Secretary): I do not know how many other members the Hon. Sir Arthur Rymill has on his side, but I assure him that he has at least four supporters on this occasion. When he argued the matter on the first occasion, it sounded a little illogical, but today he has been good enough to say that in 99 cases out of 100 a local person would be appointed. The Government accepts the amendment. After listening to the honourable member's explanation, how could we say "No"?

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6—"Duties and obligations of Solicitor-General."

The Hon. Sir ARTHUR RYMILL: I commented on this clause during the second reading debate and the Chief Secretary has been kind enough to give me a reply. I accept what he says and do not intend to proceed any further in this matter.

Clause passed.

Clauses 7 to 10 passed.

Clause 11—"Former Solicitor-General appointed judge."

The Hon. Sir ARTHUR RYMILL: I understand from the Chief Secretary that the Government, too, thinks that the word "Former" in the marginal note should not be there.

The Hon. A. J. SHARD: That is so.

The CHAIRMAN: I will make that alteration.

Clause passed.

Title passed.

Bill read a third time and passed.

HIGHWAYS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from March 15. Page 3884.)

The Hon. M. B. DAWKINS (Midland): The main provision of this Bill relates to the

use of the *Troubridge* (as the subsidized Government service, which it now is) to Kangaroo Island. Also, the Government has said that it may want to use the *Troubridge* for travel to and from Port Lincoln, as it was operated under the auspices of the Adelaide Steamship Company not long ago. I gather the *Troubridge* is to be operated by the Highways Department as, in effect, a highway. I go along with this in relation to Kangaroo Island because, in effect, the *Troubridge* is the only road, if we can call it that, to Kangaroo Island. Therefore, I agree it should be supported, to some extent, by highways or road funds.

The Hon. T. M. Casey: It is the only means of transport between the mainland and the island.

The Hon. M. B. DAWKINS: It is the only possible way of getting heavy equipment from the mainland to Kangaroo Island, and that is likely to be so for some time. Therefore, I believe that the use of some highways funds to provide transport to Kangaroo Island of the roll-on roll-off type is justified. However, I do not agree with the suggested extension to Port Lincoln. As the Hon. Mr. Hill said the other day, Port Lincoln and the whole of Eyre Peninsula are now served by very efficient road transport and it should not be necessary to run a roll-on roll-off ferry service to Port Lincoln.

The Adelaide Steamship Company obviously stopped it because it was not paying. While there will be a loss on the Kangaroo Island service, which, as I have said, is justified because there is no alternative route for heavy transport, I see no real justification for this type of service to Port Lincoln, unless in the Government's mind this is linked with another Bill we have already heard about this afternoon containing a clause providing for something that so far we have not dealt with in this Parliament. I refer to the Motor Vehicles (Hours of Driving) Bill, which could tend to force road transport from Eyre Peninsula on to the *Troubridge.* Bearing in mind the Government's wellknown attitude to transport, in particular private transport, that is no doubt its object.

Therefore, it is wrong for these road funds (that is what they are) to be used to subsidize a service to Port Lincoln. If the service could be run by private enterprise or by the Government without any loss—in fact, if it could be run at a profit—no objection could be taken. But we know perfectly well that a substantial loss on this sea transport lane is likely unless, as I have indicated, heavy transport is forced on to this service by the restriction of driving hours on the road as a result of Government policy.

The Hon. T. M. Casey: I take it you do not believe in competition?

The Hon. M. B. DAWKINS: I certainly believe in competition but not in coercion. I believe in competition on the road but I do not believe in a restriction of driving hours that will force road transport on to a roll-on roll-off ferry.

The Hon. A. F. Kneebone: There is nothing in this Bill about that.

The Hon. M. B. DAWKINS: I appreciate that but, according to this Bill, we are to run a roll-on roll-off ferry to and from Port Lincoln, and in another Bill we are to restrict the driving hours of transport drivers, who will not then be able to get through to Adelaide in one session of driving because they must stop and have so many hours of rest.

The Hon. L. R. Hart: The point is whether you believe in subsidized competition.

The Hon. M. B. DAWKINS: I believe in competition that can stand on its own feet.

The Hon. T. M. Casey: That means that you want to close down all railways in the State?

The Hon. M. B. DAWKINS: It does not mean that at all. I asked a question this afternoon about whether this Government was interested in closing down railways, and I shall be interested to hear the reply.

The Hon. T. M. Casey: That is what you are advocating.

The Hon. M. B. DAWKINS: I am not. Clause 5 (a) *(bb)* (i) provides that the Commissioner may, subject to the approval of the Minister, build, construct, or otherwise acquire ships or plant necessary or convenient for the operation of the service. That is too wide an application. The Hon. Mr. Hart the other day inquired about the source of the money for the *Troubridge.* I shall be interested in the reply. For the life of me, I cannot see how highways money can be used unless it is used exclusively for the Kangaroo Island service. If it is used for another service where already a good highway is provided, it will be something which, as the Hon. Mr. Hart said, the Auditor-General will find himself forced to comment upon. I do not know whether we should expect the State's taxpayers to contribute from general revenue to meet the losses of the *Troubridge;* I do not know to what extent we should expect the taxpayers

to do that. I wonder how much less we can justify highways funds meeting this loss, if indeed that is what the Government intends. I am sure that there will be a substantial loss on the *Troubridge* operations to Port Lincoln, unless the Government forces people on to the *Troubridge* by reason of the provisions of the Motor Vehicles (Hours of Driving) Bill. Therefore, I will support the amendments to clauses 17 and 18 foreshadowed by the Hon. Mr. Hill, who I believe is on the right track.

The Hon. D. H. L. Banfield: In the right boat.

The Hon. M. B. DAWKINS: It would be a change if the honourable member got in the right boat. The Hon. Mr. Hart also referred to clause 6, which provides:

Section 27 a of the principal Act is amended by striking out from subsection (1) the word "main".

This means that, rather than have the power to close only main roads, the Highways Commissioner can close any road. Like the Hon. Mr. Hart, I wonder what the situation will be. Will the Commissioner do this in association with the local council; will he or the council acquire any moneys as a result of the sale of land on which the closed roads have been laid? Other than in the odd case where it may be necessary to close a main road, I believe that the initiative for closing roads should be left with councils. In addition, I believe that, if the Highways Department co-operates with the council concerned and has a good reason for closing a road, it will probably find that it will not be difficult to obtain the necessary co-operation from the council. I may draw attention to other matters in Committee. With the reservations I have made, I support the second reading.

The Hon. A. F. KNEEBONE (Minister of Lands): I do not intend to reply at this stage, hut I will try to answer questions as they are asked in Committee. This will save some time.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—"General powers of Commissioner."

The Hon. L. R. HART: As I understand the position, tenders have been called for the operation of the *Troubridge* and, in these circumstances, the lowest tender is most likely to be accepted. Will the successful tenderer be responsible for all aspects of running the vessel? It appears that the tenderer will have no say in the charges made, as this decision will be left to the Commissioner. We all know that different transport systems have different prices for the cartage of different goods; these are known as differential prices. Will these differential prices be at the discretion of the Commissioner?

The Hon. A. F. KNEEBONE (Minister of Lands): The honourable member said that the *Troubridge* would be operated under tender, but the Bill puts it under the control of the Commissioner. All transport organizations have a discretionary power with regard to charges made, and that is the basis of competition for trade. Honourable members are always saying that competition is the basis of free enterprise and should be encouraged, yet when the Government goes into an operation such as this they say it should not be able to make concessions in order to compete. There must be a discretionary power, under the Minister, for these concessions to be made.

The Hon. L. R. HART: I realize that all operators have differential charges, but most operators who will compete with the *Troubridge* service are private operators who have to make their business pay. They will have to compete with an authority which will not have to make its business pay and which can attract patronage by cutting prices. The extent to which a Government authority cuts prices is not governed by the same factors that determine the extent to which a private company is able to cut prices to make a business pay. I fear that the differential charges offered by the *Troubridge* may be so low that private operators will be unable to compete. This is what I mean when I say "unfair competition". I agree that the vessel can have differential charges but not to the extent that the private operator will be forced out of business because he cannot compete. The authority running the service will not have to be a viable and economic proposition, because it will have the taxpayer, the motorists' money and the Highways Fund behind it.

The Hon. A. F. KNEEBONE: The Hon. Mr. Hart wants an assurance from me in this matter; yet the Hon. Mr. Hill has introduced an amendment because he wants the service to run at a minimum loss. The Hon. Mr. Hart wants me to assure him that we will not compete too severely with private enterprise, but the ferry has been put into operation because private enterprise does not want to operate it. That is all they care about looking after people, yet they want us to protect private enterprise. We will try to run this service as economically as possible so that the taxpayer will not suffer. If we can do

that on all fours without hitting private enterprise too hard, that is what we will do. We are not out to run the transport industry off the road but to provide a service to Kangaroo Island which private enterprise refuses to run.

Clause passed.

Clause 6—"Powers of Commissioner to open and close roads."

The Hon. L. R. HART: I referred to this matter in the second reading debate. I asked whether, when the Commissioner closed a road, he would transfer it to the local government body which, in most cases, would dispose of it to adjoining landowners, or whether he would dispose of the road himself to adjoining landowners, in which case, where would the proceeds of the sale go, namely, to the general revenue of the Highways Department or to the local government body?

The Hon. A. F. KNEEBONE: The main idea of changing the limitation on main roads is that, as I have said in the second reading explanation, the Commissioner is responsible for other roads and main roads. This provision does not alter the means of disposal of the roads, so the procedure for the disposal of them will be the same as exists now. Regarding travelling stock routes, with which I am closely associated, when they are closed as stock routes they are made available to the adjoining landowners. No doubt that same procedure would apply here. If a road under the control of the Highways Department were sold, the funds would go to the department.

Clause passed.

Clauses 7 to 16 passed.

Clause 17—"Highways Fund."

The Hon. C. M. HILL: I move:

To strike out "any ferry or sea transport service operated under this Act" and insert "any ferry service operated under this Act wherever operated and for the use of that portion of any sea transport service operated under this Act to Kangaroo Island".

The purpose of the amendment is not to prevent the Government, the Commissioner or some other tenderer from operating the *Troubridge* to Port Lincoln but to ensure that the subsidy the Government must pay to whichever authority operates the *Troubridge* to Port Lincoln does not come from the motorists or, in other words, from the Highways Fund. Honourable members will recall that we passed a Bill in this Chamber last year agreeing to the ferry service to Kangaroo Island and we agreed that the Highways Fund be used for that purpose. The amendment covers any other sea service operated by the Commissioner. The "any other sea service" is the one that goes from Port Adelaide to Port Lincoln.

The Hon. T. M. Casey: Should they build a railway line from Whyalla to Port Lincoln?

The Hon. C. M. HILL: Who does the Minister mean by "they"?

The Hon. T. M. Casey: The South Australian Railways or the Commonwealth Railways. Do you think they should build a railway line from Whyalla to Port Lincoln?

The Hon. C. M. HILL: I do not think the question has any relevance. I think the Minister is simply trying to draw a red herring across the track, and I am not interested in silly interjections.

The Hon. T. M. Casey: Your argument is based on an exclusive right. You do not want any competition whatever.

The Hon. C. M. HILL: The Minister is talking of exclusive rights and no competition whatever. Road transport runs to Port Lincoln now. Several operators go there, and this Bill provides for the *Troubridge* to run there. Of course there is competition between the road haulier on the one hand and the *Troubridge* on the other.

The Hon. A. F. Kneebone: Don't you like competition?

The Hon. C. M. HILL: I do not mind competition at all, provided the two competitors are on an equal footing and make equal endeavours to make the business pay, but the State is not on an equal footing with the road hauliers. The State can cut the rates to make the service pay and push the road hauliers out of business, because we know that the Government is not in love with the road hauliers. We have the Bill about driving hours.

The Hon. T. M. Casey: What has happened in New South Wales and Victoria under Liberal Governments? What rot you are talking! It has been operating over there for years.

The Hon. C. M. HILL: Surely because there is control on hauliers in other States is not a sound reason why it should apply here.

The Hon. T. M. Casey: But it doesn't do your argument any good, because you are criticizing a Government that is a Labor Government.

The Hon. C. M. HILL: Not only am I criticizing the Government: the Minister should think back a few years and think about what a big issue road transport was. It could have been the major issue that put the Labor Government of 1965 to 1968 out of office.

The Hon. A. F. Kneebone: Incidentally, it is not our policy.

The Hon. C. M. HILL: I am interested to hear the Minister say that, because we will be watching closely for any discussions between the Railways Commissioner and the Minister of Roads and Transport concerning zoning in regard to transport drivers and controls. It was even mentioned today: the Hon. Mr. Dawkins opened up the subject when he quoted from the Commissioner's open letter on the same question.

However, I was getting a little off the track. I am interested only in pursuing the point before us. The Minister led me off the track by talking about building railways from Port Lincoln to Whyalla. The purpose of this amendment is simply to see that the subsidy for the sea service from Port Adelaide to Port Lincoln comes from general revenue, not from the Highways Fund. It is as simple as that.

I want the Government to justify taking the drivers' licence fees from drivers in metropolitan Adelaide, to justify taking registration fees, and to justify taking the ton-mile tax from the hauliers who take their trucks to Eyre Peninsula, and then using the money for the purpose of subsidizing a sea service that will operate in direct competition with road hauliers.

The Hon. A. F. Kneebone: We have been doing this in regard to the *Troubridge* for a long time, and I think your Government started it.

The Hon. C. M. HILL: Yes, and then the service to Port Lincoln stopped, and the Government is heavily subsidizing this vessel operating to Kangaroo Island. I wholeheartedly support that, but as regards the Port Lincoln run—

The Hon. D. H. L. Banfield: It went to Port Lincoln when you were in office.

The Hon. C. M. HILL: It did for some time, but matters got worse.

The Hon. D. H. L. Banfield: You were in office for only a limited time.

The Hon. C. M. HILL: That can happen to more Governments than one. I do not believe that motorists' funds should be used to subsidize the service to Port Lincoln. The committee's report showed that there was no need for such a service and that the local people did not want it. However, I have not foreshadowed amendments to stop the service: I have simply said that the motorists' money should not be used for any sea-going service. Once the motorists' money may be used for that purpose, the Commissioner of Highways may find that someone at Ceduna wants to put freight or passengers on the service; that can be done under the Bill as it stands. If the Government has spare money for this purpose, why does it not seal the Eyre Highway?

The Hon. A. F. Kneebone: The Commonwealth Government will not come to the party.

The Hon. C. M. HILL: The present Government is not the only Government that has sought finance for that purpose. The Highways Department cannot afford the cost of sealing the Eyre Highway, yet the Government says that it can afford to subsidize a shipping service to Port Lincoln, when it knows that the Port Lincoln area is well serviced by road transport operators.

The Hon. A. M. WHYTE: I heartily support the intention of the amendment but not perhaps everything that the Hon. Mr. Hill has said. I am perplexed at the Government's intention to start a service that was so unprofitable under private enterprise. It is difficult to understand why the amount in the Highways Fund should be eroded to prop up something that has always been unprofitable. It has been suggested that at present, because of the drilling operations and the construction of the new wharf, the service to Port Lincoln could be profitable in the short term. I have no objection to it operating while it is profitable. The vessel needs no extra facilities. The *Troubridge* could run to Port Lincoln when there is loading to make it pay. A survey of the townspeople at Port Lincoln would show that they were evenly divided on whether the service should be reopened. They were let down with it before.

The Hon. D. H. L. Banfield: By private enterprise.

The Hon. A. M. WHYTE: This makes it more questionable, because Government enterprises have never competed with private enterprise.

The Hon. A. J. Shard: In some things they have. I could name two or three.

The Hon. A. M. WHYTE: The private enterprise concern was pretty highly geared to cope with roll-on roll-off transport. The Minister has said this service would be available to anyone who wanted to drive on but, while this sounds a grand offer, when one considers the trucks of various shapes and sizes and the loads that would be trying to get on the vessel I question this. However, that is for the managers; I do not want to interfere with their business. Our Highways Fund cannot afford to subsidize an enterprise that is not profitable. There is no reason why the *Troubridge* could not operate a service

for some period of the year when it would be profitable. My remarks are directed specifically to the Port Lincoln service. The Kangaroo Island run must be maintained, whether profitable or otherwise, and since there is no possibility of a highway it is the responsibility of the Highways Department.

The Hon. D. H. L. Banfield: If private enterprise cannot make it pay, hand it over to the Government!

The Hon. A. M. WHYTE: We have had to do that.

The Hon. D. H. L. Banfield: Private enterprise ran it before, and left it for dead. Now you want the Government to take it over.

The Hon. A. M. WHYTE: That is right; there is no argument about that. The Port Lincoln case is entirely different. I am amazed that the Highways Commissioner has not had something to say about this, because he must be under pressure, especially from people on Eyre Peninsula, to have something done about the roads there. Here we find a fair possibility of some of his funds being used to prop up a system that is not necessary. We wonder whether there is some sugar coating to the proposed legislation on trucking which will limit the load to that of the specification of the maker, as this would almost double the freight rate. On top of that, we have the proposal to restrict the hours of driving.

The Hon. A. F. Kneebone: Are you advocating overloading?

The Hon. A. M. WHYTE: I am advocating the normal functions of transport applying today, and surely that is restrictive enough. We have eight-ton axle limits and no-one will declare them overloaded until we see a project such as that put forward now. One has to consider whether this ferry service to Port Lincoln is to take the place of the road transport that will undoubtedly go off the road or be forced to double the rates.

The Hon. A. F. KNEEBONE: The Hon. Mr. Hill is interested in saving the Highways Fund from further expense. When he hears what I have to say I think he will agree that the proposition to run the service to Port Lincoln is a worthwhile one. I ask honourable members to reject the proposal. Inquiries were made all over the world on this matter. Although members have talked about many things that are not related to the Bill, I do not intend to do so now. Everyone is screaming about subsidies and saying that the Government makes a loss on everything it takes on. However, if previous Governments of a different colour than ours had a profitable operation, they allowed private enterprise to take it over and, if they did not have a profitable operation, they unloaded it from private enterprise and asked the taxpayers to pay for it. The subsidy that was paid to the Adelaide Steamship Company to run the *Troubridge* certainly did not come from the Highways Fund. Everyone, whether or not he received a benefit, had to pay for it and, after all, what really is the difference? The Government is merely trying to make the operation less unprofitable.

I ask the Committee to reject these amendments. The purport of them is, in effect, that the Highways Fund is only to be credited and debited with revenue and expenses directly related to the provision of a sea transport service to Kangaroo Island. If this is correct, the effect of the amendment would be to increase rather than decrease the drain on the Highways Fund, and in this sense I refer to the net outgoings from the Highways Fund. As I said in my second reading explanation, the purpose of extending the service to Port Lincoln was to render the loss that must inevitably be incurred by the operation of a service of this nature less rather than more. Accordingly, any restriction on the operation to Port Lincoln will result in an increased loss and hence an increased drain on the Highways Fund.

The second reason why I ask the Committee to reject the amendment is that in the operation of the service, that is, from Adelaide to Kangaroo Island, thence to Port Lincoln, thence to Kangaroo Island and back to Adelaide, it would be almost impossible to distinguish what was not of benefit to the island from what was of benefit to the island. Honourable members must sort out what is and what is not of benefit to Kangaroo Island. This would give rise to very considerable accounting problems, since it is clear that the shipment of goods from, say, Port Lincoln to Kangaroo Island will itself be of considerable benefit to the people on the island. The only operations envisaged at present that will not be obviously of direct benefit to the island may be voyages from Adelaide to Port Lincoln and return. I assure honourable members that these will be undertaken only when they are clearly profitable, and, as such, of course, will result in reducing the net loss to the Highways Fund. As I said in my second reading explanation, it is necessary that the Government enter into the sea transport service as a social service for the

people of Kangaroo Island; however, it is right and proper that it should try to restrict the losses on this service as much as possible, and the proposals contained in the Bill as it stands at present will enable it to do this. I should like to repeat what I said in my second reading explanation, as the matters contained therein were all investigated. Indeed, intricate investigations were carried out and the matter was carefully examined.

The Hon. A. M. Whyte: You wouldn't have got much advice from the steamship company.

The Hon. A. F. KNEEBONE: No. After all, the company failed.

The Hon. T. M. Casey: It admits it.

The Hon. A. F. KNEEBONE: Yes. Private enterprise could not care less about Kangaroo Island. People were greatly concerned about what the State would charge in the way of freight rates, but private enterprise did not care about this matter. We then had people rubbishing a union because of a black ban it imposed, even though private enterprise placed a black ban on the whole of Kangaroo Island and was not going to supply any service. In my second reading explanation, I said:

However, investigations have suggested that, by extending the *Troubridge* service to Port Lincoln, the loss can be substantially reduced since certain heavy dead-weight cargoes, such as cement, building materials, steel, etc., can be carried economically with a resulting benefit to the Eyre Peninsula community as well as the community of the island.

If a commodity can be carried to Port Lincoln more economically by sea, where do members who represent the area stand in regard to their constituents when those members say, "Let a monopoly run it and charge what it likes"?

The Hon. A. M. Whyte: I don't think any member said that.

The Hon. A. F. KNEEBONE: After advocating that my constituents pay more for goods delivered to their area, I should not like to go back to them. I also said in my second reading explanation:

An added virtue of this proposal is that, since such cargoes cannot economically be carried by road transport, the interests of road transport operators will also be advanced.

We hear no objection from members opposite to any other type of transport provided for people on Eyre Peninsula and Kangaroo Island. No-one objects to the operations of the airline company, which is private enterprise; yet if it were a State-owned company carrying freight to these places there would be a terrible scream about it. Members said that they would support the provision if I could show that it would result in a saving to the Highways Department, and I ask them to support me now.

The Hon. C. M. HILL: I understand that the Minister said that, if money had to be taken from the Highways Fund for the service to Port Lincoln, the service would not be run. Is that what he said?

The Hon. A. F. Kneebone: No.

The Hon. C. M. HILL: Then he has not given any assurance that the service to Port Lincoln will run without subsidy. I am sure he cannot give that assurance. Therefore, there will be a subsidy.

The Hon. A. F. Kneebone: There will be a subsidy regarding the whole operation, but it will be less as a result of the service extending to Port Lincoln.

The Hon. C. M. HILL: Many of us have heard these arguments from Government departments before today. If a relatively simple operation is being managed by the department (in this case, the service from Port Adelaide to Kangaroo Island), quite often departmental officers say, "If we can extend this operation we can save money in the long term." However, from my experience it does not work out that way.

The Hon. T. M. Casey: We're not expanding the service.

The Hon. C. M. HILL: I wish the Minister would watch what he says. When he starts talking about a ship going from Port Adelaide to Kangaroo Island and then decides that it should go across to Port Lincoln, if that is not expanding the service what is?

The Hon. T. M. Casey: What was it before?

The Hon. C. M. HILL: The whole problem started when this Parliament approved a ferry service across Backstairs Passage. Everyone was agreeable to it and to Highways Fund moneys being used. As the Hon. Mr. Dawkins said, there was not a road there anyway, and of course the department operates ferries elsewhere in the State. That proposal, which was to follow the Bill that we passed, has in some way been scrapped or delayed. In the second reading debate, I asked to be told something about the change of plans and the reasons for it, but I was not given a reply.

So we assume something went wrong and, instead, the Government purchased the *Troubridge.*

The next step, to my mind, in this plan was that instead of the ferry service across Backstairs Passage the *Troubridge* would run from Port Adelaide to Kangaroo Island. It is as simple as that. In other words, the Government would supply that service and in years to come a ferry would be installed and the *Troubridge* service could be dispensed with. It is simply a follow-on from the previous Bill and plan and the unquestioned need to serve the people of Kangaroo Island.

What has happened is that, when the department or some committee investigated it (I do not know which committee did, but I know all about the previous committee and who was on it) and when further investigations were made, someone must have said, "If we can extend this service to Port Lincoln somehow or other, we shall make more profit or less loss, and it should be more economic."

The Hon. A. F. Kneebone: That is right.

The Hon. C. M. HILL: But I am not convinced that that is so. The history of this service to Port Lincoln is one of financial disaster, apart from being one of severe treatment of its competitor there—the road hauliers. I was interested to read a report of the committee dealing with this matter. It states:

> The company has, in fact, said: "In April, 1968, the time table (of *Troubridge)* was changed to provide an additional service each week to Port Lincoln with the object of better using the capacity of the ship as the potential volume of cargo to Eyre Peninsula is greater—

the very thing that the Government is now thinking about. The report continues:

> Although the change . . . has enabled us to make some gains we have only held a substantial part of our tonnages by cutting rates which we have been forced to do by the severe competition.

The Hon. A. F. Kneebone: They cut their rates?

The Hon. C. M. HILL: Yes; honourable members can see the problem that can arise there. They certainly ran into severe competition. As I said in my second reading speech, they would cut rates to the point where they would have to be subsidized. The Minister said a moment ago that they would have to be subsidized. The simple fact is that the service to Port Lincoln must be subsidized. I am saying, through my amendment, that the subsidies should come from general revenue and not from motorists' funds. It is as simple as that.

All the other stories about bigger plans and extensions and the rigmarole about black bans on Kangaroo Island can be cut to the one point that a subsidy will be required and the State as a whole, not the motorists, should bear that subsidy. That is simply what my amendment seeks to do.

The Hon. A. F. KNEEBONE: The honourable member sets out to convince us that we shall lose more money on the Port Lincoln run and he reads from a report which states that, although the operators of the *Troubridge* at that time were making a profit, they eventually ceased operating it. Why, I do not know. I should be interested to know from the honourable member how many State transport operators went broke on that run to Eyre Peninsula as a result of the cut rates.

Rates were cut, but what were the rates originally? Perhaps they had been so much above the rates charged by road transport that the *Troubridge* had not been able to compete. There is nothing in the report to show that the rates were cut below the rates being charged by road transport. The only reason we are having the *Troubridge* operate from Kangaroo Island to Port Lincoln and return is that this will provide a service to Kangaroo Island and, as our investigations show that the operation will be profitable (the Adelaide Steamship Company states that it operated the service profitably), the result will be that not as much money will have to come from the Highways Fund. That is the reason for this provision: we have no ulterior motive. We are not out to stop road transport.

The Hon. R. C. DeGaris: You've changed your policy.

The Hon. A. F. KNEEBONE: Yes, as we have said often. Our policy is now an open-road policy, and we do not intend to introduce the type of transport control that operates in all other States, under Liberal Governments. We have said that we do not intend to introduce that type of legislation again. We are not trying to force people to use the *Troubridge;* we are merely trying to provide a service.

The Committee divided on the amendment:

Ayes (5)—The Hons. M. B. Dawkins, R. C. DeGaris, C. M. Hill (teller), E. K. Russack, and A. M. Whyte.

Noes (13)—The Hons. D. H. L. Banfield, T. M. Casey, M. B. Cameron, R. A. Geddes, G. J. Gilfillan, L. R. Hart, H. K. Kemp, A. F. Kneebone (teller), F. J. Potter, Sir Arthur Rymill, A. J. Shard, V. G. Springett, and C. R. Story.

Majority of 8 for the Noes.

Amendment thus negatived; clause passed.

Remaining clauses (18 to 21) and title passed.

Bill read a third time and passed.

ADJOURNMENT

At 6.9 p.m. the Council adjourned until Tuesday, March 21, at 2.15 p.m.