LEGISLATIVE COUNCIL

Wednesday, November 1, 1972

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

QUESTIONS

ABATTOIRS

The Hon. R. C. DeGARIS: I seek leave to make a brief explanation before asking a question of the Minister of Agriculture.

Leave granted.

The Hon. R. C. DeGARIS: Yesterday I asked the Minister a question about complaints I had received from producers of high-quality lambs in South Australia who had been unable to get a kill at the Metropolitan Abattoir. I think the Minister replied that he would investigate the matter. Has he a report on it? I believe that the situation is now desperate for some producers in the Adelaide Hills.

The Hon. T. M. CASEY: Yesterday I informed the Leader that I would obtain a report from the Operations Committee of the abattoir; that committee deals with the inflow of stock into the abattoir. I told the Leader that as soon as I received a report I would let him know. However, I do not believe that 24 hours is sufficient time for a report to be prepared. I shall do my best to see that it is hurried up.

The Hon. A. M. WHYTE: In reply to a question I asked on September 13 about the Port Augusta abattoir, the Minister of Agriculture said that he would be happy to investigate the situation. Because I had not received any other reply from him, I was surprised to see a regulation yesterday allowing for an increase in the killing charges at that abattoir. In my question I asked the Minister to investigate why those charges needed to be so much in excess of those at any other abattoir in the State. Can the Minister justify the increase in the charges?

The Hon. T. M. CASEY: I believe that the Port Augusta abattoir ties its charges to those of the Gepps Cross abattoir. I shall have another look at the honourable member's question to see whether I can add anything further.

RURAL RECONSTRUCTION

The Hon. R. A. GEDDES: I seek leave to make a short statement before asking a question of the Acting Minister of Lands.

Leave granted.

The Hon. R. A. GEDDES: The following is an extract from an article in a recent issue of the *Stock Journal*:

Unless South Australian farmers make more use of the $6,000,000 available for farm build-up under the State Grants Rural Reconstruction Act, 1971, some of the funds may in due course be lost to the State.

Can the Minister assure the Council that moneys that have been allocated by the Commonwealth Government for rural reconstruction in all its forms are being used in South Australia and that those moneys will not revert to the Commonwealth? If I am incorrect in my assumption, will the Minister please say so?

The Hon. T. M. CASEY: I believe the Commonwealth has laid down a deadline, but I can check the matter for the honourable member, although that is my understanding of the position. If farmers do not apply to take advantage of the scheme it is possible that money will be left in the coffers. The rural community is asked to take advantage of this sum of more than $6,000,000 allocated to South Australia, so that we can use all the money available. I would be only too happy to see it all taken up, but if we do not get the applications there is a possibility that it will have to revert to the Commonwealth. I will inform the honourable member of the latest position.

BRUCELLOSIS

The Hon. R. C. DeGARIS: On October 26 I directed to the Minister of Agriculture a question concerning brucellosis, and I now ask for a reply to that question.

The Hon. T. M. CASEY: The provisions of the Cattle Compensation Act do not authorize the appropriation of moneys from the Cattle Compensation Fund for brucellosis eradication. During the last three financial years, a total amount of $95,000 has been paid from the Cattle Compensation Fund for the control of tuberculosis.

RAILWAY FINANCES

The Hon. C. M. HILL: Has the Minister of Agriculture a reply from his colleague, the Minister of Roads and Transport, to the question I asked on October 19 regarding the possibility of a comprehensive report on railway finances, dated October 5, 1971, being made available?

The Hon. T. M. CASEY: My colleague informs me that the report referred to by the honourable member is one of many received by the Government. It is now being considered by the Government, and it would not be proper for it to be released at this time.

FUNERAL EXPENSES

The Hon. E. K. RUSSACK: I seek leave to make a short statement prior to asking a question of the Chief Secretary.

Leave granted.

The Hon. E. K. RUSSACK: I have been approached by several funeral directors concerning payment of accounts in connection with deceased estates. I understand it is the rule rather than the exception that frequently a director must wait, sometimes for years, for payment of these accounts, but on the average he must wait for seven to nine months, and during that period funeral directors must borrow money at interest to carry the debts of many people. An amendment to the Deceased Persons Estate Duties Act in Tasmania has enabled trustees and executors to pay funeral expenses from moneys held. I take it the money would be held in bank accounts, and so on. Will the Government look at the Tasmanian situation, and will the Attorney-General consider initiating legislation to enable such an amendment in South Australia so that funeral expenses can be paid at a reasonably early date after the death of the person concerned?

The Hon. A. J. SHARD: I think the question properly should be referred to my colleague, the Attorney-General. I will refer it to him and bring down a reply as soon as possible.

OVINGHAM HOUSE

The Hon. C. M. HILL: Has the Minister of Agriculture a reply from the Minister of Roads and Transport to my recent query regarding a house at Ovingham which might be demolished for road or overway purposes, and which I suggested could be preserved or commemorated in some way?

The Hon. T. M. CASEY: The Minister of Roads and Transport reports that a full investigation was carried out to ascertain whether the house at Ovingham, referred to by the honourable member, was ever occupied by George Fife Angas. The Aboriginal and Historic Relics Advisory Board, the Archives Department and the Hindmarsh council all conducted exhaustive investigations at the Minister's request. None of these investigations positively identified the house as having been lived in by George Fife Angas himself or, in fact, even been owned by him.

It is known, however, that the land on which the house stands did, at one time, form part of land originally owned by George Fife Angas between 1864 and 1878 and that the original two-storey building erected during those years was demolished, probably some time before the turn of the century. The honourable member also asked whether everything possible had been done by the Highways Department to save the house in the planning of the project.

The Minister has informed me that the property is affected by the proposed provision of a link between Noble Street and a service road to be constructed as part of the bridge over the railway line at Ovingham. It would not be practicable in the future to provide access to the front of the property and, therefore, it is just not possible to preserve the house, bearing in mind the necessary roadworks to be constructed in the area. The Minister has further informed me that he gave instructions in May, 1972, that, because of the apparent historic association with George Fife Angas, it would be appropriate for the Commissioner of Highways to arrange for a suitable plaque to be manufactured and placed at the appropriate time.

BURNSIDE LAWN REMOVAL

The Hon. C. M. HILL: Will the Acting Minister of Lands, representing the Minister of Local Government, report upon the Local Government Office's inquiries of the Burnside council regarding the problem of footpath construction that has occurred in St. Georges?

The Hon. T. M. CASEY: I have been informed by my colleague that his office did contact the city of Burnside regarding the removal of lawn from the footpaths in the council area and their replacement with bitumen footpaths. The council has not raised objection to ratepayers planting lawn on footpaths, but has advised ratepayers that lawn could be removed in order that footpaths may be constructed. The council is following the policy that footpaths be provided throughout the area. This is a matter which is entirely within the jurisdiction of the council.

ARGENTINE ANT

The Hon. H. K. KEMP: Has the Minister of Agriculture a reply to the question I asked on October 24 regarding the Argentine ant?

The Hon. T. M. CASEY: The Director of Agriculture and his staff are aware of the importance of the Argentine ant as a pest and maintain continual vigilance against it. The ant has been established in New South Wales, Victoria and Western Australia for some years and was recently introduced into Tasmania from the mainland in pot plants and in general cargo. It does not occur in South Australia, Queensland or the Northern Territory.

The department's Mount Gambier office will check any reports of suspected Argentine ant in the area. On rare occasions the ant has been detected in cargo of oversea vessels at Port Adelaide, but each occurrence has been exterminated at the wharf.

JAMESTOWN-HALLETT ROAD

The Hon. R. A. GEDDES: Will the Acting Minister of Lands ascertain from the Minister of Roads and Transport the programme for sealing the road between Jamestown and Hallett?

The Hon. T. M. CASEY: I shall be happy to refer the question to my colleague and bring down a reply for the honourable member. I can remember talking about this matter about eight years ago.

COMMITTEES

The Hon. C. R. STORY: I desire to ask a question of the Minister of Agriculture that will require a certain amount of detailed research. Can he ascertain how many boards have jurisdiction within his province, and how many advisory committees and equalization schemes come within his sphere, and will he name them?

The Hon. T. M. CASEY: I shall be delighted to get the information for the honourable member. If I may just refresh his memory, I believe he mentioned this specific matter during an Agricultural Council meeting several years ago.

CAMPBELLTOWN ZONING

The Hon. C. M. HILL (Central No. 2): I move:

That the Metropolitan Development Plan Corporation of the City of Campbelltown Planning Regulations—Zoning, made under the Planning and Development Act, 1966-1971, on September 21, 1972, and laid on the table of this Council on September 26, 1972, be disallowed.

First, I point out that there was some publicity about this matter in this morning's *Advertiser,* and a clear impression could be gained from what was printed that my concern about the possible disallowance of these regulations centred on a landowner, and that that landowner was in some way connected with the general open-space or market garden region within the city of Campbelltown, which had been and still is the subject of continual controversy in that area. However, that is not the case.

My concern about these regulations involves a householder who lives in a different part of the city of Campbelltown. Indeed, he is a constituent who lives at the intersection of Glynburn Road and Magill Road. Whilst he is only one individual in this big world of planning in which we are now involved, I think the voice of the individual should still be heard in this place and in other places of appeal when town planning regulations and controls are being implemented.

I do not like to think that we have reached the day when the will of the majority in town planning completely blots out the voice of the individual who is adversely affected. Similarly, in this place, I hope we shall always hear of instances where individuals who are adversely affected can have their voices heard. This is one of those instances.

My constituent's house is situated at the intersection to which I have referred. Three council boundaries merge at that point—the boundaries of the city of Campbelltown, of the corporation of Payneham and of the city of Burnside, the city of Burnside covering the land south of Magill Road. The Payneham corporation is on the western side of Glynburn Road and the northern side of Magill Road. So right in the corner of the city of Campbelltown this house is situated. On the other three corners of that busy intersection, at which traffic lights have now been installed and roadwork has recently been completed, there are commercial properties.

If I read my constituent's own story, or part of it, from a letter he has sent me, I think honourable members will gain some idea of the problem facing him. He talks about himself and his wife and says:

We are not wealthy people and our property is by far our most precious possession and has taken us very important years of our existence to acquire. The zoning of this property as Rl, according to the best of the information given us, will make its sale as a residential property very difficult indeed. I am self-employed and have no eventual superannuation benefits coming to me. Upon retirement or my death, the residence would necessarily be placed upon the market as it comprises nine rooms and totals approximately 40 squares, and its upkeep by two, or one, persons or person, as the case might be, would be quite beyond our financial resources. Accordingly, we apparently will be compelled to accept a consideration far below its present value from, perhaps, a family comprising mother, father, children, sons and daughters-in-law, grandchildren, etc., totalling, say, 20 people. I see no provisions in the zoning to prevent this and I believe it to have happened in other instances.

This law then can result in an intended low-density area becoming quite the opposite. The house rext to ours on Magill Road was flats until the estate, of which it comprised part, disposed of it. I assume that under the provisions of the regulations it can continue as flats for any time in the future. Our only other neighbour is a property to our north on Glynburn Road. The area of this land is about 180ft. x 180ft. and about three-quarters of this is taken up with flats and the owner's residence. An area about 90ft. x 100ft. immediately adjoining our property is garden. The owner of this property died within the last fortnight and I assume the beneficiary receiving this land can also build flats on it as extensions to the existing flats. Opposite our residence on the north-western corner is the Tranmere Hardware Store and behind this is a parking area for shoppers in an arcade (which also includes an amusement parlour). However, home units are now being constructed on land next to the car park and I am of the opinion that the car park will become part of the home-unit scheme.

What with a service station, Kingdom Hall of Jehovah's Witnesses, betting shop, Masonic Lodge and grocery shop on the south-eastern corner of the intersection and the continuous stretch of shops and commercial enterprises on the south-western corner, I contend that my wife and I will be severely victimized by restricting our corner to residential uses only. There are more than 40 shops and commercial enterprises in a semi-circle around our residence. We would greatly appreciate your intervention on our behalf with the corporation to correct what is an apparent breach of justice.

The machinery of the law in regard to this planning is that the gentleman appealed to his council, namely, the city of Campbelltown when the regulations were displayed. That appeal was unsuccessful, although I understand from officers of the council that it gave full consideration to the problem, which I think several members of the council recognized as facing this person. He then did all that was left for him to do under the present law: he went to the Subordinate Legislation Committee, in Parliament House, and put his case. The committee, in its wisdom, no doubt gave every consideration to the matter but did not do anything about it. I think perhaps the main reason was that the committee could not recommend an amendment to the regulations: it can only recommend that the regulations affecting the whole city of Campbelltown be disallowed, or approved of in their present form. The committee came down with a decision in favour of the latter course.

There appears, therefore, to be great inflexibility in the question of appeal by ratepayers against planning regulations and also in the machinery the individual can pursue to try to obtain justice as these regulations pass through their various stages, one of which is the present stage of being laid on the table of this Council. Of course, the Council is faced with the problem of inflexibility, because I recognize that it faces the same problem I have already mentioned: it cannot amend the regulations on the table just to suit one individual. Because of that, one might well ask what is the purpose of the regulations being laid on the table at all when the individual's case is under consideration.

I stress the "individual", because I am separating his case from instances in which a great number of residents who live in a certain region of a corporation might get together with petitions and signed forms, in which case the council would be dealing with a greater number of people whose interests would cover a far greater area of the corporation than is the case in the present instance. Although I have wanted to help this gentleman in some way, I have found great difficulty in doing so under the present law.

I have discussed the matter with the Corporation of the City of Campbelltown, and I must thank the Town Clerk and the Assistant Town Clerk for the time they have given me in regard to this problem. There is one exemption provision in the regulations under the Planning and Development Act; it is in the model regulations and, therefore, would be in all regulations that are brought down within metropolitan Adelaide. Under the heading "Exemption from Regulations—General Uses", regulation No. 41 provides:

(1) Where the building on or the use of land is forbidden by regulation 7 the council or the Authority may, on the request of the developer, recommend to the Governor that the land affected by the proposed building or use be exempted from the operation of regulation 7 or some specified part of regulation 7.

(2) The recommendation shall be accompanied by an application from the developer in the form required by regulation 35 (1) and by plans, drawings and information of reasonable particularity for the purpose of enabling the Governor to give full consideration to the proposed building or use.

(3) On receipt of a recommendation from the council the Governor may call for a report from the Authority on the proposed building or use and the Authority shall furnish the report with all due diligence.

(4) The Governor may, after consideration of the recommendation and the report (if any), by proclamation, and subject to such terms and conditions as he may specify in the proclamation, exempt the land from the operation of regulation 7 or any part of that regulation specified in the proclamation, and may prescribe the cases and circumstances in and

under which, and the purposes for which, land which is exempted may thereafter be used.

(5) The Governor may by proclamation revoke or vary any such exemption.

(6) For the purposes of this regulation, "developer" means any person who by regulation 7 is forbidden to erect a building on, or to use, land in a zone referred to in that regulation.

It may therefore be possible, if these regulations are allowed by this Council and become law, for the Campbelltown council or some future council to give special consideration to the person under regulation No. 41. It is the only exemption that I can find in these inflexible regulations that we have before us. I have not overlooked the disadvantages that sometimes arise for neighbouring properties when areas that have been classified for residential purposes have their use changed.

I fully appreciate that, if a petrol station were established on a site previously zoned as residential, the value of adjacent properties would be reduced. Therefore, an approach that the Campbelltown council might take is to permit a variation of use to provide for semi-commercial or semi-professional uses. The Campbelltown council ought to be permitted to lay down that such consent is given subject to the residential character of the building being maintained. I can recall that years ago another council was permitted to adopt that approach. In other words, any person passing the property would not know that it was not an ordinary residence. If that kind of usage was approved, there would be very little reduction in the value of the subject property or adjacent properties.

I realize, too, that the property is on a corner and that the Highways Department has expressed concern about the question of traffic volume. However, I point out that rooms for a veterinary surgeon, accountant or doctor would not need much parking space and would not generate a marked increase in traffic volume. If the person should die and his widow is forced to put the property on the market she will suffer loss, but if some change in use was possible she would not. The council cannot commit any future council to permitting a change in land use; I am fully aware of that problem. However, I believe that, if the council was willing to supply a letter to the effect that sympathetic consideration would be given to such an application if and when it was made in the future, there would be a good chance of a future council in the circumstances honouring such an undertaking. That is the kind of sympathetic consideration that I must seek from the council to help the person who is situated in the unique circumstances I have outlined.

I intend to write to the Corporation of the City of Campbelltown, which is willing to consider my letter at its meeting next Monday night. If the council agrees to prepare a letter of the kind I have described, that is as far as I can go towards helping the constituent. I thank honourable members for their patience in connection with this matter. I believe that bringing the matter before this Council in this way is the proper thing to do in the circumstances. The individual's rights must be considered in every possible way.

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

MEADOWS ZONING

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

That the Metropolitan Development Plan District Council of Meadows Planning Regulations—Zoning, made under the Planning and Development Act, 1966-1971, on July 6, 1972, and laid on the table of this Council on July 18, 1972, be disallowed.

(Continued from October 25. Page 2376.)

The Hon. H. K. KEMP (Southern): This motion must be considered in the light of the review that is taking place of planning for the Adelaide Hills. I therefore believe that this matter should not be pushed forward to completion immediately. I was informed yesterday, in reply to a question, that a Bill was being prepared to modify the planning arrangements for the Adelaide Hills, and it was stated that the new plan would be on public display in January, 1973, or soon afterwards. It is therefore foolish to let these regulations go through in their present form.

We must remember that a very important green belt area is in danger of destruction. I have no doubt that in its present custody and care the area of farmland (it is more than farmland; it is savannah forest, which is very beautiful indeed) is in secure hands. Therefore, there is no urgency for it to be decided one way or the other whether it be subdivisional land in the distant future. Why hurry this matter when the whole subject is apparently about to be reviewed and completely different legislation applied to it?

The Hon. C. M. HILL secured the adjournment of the debate.

CONSTITUTION ACT AMENDMENT BILL (COUNCIL)

Adjourned debate on second reading.

(Continued from October 25. Page 2377.)

The Hon. Sir ARTHUR RYMILL (Central No. 2): I rise to speak to this Bill more in sorrow than in anger. I believe the Bill was born in cynicism, or perhaps worse, and sent to us in the hope that it would behave something like a letter bomb. To me, the Bill is totally illogical, its author, whose main ambition in life, in my opinion, although he does not admit it, is to abolish this Chamber, is making a deliberate attempt to besmirch the Legislative Council. What his motives are I know not. He reached the highest place his Party can offer, and even this did not apparently satisfy his ego, because he resigned from it, not with the intention of retiring, it seems, but for the purpose apparently of undermining the greater number of his former colleagues and supporters. I believe this Bill also to be an insult to the House of Assembly, but the Labor Party was prepared to accept the insult because it saw a means of furthering its acknowledged objective of abolishing this part of the Legislature.

The Hon. D. H. L. Banfield: That has always been our policy.

The Hon. Sir ARTHUR RYMILL: Why, you may ask, Mr. President, am I saying these things? The reason is simple. The author of this Bill has been preaching throughout the length and breadth of this State for three months or more that the sole role of this Council is as a House of Review, to review the solemnly considered legislation of the House of Assembly. Then, in the next breath, he produces this Bill which says that 18-year olds are capable of doing this review. Weil, Sir, I ask you! Many in this age group are still at school. At best they could have had only a year or so at the university as junior students, or a couple of years of early apprenticeship of some sort or another. The present age for membership of this Chamber, as all members know, is 30 years, and there is obviously a very good and fundamentally sound reason for this. Perhaps it is best put in the words of the late George Bernard Shaw, who, on his ninetieth birthday, uttered these words:

Age does not bring wisdom, but it brings experience which young people cannot have.

I emphasize those last words. He did not say "which young people do not have"; he said "which young people cannot have". Of course, it is the objective of our present minimum age for this Chamber that it ensures that people have got the experience which makes them capable, in various ways, of reviewing legislation from the other place.

It may be that in these days the age of 30 years can be lowered, but to suggest that 18-year-olds are capable of reviewing the legislation of the House of Assembly is, to me, absolutely ridiculous, as I think one would find most sensible 18-year-olds would say it is: in fact, I know they do, because I have discussed it with them. While quoting words, I point out that I heard on the wireless the other day (because recently, unfortunately, I have had to do much listening to the wireless) this contribution by an announcer:

It is said that we spend the first half of our lives trying to understand older people and the second half trying to understand younger people.

I think that is quite a truism, but at the moment I do not think that I am having great difficulty in understanding either older or younger people; my trouble at the moment is trying to understand the angry middle-aged. I do not think we should waste much time on this Bill, for the reasons I have given. I find it a ridiculous piece of legislation. I propose to vote against the second reading, and I recommend that my colleagues do likewise.

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

RENMARK IRRIGATION TRUST ACT AMENDMENT BILL

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

The Hon. T. M. CASEY (Minister of Agriculture): I move:

That this Bill be now read a second time.

The effect of this short Bill will be to make considerable additional funds available to the Renmark Irrigation Trust. The firm proposals for these additional funds were negotiated between officers of the trust and officers of the Government, and I am pleased to inform honourable members that the Chairman of the trust has informed the responsible Minister of the acceptance by the trust of the "Government's realistic offer of grant and loan funds". This Bill, then, is introduced to ratify the agreement reached with the trust, since Parliamentary approval must be obtained for the necessary expenditure.

I will now deal with the Bill in some detail. Clauses 1 and 2 are formal. Clause 3 amends section 123b of the principal Act which at present provides for a Government grant of up to $1,000,000 for the rehabilitation of the

irrigation works of the trust and the provision of additional drainage within the Renmark Irrigation District. However, at present every dollar of this grant must be matched by a dollar of expenditure on these matters by the trust. The proposed amendment has two objects: *(a)* first, to lift the upper limit of the total grant by $800,000 to $1,800,000; and *(b)* secondly, to remove the "matching expenditure requirement".

Clause 4 inserts three new sections in the principal Act. Section 123ba provides for additional financial assistance by a loan of up to $1,450,000 for the purposes mentioned in connection with section 123b. The repayment of this loan is to be spread over 40 years and the loan is to bear interest at 5 per cent. Section 123bb provides additional assistance by loan for the purposes of establishing a domestic water supply in the area. In this case the maximum amount of loan is fixed at $313,000, and again the repayments are to be spread over 40 years. Section 123bc is a formal appropriating provision. Clause 5 makes an amendment to the principal Act consequential on the amendments proposed. Thus, the total additional assistance provided by this measure is about $2,563,000 and will be available at the rate of about $500,000 a year. This Bill has been considered and approved by a Select Committee in another place.

The Hon. C. R. STORY (Midland): When something is being obtained for nothing, it seems awful for one to hold it up. I therefore intend to speak to the Bill immediately, if the Council agrees. I have known of the arrangements concerning the Renmark Irrigation Trust since before it received financial assistance from the Government and since the 1956 flood, when it had to obtain financial assistance.

The Hon. A. J. Shard: You don't want to see that happen again?

The Hon. C. R. STORY: No. At that time it had to install a comprehensive drainage scheme and a suitable flood bank system in the area. This additional grant will without doubt put Renmark where it ought to be: in the vanguard of irrigation settlements throughout Australia, because it was, after all, the first irrigation scheme that was established in this country. The Government has been generous in making available this additional money. In its generosity the Government is learning a tremendous amount that it will be able to use in its own irrigation schemes throughout the State. I sincerely hope that the Government will bring to South Australia, in the way that Israel has done, a pressurized grid system which will save water and which will make it available to houses the owners of which have in the past had to install underground tanks. I do not know how many children have over the years been lost because of these tanks in which people have stored water for their domestic use, but many children must have been lost in the last 75 years. This scheme will provide a pressurized irrigation system to the whole area and a reticulated water system to the Renmark district. This, in addition to what is happening at Cooltong, which is the war service land settlement scheme adjacent to Renmark, will bring the irrigation schemes in this area into the top bracket not only in the State but in this country. I have much pleasure in supporting the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—"Loan for irrigation water and drainage."

The Hon. R. A. GEDDES: I am aware that Renmark has many freehold blocks. I am aware, too, of the problems that the Renmark Irrigation Trust has had in the past in having to match Government grants on a $1 for $1 basis. Because of the economic problems being experienced in the area and the enormous cost of drainage and reticulation, the Government has seen fit to accede to the request made by the trust to waive the provision regarding matching grants that existed in the previous legislation. I compliment the Government in this respect.

The Hon. T. M. Casey: A progressive Government!

The Hon. R. A. GEDDES: Many problems have been experienced in the Renmark area since the last major flood: salinity levels have risen and, because many blocks are freehold, the owners have not been able to remove old trees and plant new ones. There is an urgent need, which was recognized by the former Government, correctly to drain the subsoil. This is a continuation of that scheme. Because of escalating costs, possibly assisted by some of the "progressive" Government's policies, the pattern has changed, and the trust can no longer match the $1 for $1 grants. I support the Bill.

Clause passed.

Clause 5 and title passed.

Bill read a third time and passed.

MARKETING OF EGGS ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

REAL PROPERTY ACT AMENDMENT BILL (FEES)

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

The Hon. T. M. CASEY (Minister of Agriculture): I move:

That this Bill be now read a second time.

This short Bill arises mainly from a submission to the Government of the then Commissioner of Statute Revision. Honourable members will be aware of the existence of the Fees Regulation Act, 1927, which gave wide powers to vary fees provided for in any Act and, incidentally, gave powers for fees to be fixed where no fee was provided for the doing of any matter or thing under an Act. Since 1927 many regulations have been made under the Fees Regulation Act and, as a result, a large number of fees payable under other Acts have been varied. While this has been administratively convenient, there is no question that the multiplicity of regulations under the Fees Regulation Act has resulted in confusion to the legal profession and the public generally. It has always been necessary to ensure, when examining an Act, that the fees set out therein have not been subsequently varied by a regulation under the Fees Regulation Act.

This Act then does little than ensure that in future all fees under the Real Property Act will be fixed or varied by regulations made under that Act. At the same time opportunity has been taken to effect certain changes to English units of measurement consequent on the decision of the Government to adopt the metric system of measurement. Clauses 1 and 2 are formal. Clause 3 makes a necessary consequential amendment. Clause 4 repeals and re-enacts the provision in the principal Act that provides for the fixing of fees "in respect of the several matters provided for" in the principal Act. Clause 5 amends section 65 of the principal Act, which provides for the fixing of a search fee. For some time now searches in the registry have been without charge and this is made clear by the proposed amendment. Clauses 6 and 7 provide for a number of conversions to the metric system of measurement, which are generally self-explanatory.

Clause 8 repeals sections 271 and 272 of the principal Act. These two sections principally dealt with the licensing of land brokers, a matter that is now proposed to be dealt with under the Land and Business Agents Bill that is at present before this Council. However, included in section 271 was a power for the Registrar-General to prescribe the charges recoverable by both land brokers and solicitors for transacting business under the Act. It is proposed that in future these charges shall be fixed by regulation. Clause 9 enacts a new section 277 of the principal Act and provides for a formal regulation-making power to fix fees in respect of matters mentioned in the principal Act and also to fix charges referred to in connection with Clause 8. I draw honourable members' attention to proposed new subclause (2), which will enable existing regulations made under the Fees Regulation Act to be amended or revoked by regulations under this Act. Clause 10 repeals the first schedule to the principal Act. Clause 11 makes a minor metric amendment to the sixth schedule to the principal Act, and clause 12 repeals the twentieth schedule to the principal Act. Both clauses 10 and 12 are, in effect, consequential on the decision to fix the fees by regulation.

The Hon. C. M. HILL secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL (GENERAL)

Adjourned debate on second reading.

(Continued from October 31. Page 2512.)

The Hon. F. J. POTTER (Central No. 2): I support the second reading of this short amending Bill that deals only with three principal matters. The first is the facilitating of the payment of witness fees. That needs no further comment from me: it is a simple machinery measure correcting an anomaly. The second matter concerns the right of the curator of prisoner's property in the Public Trustee's Department to institute civil proceedings on behalf of a prisoner. That seems to be reasonable. We would not want a person in prison to lose his right to bring an action because of his inability to do so owing to imprisonment. The third matter is the power given to a criminal court to confiscate firearms used in or about the commission of a criminal offence. Again, this seems to me to be an area where the superior court should have jurisdiction to make such an order. It appears that at present, owing to a deficiency in the

law, it can impose forfeiture only as a condition of a bond. This seems to me to be unnecessarily restrictive.

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

INDUSTRIAL CONCILIATION AND ARBITRATION BILL

In Committee.

(Continued from October 31. Page 2518.)

Clauses 3 to 5 passed.

Clause 6—"Interpretation."

The Hon. F. J. POTTER: This long clause deals with the interpretation of various expressions used continually throughout the Bill. Some of these definitions are very important. I move:

To strike out the definition of "declared industry".

This definition is not used anywhere in the Bill. The definition refers to clause 91, which gives the Minister power to declare certain industries to be ones to which the Bill will not apply. Other than in that section, the expression is not used. The definition seems to be redundant.

The Hon. A. J. SHARD (Chief Secretary): The amendment is not acceptable to the Government. The definition of "industry" at present contained in the Industrial Code specifically includes one charitable undertaking, the St. John Ambulance Brigade. The Government has received a number of requests for the inclusion in the definition of "industry" on behalf of employees of other non-profit making organizations. In order to bring these people within the coverage of awards and to ensure future flexibility in this matter, the practicable solution is provided in the Bill of extending the definition of "industry" so that it includes charitable, religious or non-profit making organizations, and by clause 91 empowering the Minister of Labour and Industry to exempt such organizations if he is satisfied it would be in the public interest. The Government considers that it is far better to exempt employees where there is good reason to do so rather than continue the present situation in which many employees cannot get the benefit and protection of an award just because of the type of organization by which they are employed. I ask the Committee not to accept the amendment.

The Hon. F. J. POTTER: The Minister has given the Committee an explanation not so much of why we should vote against my amendment but of why we should vote against a subsequent amendment to clause 91. My amendment is tied up with that clause—possibly, too, even with the definition of "industry". I have certain amendments to the definition of "industry" that we will deal with later. I think it is unimportant at this stage to delete the definition of "declared industry", which I maintain is redundant in the existing circumstances of the Bill, even without any amendments. In order not to confuse the Committee, I will not press the matter but leave it until we consider what we will do with the definition of "industry" and, subsequently, when we reach clause 91. If the Committee accepts the amendment along the lines I have suggested, we can go back and study this definition later.

The Hon. R. C. DeGARIS: I agree with the Hon. Mr. Potter's contention. If honourable members study the definition clause, "declared industry" has a meaning, but that term does not appear in the Bill. It appears strange to have a definition of "declared industry" when such words do not appear in the Bill. I, too, believe that we should pass over this amendment.

The Hon. F. J. POTTER: I ask leave to withdraw the amendment.

Leave granted; amendment withdrawn.

The Hon. A. J. SHARD: I have an amendment to this clause. The Hon. Mr. Potter's next amendment starts before mine and goes past mine, so perhaps we should deal with his amendment first.

The Hon. F. J. POTTER: I do not suppose we will get into much trouble because, if the Committee accepts my amendments, I do not think the Chief Secretary will have any reason to move his amendment. I move:

To strike out the definition of "employee" and insert the following new definition:

> "employee" means any person employed in any industry, whether on wages or piecework rates, and includes any person whose usual occupation is that of employee in any industry, but does not include any spouse, son or daughter of his or her employer:

My amendment is a fundamental one that strikes out the long definition of "employee" and inserts a very simple definition. The new definition is a shortened version of the definition which appears in the existing Industrial Code, which has served well for many years and which has caused no difficulty as far as the Code is concerned. The definition of "employee" in the Bill could cause much trouble, because the definition is as wide as the sea. By bringing into the definition of "employee" such persons as contractors, subcontractors and people who drive motor

vehicles that are not registered in their name in connection with the transport of goods could create considerable difficulty in the administration of the Act. Honourable members paid close attention to this problem in the second reading debate.

It seems to me that the definition in the Bill could greatly restrict a person's ability to set up business on his own account and would bring into the category of "employee" for the purposes of this legislation people who are not strictly employees and who would never be regarded by any logical use of that word to be employees; so they would become potential persons over whom and in connection with whose activities an award of the commission might be made if the jurisdiction is invoked in connection with it. Considerable pressure tactics are already exerted in this field, and to give legislative approval to pressure tactics would be wrong.

The Hon. A. J. SHARD: The amendment is not acceptable to the Government, which considers that the definition of "employee" should be extended to give the protection of awards to people who, although they do not at present fall within the legal definition of "employee", in fact operate in the same way as employees. Although allegations have been made that the Government is trying to do away with the subcontracting system in the building industry, there is nothing in this Bill to substantiate those allegations. For many years complaints have been made that the labour-only subcontracting system has been used by employers and workmen to avoid observing industrial awards. In many cases this has resulted in labour-only subcontractors receiving lower than award rates, having regard to the hours they work, because particularly when work is scarce they are forced to enter into contracts to do work for the amount which the contractor is prepared to pay.

Similarly, we consider that taxi-drivers, owner-drivers and cleaners who are now denied the right to the protection of industrial awards in certain circumstances should have the opportunity to seek an award. The Tip Truck Operators Association of South Australia almost two years ago asked the Government to amend the present law to enable tip-truck operators to apply to the Industrial Commission for an award. While the Commissioner of Prices and Consumer Affairs fixes maximum rates which can be charged for the cartage of quarry and building materials, there is no minimum rate which provides tip-truck operators with a reasonable return for their services. A similar situation exists in this industry to that in the building industry, where drivers are working for far less than award wages. For many years the rates payable to owner-drivers employed by country district councils throughout South Australia have been fixed by an award of the Commonwealth Conciliation and Arbitration Commission. The Government considers that all owner-drivers who work on a similar basis should have similar protection.

Many tip-truck operators supply their own trucks, but cart for the same employer continuously; in fact, it is not unusual for them to have their trucks painted with the name of the person for whom they are working. Because they are not employees, they do not get the benefit of annual and sick leave, and the Government considers that they should have the protection of an award. Although the purpose of the amendment is to delete the definition in the Bill and revert to the definition that is at present contained in the Industrial Code, the amendment does not in fact do that, because it does not include persons employed on a salary who are now employees under the Industrial Code. I therefore urge the Committee to oppose the amendment.

The Hon. D. H. L. BANFIELD: I oppose the amendment. The Hon. Mr. Potter said that the definition in the Bill would create difficulties, but I point out that many difficulties are being created because the definition in the Bill is not at present in force. The Chief Secretary said that tip-truck operators wanted protection and that drivers in the building industry had been working for rates that were far less than award rates. Why should these people be deprived of working conditions that are almost universal, simply because at present they do not come under an appropriate award? For many years there have been complaints regarding subcontractors, who are often forced to work for less than the award rates. However, if such subcontractors were assured of at least a reasonable wage for a reasonable working week, we would not have nearly as many complaints. Taxi-drivers, too, are entitled to protection, because there is no basic difference between taxi-drivers and drivers who are covered by awards.

The Hon. R. C. DeGARIS: During the second reading debate some honourable members stated that the definition of "employee" in the Bill went a good deal further than the definition at present in the Industrial Code; there is no doubt that the latter definition has not caused any difficulty. Moreover, the

definition of "employee" in the Bill affects the definition of "employer". Some of the points made during the second reading debate have not been replied to in full. I fear that there will be confusion as to who is an employer and who is an employee; in some cases a person could be both. As we have had a definition in the Industrial Code that has not caused great difficulty, we should require the Government to produce strong arguments if it wants that definition to be changed. Although the Chief Secretary has said that this Bill does not aim to get rid of the subcontracting system in the building industry, I point out that some members of the Government have claimed that they aim to get rid of that system; they made such a claim in connection with the builders licensing legislation and the regulations under that legislation. So, when one examines the definition of "employee" in the Bill, one is naturally suspicious.

I am somewhat impressed by one argument advanced by the Chief Secretary; if what he says is true (that there are people who, through no fault of their own, are being forced to work for less than award rates) that is a serious matter. On the other hand, I do not think we should adopt any legislation that prevents a person from establishing his own business and tendering for a contract; if we adopt such legislation, we will upset the whole base of a system that has served us extremely well. We have heard all sorts of complaint about the standard of building in South Australia—allegedly because of the subcontracting system. Having looked at the situation in other States, I believe that we have nothing to be ashamed of in South Australia in connection with building standards and building costs. They will stand examination by any person who cares to take the time to look at it.

The Hon. D. H. L. Banfield: It does not apply only to houses built by subcontractors.

The Hon. R. C. DeGARIS: One will find, if one looks at it, that the vast majority of building in South Australia is done under the subcontract system. Very few houses constructed do not use that system; in fact, I doubt whether there would be any, except perhaps for the small builder in a country area who does all the work himself. That would be about the only case in which the subcontracting system was not used. I think the Hon. Mr. Potter is right to have some suspicion regarding the provisions of this definition of "employee". It goes far beyond the present definition in the Industrial Code and, as has been said by the Hon. Mr. Banfield and the Chief Secretary, it relates to people who, until now, have not been looked on as employees and who do not wish to be looked on as employees. They wish to remain free and to contract and tender for the work they can get. I am somewhat surprised by some of the evidence the Chief Secretary has put forward, but I do not think it is sufficient to change my mind that the definition goes far beyond that which presently exists, and the reasons are not strong enough for that to occur.

The Hon. F. J. POTTER: I seek leave to amend my amendment by inserting the word "salary" immediately before the word "wages". One remark made by the Chief Secretary has caused me to look again at the amendment, and I realize that this word has been left out. I am grateful to him for reminding me. Apart from the amendment I now seek to make, the amendment remains the same.

Leave granted; amendment amended.

The Hon. D. H. L. BANFIELD: The Hon. Mr. DeGaris has said that the Government should put forward some definite reasons to have this amendment defeated. I suggest the Chief Secretary put forward a very good case. The Hon. Mr. DeGaris said there is no reason to alter the Bill. If that is so, I wonder why the Tip Truck Operators Association of South Australia two years ago approached the Government to have the law amended to enable tip-truck operators to apply to the Industrial Commission for an award. The Chief Secretary pointed to one instance, and we know, too, of taxi drivers and cleaners who are just as interested in the right to have an industrial award, but this is opposed because it could cause some inconvenience. I do not know where the inconvenience would be, because the Industrial Commission knows how to deal with these matters; probably it is inconvenient to some members opposite to appreciate that there are employees with substandard wages and working conditions, but apparently those honourable members do not regard that as an inconvenience or disadvantage. To those members it would appear more of an inconvenience for these awards to be achieved through the court. I suggest that the commission is established to overcome this, and that any slight inconvenience arising is far outweighed by the number of employees in the categories mentioned by the Chief Secretary who suffer because they cannot get proper award coverage. I suggest we reject the amendment of the Hon. Mr. Potter.

The Hon. G. J. GILFILLAN: The Chief Secretary and the Hon. Mr. Banfield have been most persuasive, but they have failed to point out that the Hon. Mr. Potter's amendment covers any person employed in any industry. It is a very wide coverage, including persons on salaries, wages, or piece-work rates and any person whose usual occupation is that of employee in any industry, but it does not include any spouse, son or daughter of his or her employer. This is a very sensible amendment, and would include the people spelled out by the Hon. Mr. Banfield with the exception, perhaps, of the tip-truck driver who owns his own vehicle and is self-employed. It is difficult for me to understand how anyone could work out an award for a person working under contract rates. I know of many instances where the tip-truck drivers work on contract and the actual return depends largely not only on the contract but on the type of vehicle and the manner in which it is maintained. To get an award for such a person would be quite difficult. I believe that the amendment covers all the situations which could occur where an employee is concerned, without spelling out the different categories, which could lead to a good deal of confusion.

The Committee divided on the amendment:

Ayes (11)—The Hons. M. B. Cameron, Jessie Cooper, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, L. R. Hart, C. M. Hill, F. J. Potter (teller), E. K. Russack, C. R. Story, and A. M. Whyte.

Noes (6)—The Hons. D. H. L. Banfield, T. M. Casey, H. K. Kemp, Sir Arthur Rymill, A. J. Shard (teller), and V. G. Springett.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. A. F. Kneebone.

Majority of 5 for the Ayes.

Amendment thus carried.

The Hon. F. J. POTTER: I move:

In the definition of "employer" to strike out paragraphs (*c*), (*d*), (*e*), (*f*) and (*g*).

This amendment is consequential on the amendment that has just been passed.

Amendment carried.

The Hon. F. J. POTTER: I move:

In the definition of "industry" after "sections" to insert "but does not include any undertaking, trade, business, occupation or calling, the objects of which are charitable or religious".

As it stands, the definition catches up with everyone. However, it should exclude any charitable or religious organizations, which will frequently be unable to pay award rates of pay to their employees. If they are forced to do so, these organizations will have to approach the Government for large subsidies. This matter is no different from that in relation to clause 91 as it stands at present, in which, so the Minister has said, there is provision for charitable, religious and non-profit-making organizations to be excluded. However, they can be excluded only if the Minister decides that he should exercise his powers and, by notice in the *Gazette,* declare that they are a religious or charitable organization to which the Act shall not apply. Even if he does that, the section still provides that an award can expressly operate to exclude those people. Clause 91 therefore seems to be a crazy provision. When we get to the relevant clause, I will move an amendment to limit the Minister's powers to declare, in the public interest, that certain non-profit-making organizations may be declared for that purpose. I cannot imagine that he will declare many of them. However, I am not concerned at present with non-profit-making organizations. I believe that organizations like the Royal Automobile Association, for instance, which is a non-profit-making organization—

The Hon. A. J. Shard: That could not come under the definition of "charitable organization".

The Hon. F. J. POTTER: I am not saying it does.

The Hon. A. J. Shard: That is what you said.

The Hon. F. J. POTTER: No. I do not think the Minister listened to what I said. I am not saying that organizations such as the R.A.A. should not be covered by the Act. I think they should.

The Hon. A. J. Shard: That is right.

The Hon. F. J. POTTER: My amendment will in no way cut across that, because an organization such as the R.A.A. is not charitable or religious. I am merely excluding from the definition of "industry", for the purposes that have already been canvassed, those organizations that are charitable or religious. That will put the matter back to where it is under the existing Code. This is a sensible amendment and, if it is not carried, these organizations will not be able to carry on under the provisions of an award.

The Hon. A. J. SHARD: Ever since I have been a member of this Council, I have never heard an argument that has condemned an amendment as much as the Hon. Mr. Potter's argument has. I have dealt in the last decade with as many charitable institutions as anyone and, to the best of my knowledge, all reasonable-sized charitable institutions believe that everyone should be paid award rates.

The Hon. Mr. Potter said that many of these organizations would not be able to pay award rates. I have organized and assisted charitable institutions and have ensured that they receive increased subsidies to enable them to pay award rates. It is pure rot for anyone to say that Parliament is willing to allow certain organizations to pay their employees less than award rates of pay. I have never heard such a weak case advanced. Does this Parliament believe that Government-subsidized charities should be permitted to employ people at less than award rates? That is what the Hon. Mr. Potter said, not what I said.

The Hon. F. J. Potter: They are not all Government subsidized.

The Hon. A. J. SHARD: This will exempt them.

The Hon. F. J. Potter: What about religious organizations?

The Hon. A. J. SHARD: I deal with them all, and I ensure that they receive subsidies to enable them to pay award rates. When the Commonwealth Liberal Government refused to pay rates to a non-profit-making organization, this Government came in and picked up the pieces. It had to do it last year and, notwithstanding that an election is imminent, it has done it from August 1 this year. It has had to guarantee losses of up to 70c a day from August 1 to December 1, until the Commonwealth Government comes good again. Despite that, the honourable member wants to give those institutions the right to employ people at less than award rates. I have heard nothing as blatant as this since I have been a member of this Council. Whether it be a Labor, Liberal or any other Government, I hope it will at least have the decency to provide charitable institutions that are looking after aged people, and others who need it, with a subsidy large enough for them at least to pay award rates to their employees.

The Hon. F. J. POTTER: I do not criticize the Government for what it may be doing. These bodies arc exempted under the existing Act and, if they choose to pay award rates, it is a fine gesture by the Government in subsidizing them, but it does not subsidize every charitable or religious organization in this State. It works the other way. too: it is not always that the employer does not wish to pay the award rates: it frequently happens that workers help these charitable and religious organizations without wanting to be paid award rates. They are perfectly happy to give their services for perhaps nominal remuneration.

The Hon. A. J. Shard: Some of them do it for nothing, and the Bill will not prevent that.

The Hon. F. J. POTTER: Yes, but I am not talking about someone who works for nothing.

The Hon. A. J. Shard: Your amendment prevents them from doing that.

The Hon. F. J. POTTER: If people work for less than award rates, they will be brought under the terms of the award if this definition of "industry" is left as it is; there will be no exemption for a charitable or religious organization. The Chief Secretary said my amendment would prevent people from paying award rates, but that is not so.

The Hon. D. H. L. Banfield: It would prevent employees from claiming award rates.

The Hon. F. J. POTTER: That is not how the Chief Secretary put it: he said that employers would be trying to find ways of getting out of it.

The Hon. A. J. Shard: Some of them would; I have had experience of that.

The Hon. F. J. POTTER: They may or may not. I think any Government would make sure, if possible, that sufficient subsidies were given to organizations to enable them to pay award rates, but my amendment does not cover everyone; also, it allows the individual to agree to work for less than award rates. That frequently happens in the case of people who help charitable or religious organizations.

The Hon. D. H. L. BANFIELD: The bighearted people who want to work for less than award rates can receive their award rate of pay and hand it back to the organization. They can claim a taxation deduction by doing that and they can also give that to the charitable organization. Honourable members should not deprive employees of charitable organizations of at least the right to claim award rates for services rendered. We know there are some socialites who do good charity work and are pi epared to give their services free. This Bill does not affect them.

We also know there are hundreds of workers who cannot afford to give their services free; they must go out to work and, if work is available only at those places that do not observe award rates, they can be fleeced if they are not covered by an award. This points to the difference between our humane outlook on the workers and the heartless outlook of the Opposition on them. Whenever

they can deprive a worker of the right to a just return, they do so. The Hon. Mr. Potter has said that, if an employee works for a charitable or religious organization, he should not be covered by an award. What a ridiculous statement! Why not have all employees covered by an award? If some people are charity-minded, let them hand their pay back to the organization, but do not deprive the worker who cannot do that or the worker who depends on that type of work for his livelihood.

The Hon. R. C. DeGARIS: As the clause now stands, an organization can be exempt from the provisions of the definition of "industry" where the Minister is satisfied that it is a charitable, religious or non-profit-making organization. The Hon. Mr. Potter is attempting to exclude from the definition those organizations that are charitable or religious.

The Hon. F. J. Potter: We say that this Parliament, and not the Minister, should decide what is in the public interest.

The Hon. D. H. L. Banfield: You are not saying that at all; you are saying that all these things are in the public interest.

The Hon. R. C. DeGARIS: The point here is whether a Minister, one man looking at the whole range of charitable and religious organizations, should decide what is in the public interest and say, "That one is in the public interest but that one is not", or whether Parliament should decide that any organization that can show that it is a charitable or religious organization should not be included in the definition. I appreciate the point made by the Hon. Mr. Banfield and the Chief Secretary, but with some emotion they have exaggerated the intention of the amendment. The Committee should decide whether it considers that the definition of "industry" should include an exclusion for any charitable or religious organization, or whether the Minister, under clause 91, should have the exclusive power to decide whether an organization is charitable, religious or non-profit-making.

The Hon. A. J. SHARD: If the Committee accepts the amendment, honourable members will ask later that clause 91 be struck out. Am I right in thinking that the amendment would prevent the court or anyone else from making an award?

The Hon. F. J. Potter: Yes.

The Hon. A. J. SHARD: If the amendment is carried, it will preclude these people from applying for an award?

The Hon. F. J. Potter: Yes.

The Hon. A. J. SHARD: In the second reading debate I asked the Hon. Mr. Potter to study clause 91 and tell me what it meant, but he has not told me. I told him that the Minister had the power to exempt.

The Hon. F. J. Potter: Yes.

The Hon. A. J. SHARD: One charitable organization, a church, works on a small scale and in the last year has been exempted from the award. The Minister will have the power to exempt. When the expansion of nursing homes, etc., takes place after January 1, they will be comfortably off. If the employees did not have the right to apply for an award I would be ashamed to go out and say, "Parliament said that, because you are working in a nursing home run by a church or charitable institution, you cannot apply for an award." No-one has greater admiration for such institutions than I have. The State and Commonwealth Governments provide subsidies to them. If the amendment is carried, no award can be made.

The Hon. L. R. HART: I probably have a suspicious mind, because I believe there is an ulterior motive in requiring charitable organizations to be brought under this legislation. I believe the Government is doing this so that the employees will be required to join a union. Can the Chief Secretary say whether a charitable organization will be required to give preference to unionists (that is. to those employees who will be required to receive award rates)? Nothing in the Bill exempts charitable organizations from a requirement to give preference to unionists. The Chief Secretary said that the Government had provided subsidies so that the organizations could pay award rates. Is it a condition in the granting of a subsidy that the charitable organization will pay award rates?

The Hon. A. J. SHARD: I am amazed at the Hon. Mr. Hart's suggestion that a subsidy would be provided only if award rates were paid. We judge on the need of the organization, and no tag has ever been attached to any subsidy. I would rather walk out of Parliament tomorrow than attach such a tag to a subsidy. Charitable institutions are now big business and most of their employees are union members: they were union members long before we came into Government. During my time as Minister there has been only one complaint regarding unionism. I negotiated with the parties concerned in the interests of industrial peace. The employees joined a union of their own free will, but there was never any suggestion that a tag would be placed on the granting of a subsidy. One of the finest and most admired ladies in this State

came to me and thanked me for the way I treated that organization. The employees of most charitable organizations are members of their respective unions. Never once has the gun been pointed at their heads or has it been suggested that the subsidy would be withdrawn unless the employees joined a union.

The Hon. D. H. L. BANFIELD: My suspicious mind tells me that the amendment has been moved so that charitable organizations will not pay their employees sufficient wages to enable them to pay union fees. The Hon. Mr. Potter, probably in collusion with the Hon. Mr. Hart, has moved this amendment for this purpose. The amendment would exclude places such as Bedford Industries, Minda Home, all the church homes, the Home for Incurables, and religious hospitals, because, in the main, their object is charitable. The Hon. Mr. Potter said that it would not stop the organizations from paying the award rate, but I point out that it would successfully stop the employees from claiming that rate. Organizations such as Bedford Industries and Minda Home must employ tradesmen, because the maintenance men are skilled tradesmen. Why should they not be covered by an award? They would be covered by an award if they were employed at General Motors-Holdens. Charitable organizations are financed to a fair extent by public subscription, and I am certain that 95 per cent of the public (unless they are like honourable members opposite) would not donate to those charities if they thought the employees were not getting a reasonable wage. Because this amendment is far too one-sided, I oppose it.

The Hon. F. J. POTTER: One or two speakers have painted a pretty grim picture of our charitable organizations. As a result, one would think that the organizations were Scrooges that were paying mere pittances.

The Hon. A. J. Shard: I did not refer to them in that way.

The Hon. F. J. POTTER: I am not saying that it was said specifically, but the general picture conveyed was that charitable organizations were paying pittances to their employees whereas, by and large, they pay award rates where they possibly can.

The Hon. D. H. L. Banfield: Then, why exclude them?

The Hon. F. J. POTTER: Because I believe that the ramifications of including them under awards are far too wide and would cause great difficulties. The Hon. Mr. Geddes asked in the second reading debate whether ministers of religion and deaconesses would be covered.

The Hon. D. H. L. Banfield: They can seek an award if they wish.

The Hon. F. J. POTTER: But do we want the tentacles of the Industrial Court to stretch out to our religious organizations? People do not have to work for less than award rates if they do not want to. In most cases employees of charitable organizations would be doing work covered by an already existing award of the court in some way, except that the award does not apply to them, because employees are exempted under the Industrial Code.

The Hon. D. H. L. Banfield: That is logical! They are covered but they are not!

The Hon. F. J. POTTER: The point made by the Chief Secretary about providing subsidies to assist charitable organizations is commendable. If it is the Government's aim to provide sufficient money so that charitable organizations can pay award rates, I am sure the organizations will welcome the subsidies and will pay the award rates. The Government could make it a condition of the subsidy that the organizations pay award rates, although I am not saying that the Government need do that. The Government could ask for balance sheets and profit and loss accounts to see whether the organizations were paying award rates.

The Hon. A. J. Shard: I do not know whether these organizations go that far. They give us a total figure.

The Hon. F. J. POTTER: If, in reply to an inquiry from the Government, the charitable organizations said that they were paying award rates, the Government could then inform them that it would provide a subsidy. The Hon. Mr. Hart's point is also relevant here; once a group of employees is covered by an award, not only are the rates of pay affected but also preference for unionists and provisions for sick leave and annual leave must be taken into consideration. These further ramifications of an award would be applied to employees of charitable organizations.

The Hon. D. H. L. BANFIELD: The hatred that members opposite have for trade unions is now obvious. This amendment was drawn by the Hon. Mr. Potter in collusion with the Hon. Mr. Hart. We eventually dragged out of the honourable member that the very reason for the amendment was that the trade unions might pick up one or two members otherwise. It is numbers that count, but let us look at the logic of this matter. The Hon. Mr. Potter says that every employee in a charitable organization might be covered by an award

but it does not apply to charitable organizations. We will now see what the difference is between numbers and logic.

The Committee divided on the amendment:

Ayes (5)—The Hons. M. B. Cameron, R. C. DeGaris, L. R. Hart, C. M. Hill, and F. J. Potter (teller).

Noes (11)—The Hons. D. H. L. Banfield, T. M. Casey, Jessie Cooper, R. A. Geddes, G. J. Gilfillan, E. K. Russack, Sir Arthur Rymill, A. J. Shard (teller), V. G. Springett, C. R. Story, and A. M. Whyte.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. A. F. Kneebone.

Majority of 6 for the Noes.

Amendment thus negatived.

The Hon. R. C. DeGARIS: There are some matters in clause 6 that I wanted to discuss with the Government in the Committee stage, but we have gone past them. I will be seeking recommittal of the whole Bill because, with the number of amendments on file, I think the Chief Secretary would agree that it may be necessary to recommit the Bill to see just what has been done.

The Hon. A. J. SHARD: I will raise no objection to the Bill being recommitted.

Clause as amended passed.

Clauses 7 and 8 passed.

Clause 9—"President and Deputy President."

The Hon. R. C. DeGARIS: The point that concerns me here is the use of the word "status" . It may be a correct word, but to me the Supreme Court should be what it is. supreme, and when one uses the word "status'' one could tend to look on the Industrial Court as having the status of the Supreme Court. I believe that in the previous Industrial Code the word "qualification" was used. Perhaps the Chief Secretary may be able to elicit this information for me. to find out why the words are used that the President of the court shall have the status of a judge of the Supreme Court. As one leads the legislation, this may be of some importance.

The Hon. A. J. Shard: I think this was attended to in another Bill previously.

The Hon. F. J. POTTER: It is a new provision, upgrading to the status of a Supreme Court judge, and later on, incidentally, there follows provision for the salary of a Supreme Court judge. This matter raises a most important issue, because there is absolutely no appeal from this court. Under the old provisions. the court itself could state a case on a

matter of law to the Supreme Court for the opinion of that court. That has been deleted from this measure. If the President of the court is to have the status of a judge of the Supreme Court, then the Supreme Court could not, even by writ of *certiorari,* review any decision of this court, so the situation would be that this court would be a complete entity and there would be no appeal on any question to the Supreme Court or to the High Court from any decision of the Industrial Court. This is a matter that needs the most serious consideration.

I do not know that we need worry about the precise terminology used in this clause but, if it is to remain as it is at present, some consideration might have to be given to writing into the legislation a separate clause with provision for a right of appeal on questions of law to the Supreme Court by leave of that court. If the reference to the President having the status was not there, then the Supreme Court, by writ of *certiorari,* could still review the decision of the Industrial Court.

Clause passed.

Clauses 10 to 14 passed.

Clause 15—"Jurisdiction of court."

The Hon. A. J. SHARD: I move:

In subclause (1) *(b)* to strike out "or" and insert "that is".

This amendment is to correct a drafting error and a printing error. Unfortunately, paragraph (*b*) of subclause (1) has not been correctly set up. The paragraph should read "to hear and determine any question of law or case stated that is referred to it by the commission or a committee".

Amendment carried.

The Hon. F. J. POTTER: I move:

In subparagraphs (i) and (ii) of subclause (1) *(d)* after "service" to strike out "or a contract under which services are rendered"; and in paragraph (iii) after "service" to strike out "or a contract under which services were rendered".

These amendments are consequential on the alteration of the definition of "employee".

The Hon. A. J. SHARD: I have no objection to these amendments which, as the honourable member has said, are consequential.

Amendments carried.

The Hon. F. J. POTTER: I move to insert the following new paragraph:

(*e*) to hear and determine any question as to whether the dismissal from his employment of an employee, not being an employee who has under any Act or law a right of appeal or review against his dismissal, was harsh, unjust and unreasonable and the court may, if it thinks fit. direct

> the employer of that employee to re-employ that employee in his former position on terms that are not less favourable to the employee than if he had not been dismissed from his employment and without limiting the generality of the foregoing may order that the employee be paid a sum not exceeding a sum equal to the wages that he would have received had he been employed in that employment between the time of his dismissal and the time at which he was re-employed, but the court shall not exercise the jurisdiction conferred on it by this paragraph unless an application invoking that jurisdiction is made, by or on behalf of the dismissed employee, within twenty-one days from the day on which it is alleged that the employee was so dismissed from his employment.

I believe that reviews of dismissal from employment should be dealt with, as they are now, by the court and not by the commission. The question whether a man has been properly or improperly dismissed from his employment goes to the whole basis of the relationship of employer and employee, and deals with the legal rights of the persons involved. I have no objection to the wording of clause 25, except for the point I made in the second reading debate, namely, that I believe the clause should provide that a person has a right of appeal if his dismissal is considered harsh, unjust and unreasonable, which is the wording of the existing Act. Clause 25 contains the words "or unreasonable", thereby introducing, as it were, a third ground, whereas "unreasonable" was made to cover the total situation.

I believe there should be a right of review against dismissal and that it should be on the grounds as they exist in the present Code. I am firmly convinced (and this is the main purpose of my amendment) that it should be a matter for decision by a member of the court and that we should not have a single commissioner interfering and asking employers, in matters that involve legal considerations, to justify the dismissal of an employee. Otherwise, the clause, as the Government has drawn it, is complete in all respects, providing as it does for reinstatement and for the payment of money lost. This is the correct place for this provision: in the clause dealing with the jurisdiction of the court.

The Hon. A. J. SHARD: The Government considers that it is more appropriate for the power to deal with the reinstatement of dismissed employees to be exercised by the commission than by the court. If it is a jurisdiction of the court, then only judges will have the authority to hear these cases. On the other hand, if the provision is left, as it is in the Bill, to the Industrial Commission, then either a judge or a commissioner can deal with such a matter. The commissioners have an intimate knowledge of the activities of industry; they were all employed for many years in industry, and their practical knowledge would be of considerable assistance in determining cases of this nature.

The basis of the Hon. Mr. Potter's amendment was that, as this jurisdiction involves some legal rights and matters of law, it should therefore be dealt with by the court. However, we believe that the matter of reinstatement of dismissed employees should be regarded as being just one aspect of industrial relations and not a question of legal rights only. The other part of the amendment is that a person would have the right to have his dismissal reviewed only if the dismissal was harsh and unjust and unreasonable, whereas the Bill provides that the worker has the right to have his dismissal reviewed if it is harsh or unjust or unreasonable. The Government cannot agree to the very much more restricted grounds for reviewing a dismissal. I ask the Committee not to accept the amendment.

The Hon. F. J. POTTER: The question of what is harsh, unjust and unreasonable is a subject on which there is a considerable amount of case law. The determination of this matter alone involves matters of legal interpretation and should, therefore, be left to the court to decide. It is not for a commissioner to determine the legal effect of these words. The Minister also said that the matter would have to be dealt with by a judge. However, it need not be dealt with entirely by a judge: it could, on the President's direction, be dealt with by the Industrial Magistrate.

The Hon. D. H. L. BANFIELD: The clause provides that reinstatement can occur if it is proved that a dismissal was harsh, unjust and unreasonable. Therefore, an employee must overcome three obstacles before he can be reinstated. The commission should be able to examine the circumstances of a dismissal and, if it considers that the dismissal was harsh, that should be sufficient reason for it to order the reinstatement of an employee.

The Hon. F. J. Potter: If it was unjust, it would certainly be unreasonable in most cases.

The Hon. D. H. L. BANFIELD: But if the word "and" is used, an employee has to overcome three obstacles.

The Hon. F. J. Potter: It has been like that in the legislation for donkey's years.

The Hon. D. H. L. BANFIELD: We are now saying that any one of those three should be sufficient if the commissioner is satisfied that one of them applies to the dismissal being considered. If he is satisfied that one of those three applies, he should have the right to say that the worker should be reinstated. It is all very well for the Hon. Mr. Potter to talk about going before a judge, but we have an Industrial Commission set up that knows all about industry. Each industrial commissioner has great experience of industry. Those people who know industry should be the ones to decide these matters. If an employee could not go to a commissioner but had to wait a long time to go before a judge for a decision to be made on whether his dismissal was harsh, unjust or unreasonable, there would be turmoil in the industry.

A strike would develop overnight if an employee was told that he had no chance of having his case heard until a judge set it down for hearing in the distant future. Whereas a man can always go before a commissioner at short notice, he cannot always go before a judge at short notice, and that will cause great discord. It is reasonable that a commissioner should be able to determine these things because he knows the industry. It is unreasonable that an employee's dismissal must comply with these three conditions before he has the slightest chance of being reinstated. I oppose the amendment.

The Hon. R. C. DeGARIS: First, the determination of any dismissal should come before the court and not before the commission. Secondly, under the present Industrial Code, the words used are "harsh, unjust and unreasonable", but the amendment changes those words to "harsh, unjust or unreasonable". We must first decide whether these cases should be heard before the court or the commission. I support the Hon. Mr. Potter on that. Secondly, I support the Hon. Mr. Potter's amendment that the words "harsh, unjust or unreasonable" be included here in Division II—"Jurisdiction and powers of court"—and we can discuss later whether the words should be "harsh, unjust and unreasonable" or "harsh, unjust or unreasonable".

The Hon. D. H. L. BANFIELD: How does the Hon. Mr. DeGaris suggest we go about this? Should an honourable member move an amendment to that effect? I do not want to do it because I do not support the idea of going before the court.

The Hon. R. C. DeGARIS: I have indicated that I shall seek the recommittal of the whole Bill because we shall get into difficulties like this as we go through it. Let us now deal with the main principle involved here (whether a case should be heard before the court or before the commission) and then deal with the other matter when the Bill is recommitted.

The Hon. G. J. GILFILLAN: I understand that, when one appears before the commission, no costs are involved whereas high costs can be involved when appearing before the court. Both employers and employees could be inhibited from making applications on the ground of costs.

The Hon. F. J. POTTER: Costs are a minor matter here compared with the principle involved—the interference by a tribunal with the right of an employer to hire or fire. That is a long-established right in our law and it is in those circumstances that a case could be reviewed. Costs are not involved if a matter goes before an industrial magistrate, so there is no problem there.

The Hon. D. H. L. BANFIELD: A few moments ago there was talk about elevating the status of the President of the court to that of a judge of the Supreme Court. Does this mean that we are now saying, "You are not good enough to hear a case like this"?

The Hon. Sir Arthur Rymill: That has not yet been elucidated.

The Hon. R. C. DeGARIS: We shall be returning to deal with that point. I understood that the Chief Secretary would attempt to get information for me when the Bill was recommitted.

The Hon. D. H. L. BANFIELD: We know that it would not cost anything to appear before the commission; we also know that, once a person is confronted with the prospect of going before a judge of the Supreme Court, it is advisable for him to get a "legal eagle" to explain the situation. That may be a reason why the Hon. Mr. Potter is including that, to give his fellow lawyers some work. Lawyers do not go into a court for nothing. Do not be misled by the fact that the Hon. Mr. Potter said that no costs would be involved. True, they may not be involved if the case is handed back to the commission, but high costs will probably be involved if it does not go back to the commission.

The Committee divided on the amendment:

Ayes (10)—The Hons. M. B. Cameron, Jessie Cooper, R. C. DeGaris, R. A. Geddes, L. R. Hart, C. M. Hill, F. J. Potter (teller), E. K. Russack, Sir Arthur Rymill, and A. M. Whyte.

Noes (5)—The Hons. D. H. L. Banfield, T. M. Casey, G. J. Gilfillan. A. J. Shard (teller), and C. R. Story.

Pair—Aye—The Hon. V. G. Springett. No—The Hon. A. F. Kneebone.

Majority of 5 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 16 passed.

Clause 17—"Powers of court."

The Hon. R. C. DeGARIS: There is no amendment on file to this clause. Regarding paragraph (*e*), "equity and good conscience" appear in other clauses. I ask the Committee to note that it would not normally be found that the court must act not only according to the law but also in equity and good conscience; hitherto, this expression may have been found in the powers of the Industrial Commission, but not in the powers of the Industrial Court. Will the Chief Secretary obtain information for me on this matter?

The Hon. A. J. SHARD: Although I understand that it is common verbiage, I will obtain a considered reply for the Leader.

The Hon. F. J. POTTER: I move:

In paragraph (*l*) to strike out all words after "form".

I find this paragraph objectionable because it cuts across the jurisdiction of the court, which is mainly to deal with industrial disputes and industrial matters. If the court does not have the jurisdiction in the first place, it ought not be empowered to grant itself jurisdiction by some form of amendment. I believe this clause has been inserted as a result of a difficulty that arose in a certain case. However, difficult cases make bad law, and it would be bad law for the Committee to endorse a provision that would enable the court, by exercising its power of amendment, to give itself a jurisdiction it does not otherwise have.

The Hon. A. J. SHARD: The words sought to be deleted have been included at the suggestion of the Industrial Court and Commission to overcome a technical difficulty that has been experienced. Although these words will seldom have application, a case that recently occurred before the commission demonstrated their desirability. An application to the commission was irregularly signed by a trade union secretary in his own name and not as the agent for his organization. The point was taken, and had to be upheld, that the application had not been made by one of the parties that had power to make application to the commission (they are listed in clause 30 of the Bill). Consequently, although the application was known to be otherwise in order, the applicant had to start afresh, as the jurisdiction had not been properly invoked and there was no power to allow the application to be amended. This is the reason for paragraph (*l*) being drafted in its present form and it seems reasonable that it should be left unaltered. I ask the Committee not to accept the amendment.

The Hon. D. H. L. BANFIELD: This amendment is similar to drafting errors. Sometimes the Opposition moves an amendment in which a typing error is found and seeks permission to have the amendment amended on the spot. In all other aspects the amendment may be in order. When there was no power to amend an obvious error in an application before the commission, the applicant had to start from scratch again. Possibly it suited the other side to delay the application. Further, we must remember that under the old system the court might have set aside a specific time to hear the application and then it might have been thrown out of its routine, simply because of a technical point. For those reasons I oppose the amendment.

Amendment negatived; clause passed.

Clause 18—"Special provisions relating to claims under awards, etc."

The Hon. F. J. POTTER: I move:

In subclause (3) (a) to strike out "one thousand" and insert "two thousand five hundred".

This amendment will increase the jurisdiction of the Industrial Magistrate to the sum that applies to a special magistrate in the local court. The Industrial Magistrate is given the powers and status of a special magistrate; in fact, he is deemed to be a special magistrate. It therefore seems to be eminently sensible that he should have the same jurisdiction as have magistrates in the local courts—namely, a jurisdiction up to $2,500, which is not an unreasonable sum nowadays. I point out that the jurisdiction of magistrates is "costs free"; that is a very good thing from the viewpoint of anyone wishing to make a claim up to that sum.

The Hon. A. J. SHARD: I oppose the amendment. The Bill already permits the Industrial Magistrate to hear claims that exceed $1,000, because under paragraph (*b*) of this subclause they may be heard by either a judge or a magistrate. The effect of this amendment is to give the Industrial Magistrate the exclusive jurisdiction to hear any claim for an amount that does not exceed $2,500, and this does not appear to be appropriate.

Amendment negatived; clause passed.

Clauses 19 to 22 passed.

Clause 23—"Commissioners."

The Hon. F. J. POTTER: I move to strike out subclause (5) and insert the following new subclause:

(5) Before the appointment of a commissioner is made by the Governor, applications in respect of the appointment shall be called for in the public press and upon receipt of applications in respect of the appointment they shall be submitted to the Public Service Board for its consideration and its recommendations thereon.

I urge the Government to support my amendment, which will get away from a very bad system that was introduced only about 12 months ago, whereby appointments of commissioners have to be made in pairs, one appointee being a person associated with employees and the other appointee being a person associated with employers. In the long run that system will not do anything to enhance the status of the Industrial Commission. So, I want to make the system the same as that existing in the Commonwealth sphere. In other words, when the Government wants to increase the number of commissioners it should not be forced to think in terms of an even number of new commissioners.

I commented on this matter last session, when an increase in the number of commissioners was required. I said then that it did not seem that two extra commissioners were necessary, and I believe that I was correct in saying that. To have to appoint two commissioners, one from each side of industry, is quite wrong. The Government may have one very suitable person in mind but, because at the same time it has to search around for an appointee from the other side of the fence, it is forced to take the best person available at that time; in other words, the Government may be forced to make a bad decision in regard to one of the appointees. The system applying in the Commonwealth sphere, where the Government has a right to appoint commissioners as and when it sees fit, and not keep doubling up all the time, is the best method.

Under my amendment, the Government would be free to appoint one or more persons to be commissioners. It would be most desirable if, before the appointment was made, the matter was submitted for the scrutiny of the Public Service Board. I have taken the draft of my amendment from the provisions existing in the Apprentices Act for the appointment of the Apprenticeship Commission. The appropriate way in future would be for the appointment of a commissioner to be made by the Governor, as provided in the early part of the clause, and for applications to be called in the public press. On receipt, applications should be forwarded to the Public Service Board for consideration and recommendation. This is the practice adopted by the Commonwealth Government with the appointment of commissioners in the Commonwealth sphere.

If it is adopted here it will greatly enhance the calibre of people appointed to this most important jurisdiction. The commission should be constituted of people of the best calibre we can get. I am not saying we can get them from only one side of industry, because I know they are available on both sides, but they must be carefully selected, having the confidence and respect and the trust of both parties involved in industrial disputes. It is similar to the position existing in connection with family courts. We have heard a great deal of discussion from time to time about the desirability of setting up family courts, where all family disputes can be dealt with, and these courts have been tried fairly successfully in one or two places in America. Some years ago I had an opportunity to look at these courts and I was completely satisfied that their effective working depended greatly on the acceptance and the calibre of the person appointed to be the judge.

The Hon. D. H. L. Banfield: Judges and magistrates usually come from the legal profession and have some legal background.

The Hon. F. J. POTTER: Quite right. It is even more important in the appointment of judges in a jurisdiction such as a family court, where there is a good deal of conciliation and arbitration necessary in family disputes, that success is very much dependent on the person appointed. I urge the Government, therefore, to seize the opportunity to make this alteration when we are setting out to review the whole of the Code. Let the Government appoint commissioners as and when they are required. Let the opportunity be given to the public to apply, and let the Government and the Public Service Board see who are the best people to be appointed to this difficult job. In that way, in the process of time, we will go a long way toward achieving far better industrial relations and greater harmony in industry. I urge the Government to accept the amendment.

The Hon. D. H. L. BANFIELD: The official Government reply is that in his attempt to require applications to be invited in the

public press before any commissioner can be appointed, the Hon. Mr. Potter has removed from the Bill the basic provision that commissioners must be persons experienced in industrial affairs by reason of their association with the interests of either employers or trade unions. This requirement has been in the Act ever since commissioners were first appointed, and the Government sees no reason to change the present provision. When the appointment of the commissioners was first made, Parliament did the right thing by including in the Act that the commissioners must be chosen from people representing either the employers or the trade unions. I do not think this method has failed to any great extent. The Hon. Mr. Potter pointed out that it was necessary for two commissioners to be appointed at the one time, whereas his amendment would require only one. Under the existing Act we must have the same number of commissioners appointed from each side, but because two are appointed at one time it does not mean that there is not sufficient work for the two; it simply means that the Government taxes to the limit the existing commissioners until there is sufficient work for two more commissioners. The Hon. Mr. Potter's amendment disregards the fact that these people must be experienced in industrial affairs. The honourable member agrees that when a judge is appointed he is taken from the legal profession, simply because he has had experience in that profession and has had legal training, and therefore he is suitable for appointment to the position of judge. The same should apply to people appointed as commissioners. They should be experienced in industrial affairs, and only in this way could the court be deemed to exercise its powers to the best advantage. We should not support the amendment.

The Hon. F. J. POTTER: It seems to me that the honourable member, underneath it all, is recognizing the force of some of the points I have put forward, but he made the criticism that I have left out that it is necessary for these people to be experienced in industrial affairs, either from the side of the employers or the employees. The only reason that is included at the moment is that we have this wretched system of having to appoint two commissioners at a time. My amendment is not going to affect this position. When it wants to make an appointment the Government will advertise in these terms. It will advertise for a person experienced in industrial affairs, and it will detail the duties of the job just as for any other Government appointment. The Governor is not going to appoint someone who has not had experience in industrial affairs. The matter raised by the Hon. Mr. Banfield is quite beside the point. We do not have to spell it out to enable the appointment to be made in these terms.

The Hon. D. H. L. BANFIELD: The Hon. Mr. Potter has not shown that the present set-up is wrong and that the commissioners are not suitable people.

The Hon. F. J. Potter: I am thinking of the future.

The Hon. D. H. L. BANFIELD: As the set-up has been working satisfactorily until now, there is no reason to change it.

The Committee divided on the amendment:

Ayes (7)—The Hons. M. B. Cameron, L. R. Hart, C. M. Hill, F. J. Potter (teller), E. K. Russack, C. R. Story, and A. M. Whyte.

Noes (10)—The Hons. D. H. L. Banfield, T. M. Casey, Jessie Cooper, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, H. K. Kemp, Sir Arthur Rymill, A. J. Shard (teller), and V. G. Springett.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. A. F. Kneebone.

Majority of 3 for the Noes.

Amendment thus negatived; clause passed.

Clause 24 passed.

Clause 25—"Jurisdiction of Commission."

The Hon. F. J. POTTER: I move:

To strike out subclause (1) (*b*).

This amendment is consequential on the subclause having been transferred to an earlier part of the Bill.

Amendment carried.

The Hon. F. J. POTTER: I move:

To strike out subclauses (3) and (4).

The Committee is now dealing with a contentious matter. This course of action, which is related to clause 145, is something new. Without going into the complexities of clause 145, this clause in effect allows the court to give itself jurisdiction in an industrial dispute that is outside the definition of "industrial dispute". I object to it on that ground alone, apart from all the other ramifications that arise as a result of this provision. The clause gives the Full Commission power, where it considers that it is in the interests of the preservation and maintenance of industrial peace and harmony, to determine that a matter is a dispute within the meaning of the Act, and to make an order that the Act shall apply to it as if the dispute were, in fact, a dispute of an industrial nature. In other words, it allows the court to expand its jurisdiction, to expand the definition of

"industrial matter", and to take within its cognizance a dispute arising on a matter that would not otherwise fall within the definition. This addition to the clause has been inserted largely because of what happened in the Kangaroo Island dispute, about which other honourable members know more than I do.

The Hon. A. J. SHARD: The Government is not willing to accept the amendment. This provision was included in the Bill to give the commission a new power to deal with matters that are not strictly industrial matters, but in which the Full Commission considers that mediation is desirable in order to maintain industrial peace and harmony. The object of the new provision is to enable the commission to try and reconcile differences between employers and employees, even though they do not otherwise constitute an industrial dispute. The subclause provides that the Full Commission comprising two judges and one commissioner must first of all be satisfied that it is appropriate to invoke the jurisdiction given by this subclause, the object of which is simply to have the means to maintain industrial peace and harmony whenever disputes involving employers and employees occur. This matter was gone into in some detail in the second reading explanation, when I thought the case was well put. I ask the Committee not to accept the amendment.

The Hon. D. H. L. BANFIELD: I stress the point that this matter has to be decided by the Full Commission, and not by a commissioner. The point raised by the Hon. Mr. Potter is safeguarded by the fact that the Full Commission comprises two judges and one commissioner, so this matter would not be taken lightly. Those three learned men would have to decide what was in the best interests of the public and what was an industrial matter. This whole legislation concerns conciliation and arbitration, and that is why this clause is so important. There is no doubt that, as a result of technicalities, we may get into a lot of strife. If we can avoid that strife, it will be better for the community, for it, too, can be inconvenienced by technicalities. I oppose the amendment.

The Committee divided on the amendment:

Ayes (14)—The Hons. M. B. Cameron, Jessie Cooper, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, L. R. Hart, C. M. Hill, H. K. Kemp, F. J. Potter (teller), E. K. Russack, Sir Arthur Rymill, V. G. Springett, C. R. Story, and A. M. Whyte.

Noes (3)—The Hons. D. H. L. Banfield, T. M. Casey, and A. J. Shard (teller).

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. A. F. Kneebone.

Majority of 11 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 26—"Mediation."

The Hon. F. J. POTTER: I move:

In subclause (1) to strike out "or a Commissioner".

This amendment deals with the powers of the commission to mediate in a dispute. I think it should be left to a presidential member of the commission to decide whether or not there should be mediation in an industrial matter, from the point of view of the public interest; otherwise, a commissioner will be able to call a conference of parties and get into a dispute precipitately of his own motion without even being asked. This is a matter which, at a fairly delicate stage of a dispute, should be left to a presidential member to determine. That does not mean to say that he should be the one to mediate, because he may delegate the mediation or allow a commissioner to mediate. This amendment deprives a commissioner of the right to buy into a dispute of his own accord. It should be left initially to the decision of a presidential member. Once he has decided that it is desirable to mediate, he can depute one of the commissioners to do it, if he does not want to do it himself.

The Hon. A. J. SHARD; At present only judges of the Industrial Commission have the power to convene a conference. It was at the suggestion of the Industrial Court and Commission that the right to call a voluntary conference of the parties was considered for inclusion in the Bill. It is consistent with the Government's belief that conciliation should be encouraged. The Government does not share the Hon. Mr. Potter's apparent lack of confidence in the commissioners of our Industrial Commission. I point out that in mediation proceedings under this clause there is no power for an award to be made: it is simply a power to enable a judge or commissioner to invite the parties to a conference. The power to decide that a compulsory conference should be held which persons may be summoned to attend is given to judges only (in clause 27). I think that the commissioners, who know a lot about these disputes, are quite able to decide and should be given the authority to request the parties to attend a voluntary conference. I see nothing wrong with that. I ask the Committee to reject the amendment.

The Committee divided on the amendment:

Ayes (7)—The Hons. M. B. Cameron, Jessie Cooper, R. A. Geddes, L. R. Hart, C. M. Hill, F. J. Potter (teller), and A. M. Whyte.

Noes (9)—The Hons. D. H. L. Banfield, T. M. Casey, R. C. DeGaris, G. J. Gilfillan, E. K. Russack, Sir Arthur Rymill, A. J. Shard (teller), V. G. Springett, and C. R. Story.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. A. F. Kneebone.

Majority of 2 for the Noes.

Amendment thus negatived; clause passed.

[Sitting suspended from 5.55 *to* 7.45 *p.m.*

Clause 27—"Compulsory conference."

The Hon. F. J. POTTER: I move:

To strike out subclause (7).

I do not think it is necessary for this subclause to be in the Bill, because subclause (6) provides that a person summoned under this clause shall not, without reasonable excuse, refuse or fail to attend a conference, so that a reasonable excuse is available to anyone under that subclause. I do not like the writing in of a specific defence that a person has not had a summons brought to his attention. This defence is not available in other courts as a specific defence. It can be pleaded as a reasonable excuse under subclause (6), and, having regard to the provisions of subclause (8) as to what shall be deemed to be proper service of a summons, I think subclause (7) goes further than any other provision and that it is unnecessary.

The Hon. A. J. SHARD: The Government asks the Committee not to accept the amendment. The clause as drafted appears to be perfectly satisfactory. Without it a person who had been sent a summons by telegram or certified mail (which is provided for in subclause (8) of this clause) but did not in fact receive it (he may have even been away from his home or place of business) would be guilty of an offence. The summonses referred to are those summoning people to a conference that may be called by a judge of the commission with the object of resolving differences between parties. It does not in any way deal with a summons to attend a court hearing. All the subclause does is put the burden of proof on the defendant to prove that the summons was not brought to his attention.

The Hon. R. C. DeGARIS: I agree with the Hon. Mr. Potter that subclause (7) goes too far in view of the other provisions of this clause.

The Hon. D. H. L. BANFIELD: I am surprised at the attitude of the Hon. Mr. Potter and the Hon. Mr. DeGaris, because in many Bills they have insisted on this type of provision being included. This Bill still places the onus on the defendant to prove that the summons was not brought to his attention. Surely, if a person knows nothing of a summons or a telegram having been forwarded, he should be able to use that as a defence.

The Hon. F. J. Potter: Don't you think it is a reasonable excuse?

The Hon. D. H. L. BANFIELD: I think it is reasonable.

The Hon. F. J. Potter: Then a person has subclause (6).

The Hon. D. H. L. BANFIELD: The honourable member says subclause (6) can be used as a reasonable excuse, but what is wrong with making it definite that this can be accepted as a defence?

The Committee divided on the amendment:

Ayes (6)—The Hons. M. B. Cameron. Jessie Cooper, R. C. DeGaris, L. R. Hart, F. J. Potter (teller), and E. K. Russack.

Noes (7)—The Hons. D. H. L. Banfield, T. M. Casey, R. A. Geddes, G. J. Gilfillan, A. J. Shard (teller), V. G. Springett, and C. R. Story.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. A. F. Kneebone.

Majority of one for the Noes.

Amendment thus negatived.

The Hon. F. J. POTTER; I move:

In subclause (9) before "matter" second and third occurring to insert "industrial".

This is a drafting amendment. The Act deals with industrial matters, not matters at large. Consequently, it is not satisfactory that, arising out of a conference, the Presidential member or the commissioner should have jurisdiction, of his own motion, to determine any matter: it should be limited to an industrial matter.

Amendment carried; clause as amended passed.

Clause 28—"General powers of the Commission."

The Hon. F. J. POTTER: As my previous amendments were not successful, it seems ridiculous for me to move an amendment to this clause and to insist on another vote now. I will not therefore move the amendment I have placed on honourable members' files.

Clause passed.

Clause 29—"Further powers of Commission."

The Hon. A. J. SHARD: I move:

In subclause (1) (*f*) after "but" to insert "except as is provided by section 111 of this Act".

Paragraph (*f*) as printed needs to be modified to make it clear that the proviso in the last 21 lines does not apply in respect of an application made pursuant to clause 111. If these words are not added, there would be a conflict between two provisions of the legislation.

Amendment carried.

The Hon. F. J. POTTER: I move:

In subclause (1) (*g*) after "made" to insert "being a day not earlier than the day on which the application in respect of which the award was made was lodged with the Commission".

This amendment will bring the matter back to the existing provision in the Code and will mean that awards cannot be back-dated for many years, as could conceivably happen under the present wording. This aspect should be limited to the date on which the application was lodged.

The Hon. A. J. SHARD: The Government considers that the Industrial Commission should not be limited in awarding retrospectivity to the date on which the application is made for an award, but that the commission should have an unlimited discretion to determine what is a reasonable date of operation. I ask the Committee to reject the amendment.

The Hon. R. C. DeGARIS: I support the amendment, which is perfectly reasonable. One can see the great difficulties that could arise for any person in the private sector of industry if an award could be made retrospective to any date. It is perfectly reasonable that the retrospectivity should not be earlier than the day on which the application, in respect of which the award was made, was lodged with the commission. It would be foolish for the Committee to do anything else in this regard.

The Committee divided on the amendment:

Ayes (10)—The Hons. M. B. Cameron, Jessie Cooper, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, L. R. Hart, C. M. Hill, F. J. Potter (teller), E. K. Russack, and V. G. Springett.

Noes (4)—The Hons. D. H. L. Banfield, T. M. Casey, A. J. Shard (teller), and C. R. Story.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. A. F. Kneebone.

Majority of 6 for the Ayes.

Amendment thus carried; clause as amended passed.

Clauses 30 and 31 passed.

Clause 32—"Form, operation and continuance of award."

The Hon. F. J. POTTER: I move:

In subclause (1) to strike out "not being an order of the Commission."

I think this is basically a drafting amendment because, as the clause reads, it does not make sense to me, because orders are awards. If we look at the definition clause, we see:

"Award" means an award or order of the commission . . .

The Hon. A. J. SHARD: I do not think that this amendment would have been moved had the Hon. Mr. Potter realized that the definition of "award" includes an "order" of the commission. There are certain orders to which the provisions of this clause are not appropriate—for example, orders for the reinstatement of dismissed employees. Although this is really a drafting matter, it seems clear that the words should be left in. I ask the Committee not to accept the amendment.

Amendment carried.

The Hon. F. J. POTTER: I move:

To strike out "(*c*)" and insert "(*d*)".

This is a drafting amendment.

Amendment carried; clause as amended passed.

Clauses 33 to 44 passed.

Clause 45—"Decisions and adjournments."

The Hon. F. J. POTTER: I move:

In subclause (2) to strike out "publish" first occurring and insert "make available"; and to strike out "publish" second occurring and insert "make available".

These are really drafting amendments, arising from a little difficulty about the meaning of "publish". It probably can include in its meanings "hand out", "deliver" or "make available". This amendment will make the clause more easily understood.

The Hon. A. J. SHARD: Although the clause as printed appears satisfactory and in fact repeats the equivalent wording of the present Industrial Code, it is purely a drafting amendment, to which I have no objection.

Amendment carried; clause as amended passed.

Clauses 46 to 68 passed.

Clause 69—"Jurisdiction of committees."

The Hon. F. J. POTTER: I move:

In subclause (1) (*g*) after "made" to insert "being a day not earlier than the day on which the application was first made to the committee".

This will bring the jurisdiction of committees into line with the jurisdiction of the commission, in respect of which we have just made an amendment in connection with awards.

The Hon. A. J. SHARD: This is a similar amendment to that previously moved to clause 29 regarding the date of operation of awards. Apart from the Government's objection in principle to the restriction that this amendment would impose, I point out that the amendment is incomplete because some matters before committees are originated not by application but by direction of the President of the commission.

Amendment carried; clause as amended passed.

Clauses 70 to 77 passed.

The Hon. A. J. SHARD: We have reached the stage where I should like to take further advice on the clauses we are about to deal with. This would be a convenient stage for the Committee to report progress and have leave to sit again.

Progress reported; Committee to sit again.

LAND AND BUSINESS AGENTS BILL

Adjourned debate on second reading.

(Continued from October 31. Page 2526.)

The Hon. C. M. HILL (Central No. 2): This long Bill repeals the old Business Agents Act and the old Land Agents Act and introduces measures involving licensed land brokers and auctioneers.

The Hon. T. M. Casey: Jolly good thing!

The Hon C. M. HILL: It is a jolly good thing in regard to one facet of the problem, namely, at long last there is a Land Agents Bill that has been sought for, I think, up to 20 years by the real estate fraternity. I am not saying that the fraternity sought it in the toughest ways as contained in the Bill, which is the toughest measure affecting licensed land agents in Australia. For a long time people involved in the business of licensed land agents and the Real Estate Institute of South Australia have made representations to successive Governments to update and improve the legislation affecting land agents. Particularly has there been an attempt to improve the educational standards required by licensed land agents.

If previous Governments had moved long ago in the matter and had tightened up the qualifications for licensed land agents and licensed land salesmen, many of the troubles with which the Minister is confronted would not have occurred. Governments have taken too long to tighten up the provisions affecting licensed land agents and licensed land salesmen in this State. However, that is only one facet of the measure.

The most important provisions are contained in Part VII which deal with the overall question of licensed land brokers. In that Part of the Bill, clause 61 is a vital provision that has far-reaching effects on licensed land brokers in this State. It is only on this aspect of licensed land brokers that I intend to speak, because I believe that other honourable members will deal with other parts of the Bill either in the second reading debate or in Committee.

The Hon. T. M. Casey: Is there a reason for that?

The Hon. C. M. HILL: The reason is the one I stressed a moment ago, namely, that the greatest change affecting citizens in this State is contained in clause 61. I will point out as I go along how people who have been conducting their business affairs honestly and to a high standard of ethics are finding their livelihood seriously affected by clause 61. From whichever angle the Bill is viewed, clause 61 is by far the most important clause. I wish to declare my position in regard to this phase of real estate work. I obtained a licence as a land broker in 1946; it was the first licence I obtained among the various licences and qualifications which I subsequently obtained in real estate work. I still hold that licence as a land broker.

The Hon. T. M. Casey: Do you practise now?

The Hon. C. M. HILL: If the Minister will be patient I think I will satisfy his curiosity in this, what I might term, a personal explanation. I have not used my licence as a land broker, as I recall, since the mid-1950's; indeed. I have often considered relinquishing it. In the mid-1950's I began to employ staff as licensed land brokers, so in the firm which I then controlled I did not proceed with that actual work. Because I have been involved with the work and because I am licensed, I submit that I have an intimate knowledge of the work of licensed land brokers, the standards of their work and of their ethics, and the manner in which they give service to the public throughout the State. That experience applies not only to metropolitan Adelaide but to the State as a whole.

As the Real Estate Institute will no doubt be mentioned in the debate from time to time, I wish to declare my position in regard to the institute as well. I was a member of the institute for many years and ultimately became the President of the institute in South Australia. I dissociated myself as a member of the institute early in 1968. I applied to rejoin the institute this year and maintain an interest in its affairs. The only grounds under which

I can hold membership are as a licensed land broker, as I do not hold any other licences under the Land Agents Act. I hope that that explanation will satisfy the Minister.

The Hon. T. M. Casey: I was only trying to get free advice.

The Hon. A. J. Shard: Like the Hon. Mr. Story: take something for nothing with both hands.

The Hon. C. M. HILL: From the experience I have disclosed, it can be seen that I have had a great deal to do, at what might be termed at State level, with those involved in real estate work, both from the point of view of land agents and land brokers. I have also had considerable experience at the national level, because the institute is an Australia-wide body. I have been a delegate at that level and have attended national conferences. 1 have also attended international real estate conventions in different parts of the world. This background gives me considerable experience in this field. It has also given me a knowledge of what people in other Australian States and other countries think of the South Australian system of licensed land brokers.

Consequently, I know with what envy this system is looked upon in other places. The advantage of the system here lies in the speed with which documents can be prepared and the extra service that licensed land brokers can give to clients, such as going to their homes and arranging for documents to be signed in places other than the office.

The Hon. T. M. Casey: Will this Bill prevent that?

The Hon. C. M. HILL: Yes; I shall explain later how it will prevent it. Another advantage of our system lies in the question of cost. I have some figures which have been provided by the Real Estate Institute and which I do not doubt. Let us consider the example of a property transfer with a consideration of $10,000; if there is a $7,000 mortgage arranged for that transaction, the approximate charges for documents amount to $285 in Victoria: $413 in New South Wales; and $50 in South Australia, under our unique system of licensed land brokers. So, it can be readily understood why in other Australian States and in other countries we often hear the cry, "If only we had licensed land brokers, as you have in South Australia." Elsewhere in the world people are exasperated by delays, expense, and loss of contact with clients. Consequently, they yearn for a system like ours.

It is this system that the Government is attacking and seeking to restrict; under this Bill licensed land brokers will be seriously handicapped. If the Government has its way, a licensed land agent will deal only with selling and a licensed land broker, in another office, will deal only with conveyancing. However, splitting up the work in this way runs entirely contrary to a world-wide trend.

The Hon. T. M. Casey: That does not make the world-wide trend right.

The Hon. C. M. HILL: If the Minister will wait, I think I can convince him on that point.

The Hon. C. R. Story: I wonder whether Caucus will allow him to be convinced.

The Hon. C. M. HILL: He is a fair-minded man.

The Hon. T. M. Casey: Yes, I am.

The Hon. C. M. HILL: If the Minister talks to licensed land brokers in this State, particularly those in the country, I am sure he will come to share my opinion of clause 61. Earlier this year I attended a world-wide congress on real estate matters. At the congress, papers were delivered by top men in real estate from America and England, and I heard discussions about real estate counsellors in America and real estate consultants in the United Kingdom.

Further, I heard leading men in the real estate field discussing the trend for the real estate man to become expert in every facet of his work—not to specialize in only one field. It was claimed at the congress that when a man had become expert as a result of qualifications and experience he could hold himself out as a real estate counsellor or a real estate consultant. This was the goal that men from every part of the free world were encouraged to aim at.

I admit that many years ago I often wondered whether we would reach the target where real estate men were willing to become qualified in all aspects of real estate work, and I wondered whether at some stage real estate men might attain semi-professional status and serve the people better than they would otherwise serve them.

It seems to me that the trend I have described is being cut asunder by this Bill; the individual person in a real estate office today who holds a land agent's licence and also a land broker's licence and who has been serving the public honestly in both capacities will not be able to continue if this Bill passes. This is where I want the Minister to become interested. That man (and there are many such men in South Australian country towns) now has to decide which of the licences he will throw overboard and which he will specialize in.

The Hon. C. R. Story: There is not much money in brokerage.

The Hon. C. M. HILL: I agree. Brokerage is basically a service to the public; that was the whole principle that Torrens had in mind 111 years ago.

The Hon. C. R. Story: Isn't it funny that England is just adopting the Torrens system?

The Hon. C. M. HILL: The whole world would like to introduce it. The land broker now finds that, by order of the Government, he must keep his work separate. A person may be operating as a sole proprietor of a business and he may have a land agent's licence and also a land broker's licence, but the Government is saying to him, "You cannot continue like this: in future you must hold only one of the two licences you have been holding. You must make the choice." That man sees his livelihood adversely affected. He sees his client in a country town, in his suburb, or in the city, no longer able to come to him to transact business. Is it any wonder he is grossly upset by this? One of the problems in country towns is that it is difficult to get the services of a solicitor.

The Hon. C. R. Story: Or of another broker.

The Hon. C. M. HILL: It might not always be the case, but I am told by a person from the Barossa Valley that it is difficult there to get the services of a solicitor.

I come back to the second category of persons involved in real estate, those who are in partnership; in other words, two or three men who hold licences as either agents or brokers, or where one holds a licence as an agent and the other as a broker. The Bill decrees that such a state of affairs cannot continue. The partnership must throw overboard either one licence or the other.

The final category in this general field covers the licensed land agent who employs a licensed land broker. Under this Bill, that agent can continue employing his present licensed land broker, but if that broker leaves his employment the agent cannot employ another. That is the end. If the broker should die, if he should decide to set up business on his own account, or go to work for another broker or a solicitor, that licensed land agent can no longer employ a broker.

There is a further restriction: if the existing licensed land broker, being an employee of the land agent, has worked himself up in that office by way of service to the employer and has gained such promotion that he has been invited to join and has accepted an invitation to become a director of the company, then for some reason the Government decrees that that broker forthwith must resign as a director.

These are restrictions which affect people deeply. They affect their livelihood, their income, and the principles of the work and service they have given. Because of this apparent demand for separation of the work involved in real estate, people are asking where it will end. What will be the position of the licensed land broker who is also a licensed valuer?

If the Government uses the same argument as it has employed to introduce this type of restriction and turns that argument to the question of agents and valuers, it will simply say it believes that if a licensed land agent is asked to value a property, and if the licensed land agent knows that ultimately he will be asked to act as agent and value that property for sale, there will be some sort of conflict of interest and he will not value it at its true market value, but will tend to value it at a figure lower than that.

This is a theory which completely cuts out any idea of trust or of honesty in people in business. It seems to treat people in real estate as almost mechanical robots, with a set of rules that applies irrespective of a person's attitude to his work and irrespective of the standard of service he gives.

That same clash of interests could be argued quite reasonably on a question of valuation, just as the Minister has done already on the question of licensed land brokers. When I say I will concentrate my remarks on the manner in which licensed land brokers are being affected by this measure, I am sure honourable members understand that I am trying to stress and to reflect in this Chamber the attitude of brokers throughout the State to this Bill. They are extremely upset by it, and I believe they have every justification for being so upset.

It is not only the brokers who are upset. Honourable members have probably read in the paper that a great number of petitions have been signed. I believe more than 30,000 signatures—

The Hon. A. J. Shard: And how many of them understood what they were signing?

The Hon. C. M. HILL: I am the first to admit that when any petition is carried around some people who sign it do not know what they are signing.

The Hon. A. J. Shard: That is right, and when people refused to sign it they were abused.

The Hon. C. M. HILL: It can be said, too, that when any petition is carried around some people who seek signatures do not conduct themselves properly when people refuse to sign.

The Hon. A. J. Shard: That is a fact in this case in an outstanding number. I am not taking sides on this.

The Hon. C. M. HILL: I want to be fair, too. The Chief Secretary mentioned an outstanding number. By that I suppose he means that a great number of people did not know what they were signing or received some abuse.

The Hon. A. J. Shard: Yes.

The Hon. C. M. HILL: I do not know how many were in that category, but my assessment would be that there would be a proportion. I stress, too, my view that by far the greater number of people who signed this petition were just as worried as were the land brokers about the provisions of this measure. They might not have been worried so much about the welfare of the land broker as about what they may have to pay in years to come when they purchase or sell property if the system of licensed land brokerage is thrown overboard. That number of people I cannot say for certain, but the number that signed exceeded 30,000.

The Hon. A. J. Shard: Would you think people who were stopped in Rundle Street and asked to sign would know what they were signing?

The Hon. C. M. HILL: I do not know what was written on the petition and I do not know what people told those who were stopped. I am willing to give ground on the basis that there are always some who sign petitions who do not know what they are signing, but I will not give ground that by far the great majority of people, in my view, did know what they were signing, and we are speaking of tens of thousands of people.

The Hon. T. M. Casey: But you wouldn't really know, would you? You are only guessing.

The Hon. C. M. HILL: If that is the best defence the front bench opposite can put up to this Bill—

The Hon. A. J. Shard: I am only decrying the value of the petition.

The PRESIDENT: Order!

The Hon. C. M. HILL: —then there is something on their conscience regarding this measure.

The Hon. A. J. Shard: When you mentioned 30.000 signatures on the petition I merely wanted to decry the value of the petition. That is all I wanted to establish.

The Hon. C. M. HILL: There is some point in establishing the fact that some people who signed did not know what they were signing. I would say that of any petition.

The. Hon. A. J. Shard: That is right.

The Hon. C. M. HILL: However, I believe the vast majority did know. It is not only the brokers involved who were concerned, but members of the public also. It is this concern and this worry that I am trying to reflect here tonight.

I want to move on to the basic underlying reason for the fear brokers are now expressing regarding their future in business, their future livelihood, and the real cause for the introduction of this Bill. Their fear is that ultimately, in the long term, they will be put out of business. Although this has always been a fear, it has not been particularly worrying to brokers in the past. However, everyone is human. I want particularly to stress that I am not speaking with a view to criticizing or condemning the legal profession.

Any reasonable human being would have to grant that there has been, in the minds of all licensed land brokers during the 111 years that they have been in practice, some degree of fear, no matter how small it might have been, that the time might come when a certain Attorney-General or Government might be in office and they might lose their means of livelihood. However, this has not been a worrying fear.

The relationships between licensed land brokers. Governments and the legal fraternity have generally been good. However, the fear started to develop earlier this year when, in the *Law Journal,* there was an article headed "New Legal Practitioners Act", the first paragraphs of which indicated that at a meeting on April 24, 1972, the Law Society council passed a resolution that was to be forwarded to the Attorney-General. The report stated that a committee had been formed to work with the Parliamentary Draftsman in the preparation of the new Act.

It also Hated that there were three main headings under which matters would be taken up with the Attorney-General. Those headings were, first, trust accounts, secondly, professional discipline and, thirdly, unqualified persons. The article then explained these headings in considerable detail and, when it came to the heading "Unqualified persons", the following appeared in the *Law Journal:*

The council considers that the public is insufficiently protected from the doing of legal work by unqualified persons (using that phrase to mean persons who are not legal practitioners). The council seeks a prohibition of the carrying out of legal work by unqualified persons for reward whether direct or indirect (subject to carefully worked out exceptions).

There is ample precedent in other States for what is needed here (for example in New South Wales and Western Australian legislation). Apart from a general prohibition against practising the "profession of the law" or holding out when unqualified, the only present prohibitions are against taking proceedings and preparing deeds for reward.

In practice, these provisions give the public little protection from the doing of legal work by unqualified persons. At present in South Australia unqualified persons regularly prepare for or in expectation of reward (either directly or indirectly) documents of many kinds, more particularly contracts for the sale of land, memoranda and articles of association of companies, partnership agreements, and wills.

Furthermore, large numbers of land transactions are carried out by land brokers. Although a land broker may be reasonably equipped to prepare and register a simple transfer, a land broker is not generally equipped to undertake the drafting of more complex documents such as mortgages or leases or to deal with transactions involving gifts and estate planning. Land brokers in fact handle such matters but they do not have the training to understand the intricacies of the legal or fiscal questions involved or to undertake the difficult drafting involved. The inadequacy of land-brokers is quite apparent for example when leases prepared by them are subjected to scrutiny.

Furthermore, in land transactions a land broker is generally engaged through the vendor's agent and thus, in practice, he is not orientated towards protecting the person whose interest he should be watching, namely, the purchaser. His close familiarity with the practice of the Lands Titles Office obscures his frequent ignorance of the fundamental matters involved in the documents which he handles.

The preparation of contracts for the sale of land by land agents is, in the experience of practitioners, undoubtedly a field in which the public suffers severely from lack of inquiry and incompetent drafting, and the council would be keen to explore with officers of the Crown a formula for giving greater protection in this area. The council also seeks the introduction of an implied warranty of skill by an unqualified person who prepares a legal document.

In all these matters the council considers that the time has come for a much tighter control over the doing of legal work for reward whether direct or indirect. The council realizes that laws could not be brought down which suddenly bring to an end the livelihood of unqualified persons who have become accustomed to handling such matters.

Although it continues, I think I have made the point that the article, which was published in the *Law Journal* in April of this year, brought fear into the hearts of licensed land brokers in this State. The brokers therefore wonder with good reason what are the views of the present Attorney-General, who has apparently either taken that advice or has acted in a way that complements the view expressed in the article. If the Attorney informs me through his representative in this Council that he has no intention hereafter of adversely affecting the semi-profession of licensed land brokers, I will accept his word. However, he is not the last Attorney-General who will serve in this State, and Governments will also come and go.

The Hon. A. J. Shard: Not for a long time, I hope.

The Hon. C. M. HILL: It may not be as long as the Minister thinks.

The Hon. A. J. Shard: I said I hoped it would not be for a long time.

The Hon. C. M. HILL: One cannot foresee the future. Having become most fearful as a result of that measure and having seen the restrictions contained in the Bill, these people who are involved in licensed land broking hold grave fears for their future. They can also foresee that, by one stroke only, at some stage in the future an Attorney-General or a Government could abolish this work altogether, by the simple process of developing an argument (and there are considerable grounds for developing such an argument) that contracts for the sale and purchase of land should be prepared in future by members of the law profession only.

Once that occurs, after this Bill, if it passes in its present form, becomes law, the solicitors will understandably carry on and do the conveyancing work, and all the land brokers' offices, which the Minister apparently envisages will be set up with some semi-professional status, will have no work to do because it will all go to the legal profession.

I am not criticizing that profession: I am being realistic and am reflecting in this Council the fears, worry and concern not only of the public but also of those at present involved in land broking in South Australia. That could happen at some stage in the future, as I said, under a different Attorney-General and a different Government; and by that one measure that effect would be produced.

I return to the personal liberty of these individuals and the restrictions on their livelihood that the Government hopes to impose by this Bill; and also the freedom of choice of some employees, who, as I said earlier, although they are working for employers at present, if

they want to stay as employees (and many of them do not want or cannot afford to set themselves up on their own account) cannot seek employment from licensed agents. I think I have stressed the problem of the single operator, the single agent-broker. I hope I have made myself clear to the Minister who, I think, did not understand the measure earlier. These men who are in business as sole operators and have two licences will have to give up one of them, if this Bill passes. The matter of a partnership and its employees is also involved.

The Hon. A. M. Whyte: Whether or not a legal practitioner is within 300 miles?

The Hon. C. M. HILL: That is not in the Bill at all. It means that, in a country business, if the present agent-broker is forced to give up one licence, he will give up his broker's licence because he gets less remuneration from that side of his work. He will, generally speaking, give up that one and someone will have to be instructed somewhere in the State to do the conveyancing work.

Is this how the Government looks with compassion upon people and their livelihood? Is this the hallmark of an understanding Government if it does this sort of thing? It has always been a principle with me in any legislation that, if a change is introduced, people's remuneration should retain its *status quo.* I think back to the times of the previous Liberal Government when major policy decisions were made—for example, to Close some of the State's railway lines. In those cases, the order went out, "There are to be no retrenchments." Also, when the Highways Department, under some policy decisions, was letting out special private contract work, the order went out, "There are to be no retrenchments." In other words, because of the normal loss of labour with the shifting of people from job to job, those people in charge of the department had to adjust the manpower of the labour force, to enable it to run down gradually.

Those are the basic principles to which any Government that holds its head high will always adhere; it will go to any lengths to see that a person is protected. Under this Bill the Government has decided, wisely, that in future there shall be no more part-time land salesmen. The Government says that those people involved in part-time work at present may continue in that work (that is the principle of keeping the *status quo* in people's incomes) but that does not apply when the Government turns it guns on to the licensed land brokers in this State

The Hon. A. J. Shard: Are you sure that is correct? That is not my understanding.

The Hon. C. M. HILL: I am convinced that my earlier remarks, which were directed to the Minister of Agriculture, would apply equally to any Minister in this Chamber. If the front bench members of his Party study this Bill and see how work that was being done previously by these people and for which they were receiving a remuneration has to be automatically stopped by this Bill, I am sure that the Ministers in this Chamber will appreciate (and that is as far as I can go) the problems that those brokers are faced with by this Bill.

I now ask: what have the brokers done to deserve this treatment? It is not only a fair but it is also a very good question. I believe, from figures I have been given (I know they are only round figures) there are about 250 practising brokers in the State; there are about 500 persons licensed to be brokers, and about half of them are in practice. To gain some idea of the amount of work they do, we can turn to the number of documents that are lodged at the Lands Titles Office. In my research, I found that over the last 11 months (as far back as I could go when I examined this matter) about 142,500 instruments were lodged at the Lands Titles Office, including transfers, mortgages, discharges of mortgages, and other transactions.

If we add one-eleventh of that total (to keep to the round figure for the approximate number of documents lodged each year), it comes to about 155,500 documents each year. Some of these are lodged by licensed land brokers, and some by solicitors. Here, I am going only on what I have gleaned from those experienced in the lodgment work of the Land Titles Office, but I understand there is a figure that is accepted by brokers generally that about 80 per cent of those are lodged by licensed land brokers and about 20 per cent are lodged by solicitors. If we accept that figure, we see that about 124,000 instruments are lodged annually by licensed land brokers in the Lands Titles Office.

These documents are prepared by the brokers and certified as correct by them. Brokers have been in business for 111 years. I know that in the last decade or two the number of instruments prepared and lodged has increased in far greater proportion than in earlier times. I have not tried to estimate the total but it would go into millions of instruments that have been lodged in the Lands Titles Office during the life of the brokers as a fraternity in a span of 111 years.

Where have they gone wrong? Why do they deserve this treatment? I have read of one or two cases of problems that have occurred. I have read of two judgments in the courts where there was some inference of criticism of brokers, and one of them, as proved by the Hon. Mr. DeGaris the other day, was not a direct criticism of the broker. We are talking of one or two instances only and we must compare them with the huge number of documents to which I have just referred.

The Hon. R. C. DeGaris: Do you think the criticism we saw in the *Sunday Mail* was reasonable?

The Hon. C. M. HILL: No; I do not think so. I think it was unreasonable.

The Hon. R. C. DeGaris: Do you think that the Attorney-General gave both sides of the matter?

The Hon. C. M. HILL: No; he gave only his own side of the matter. I do not think the Attorney-General is viewing this matter as calmly as he should be. I hope that the Ministers in the Council will view these matters with the calm with which I know they are able to view legislation and that they might talk to the Attorney before the measure goes to the vote. Licensed landbrokers until now have always been licensed under the Real Property Act, and the Registrar-General has the power to revoke the licence of a broker.

How many licences have been revoked for malfeasance, which is the expression used in the Act, since brokers were introduced under section 271 of the Real Property Act? That figure must be in the official records. I should also like to know how many court cases there are of a land broker being also a licensed land agent or a member of a partnership with a licensed land agent being charged and convicted for any malpractice, negligence, misconduct or abuse? That information can be gleaned from court records.

The third question is: is there a proven case of an employed land broker being charged and convicted over the last 111 years? I know that that information can be obtained. It may well be that there are one or two cases of which I have no knowledge but, to the best of my knowledge, there has not been a single case that comes into those categories—not a single case against this fraternity of business men, these men who prepare, certify and lodge about 120,000 documents a year, these men who have been licensed for 111 years. These are the statistics I am sure that research of this kind will reveal.

Again I ask: what have these people done to deserve this treatment? If that question is pursued and pursued again in this debate reasonably the Minister will have to come up with the answer that they do not deserve such treatment which is being meted out to them in the Bill and which I have already explained. I go further and ask: why is the record of these people so good? One reason is that the get-rich quick person is not attracted to this vocation, because there is no big money in it. There is a reasonable income, but a person cannot get rich quickly by taking on the vocation of broker.

The second reason is that there has always been and still is a difficult course of study as a prerequisite to obtaining a licence. Another reason is that there is a general allegiance and loyalty to the Registrar-General who grants licences and a respect for that senior officer and the staff of the Lands Titles Office by these people. That department is well and favourably known for its efficiency and for the willingness of its staff to liaise with and help brokers in their problems that arise from time to time. In such an environment you do not find people who are the smart alec type coming in to make their living.

A final reason for their standards and for their exceptionally good record is that there is an attitude among brokers that the standard of their services must be as good as that of solicitors in regard to the general run of Real Property Act work and, in the main, they strive in this rather competitive spirit to keep their standards high. That being as it may, where, therefore, does the real problem lie which has given rise to this Bill as it affects licensed land brokers?

The real problem lies, as I said earlier, in the licensing of land agents and in the licensing of land salesmen. Year after year stretching back to the 1950's Governments have been approached by the Real Estate Institute to tighten up the Land Agents Act to make these people have a prerequisite of an educational examination and standard that would ensure a better type of person going into the business than occasionally gets into it: it is as simple as that.

It is the few people who have nothing to do with broking but who hold licences as land salesmen and as land agents who are the cause of all the trouble: they are the people the

Government ought to be taking into its sights. The Bill as far as the land agency side is concerned is now the toughest legislation any land agent can work under in Australia. Apart from one or two minor amendments which I think are necessary, I favour such a tough approach because it will be a means by which the present troubles will cease without the brokers being touched at all.

The Government obviously did not realize where the real problem was; but it has attacked it and put it in order by the Bill. If the educational standards, which must be prescribed, are made severe from now on I do not think that those who gain licences will cause the trouble which has been caused in the past and which has given rise to this problem. I am pleased to see the general tightening-up.

I will conclude by making short references to some of the letters I have received from constituents of mine who are affected by the Bill. If the Ministers have not been convinced by now of the need to have another look at this measure, I hope that these quotations will at least convince them that people in the broking vocation in this State are trustworthy and honest people who have been doing the right thing by their clients ever since they have been in business.

The Hon. D. H. L. Banfield: The Government has never denied that, but has said that there are also some of the other type.

The Hon. C. M. HILL: I am waiting to hear about who the other type are. I have asked questions about those who have been convicted. I have given an idea this evening of how much work they have done.

The Hon. D. H. L. Banfield: You suggest that, because they have not been convicted, there are not many cases?

The Hon. C. M. HILL: If they were deserving of a conviction they would have been proceeded against.

The Hon. D. H. L. Banfield: There have been proceedings.

The Hon. C. M. HILL: I have heard of two cases, and some inferences were made where brokers had not given the standard of service they should have given. One of those instances was blasted sky high yesterday when the Hon. Mr. DeGaris read some of the court judgment that never gets circulated by those who are in favour of the Bill.

The Hon. C. R. Story: Have you ever heard of lawyers being struck off the roll?

The Hon. C. M. HILL: Yes, but I am not going to be sidetracked at this late stage on the question of criticism of lawyers. I have the highest respect for solicitors. The vast number of licensed land brokers has that same respect. I am not here to develop a war between these two groups of people, but to point out the cases of those whose livelihood is being affected. I have a letter from a gentleman who has a real estate business in my electorate. He says:

I have been in business for 10 years as a licensed land broker and land agent.

His sole business has both licences, and the Government is going to make him, if this Bill goes through, give up one of them. His letter continues:

My great alarm and concern is now that if this legislation is passed, I shall be denied the opportunity to continue my business in its present form. I will even be forbidden to prepare documents with which the land agency side of my business has no connection whatsoever and I refer to the many documents I prepare for the people in the district, such as registration of marriages, leases for homes, flats and shops, mortgages, private transfers, etc., etc. These transactions form a large part of my brokerage business and represent an equally large part of my income. I am amazed and horrified, to say the least, that a citizen who has at all times and in all matters successfully lived up to the status which an honest business man deserves is now all of a sudden placed in the predicament of having to stop his normal honest and straight forward business activities which has been proved by its success to be so very popular with the community at large.

The Hon. M. B. Cameron: Without compensation.

The Hon. C. M. HILL: Yes, without compensation. That is the view of one of these people. I have mentioned the view of a person who puts a similar case, the man who has a land agent's licence and a broker's licence and is being forced to give up one of them. His letter says:

This legislation affects in part the livelihood of a person currently licensed as a land broker and a land agent and practising or engaging as such. Is it right and proper that legislation should affect a person's livelihood, is it not a principle of democratic government that no matter what legislation is passed one should be able to continue to earn one's livelihood as they have been doing lawfully, prior to any such legislation?

"That is the same matter as I stressed earlier. Then there is an agent who considers the question of the employees and the younger people, many of them sons of those in the real estate vocation who have always looked forward to going into their fathers' offices and

becoming brokers and carrying out conveyancing work for the firm. I quote another letter:

I would like to speak on behalf of those who are land brokers only, employed with a land agent. The effect of the legislation would be for them a situation the like of which has probably never occurred before; that if they want to change their employer for any reason or if their employer goes out of business, that is the finish as an employee. They have no right to further employment unless they commence business on their own.

And it appears to be "too bad" for those who have intended to make a career of land broking, those young lads and ladies who are studying for a broker's licence; who will have to go into the employ of an existing land broker's office or set up for themselves an office while trying to establish a clientele. Almost a certainty that some will fail. But what about the position in the large land broker's office? Only one broker's licence will be necessary and a batch of clerks will do the typing. So there will be little chance of employment there.

Eventually there will be a glut of land brokers thrown out of work; not a large percentage of the work force for sure, but most of whom are capable of, and are at present doing a good job for the community without asking exorbitant fees in return.

I think honourable members should gather from those paragraphs the concern of that broker. I come to the case of an old-established firm in the southern suburbs of the city. The letter says:

Our firm has always been proud of the fact that we are not a limited liability company, and therefore back all transactions to the full extent of the three partners' personal assets. My late father and I have an unbroken history of 64 years as licensed land brokers, and my senior partner has been a licensed land broker since 1956. We are also licensed land agents of very long standing.

Over many years we have built up and still maintain a very personal connection with people from all walks of life and from all nationalities of origin. We have taken pride in helping the elderly, the widows, the sick, the pensioners, the young, and also the fit and wealthy in their real estate requirements, and frequently children and grandchildren are specifically sent to us by their parents or grandparents because of their implicit trust in us as a result of our previous associations with former generations. In all these cases, whether they be buyers or sellers, or simply in need of professional advice or documentation of real estate due to perhaps sickness or bereavement, they have implicit faith in us, and look to us to handle the whole transaction from start to finish. They often have no one else whom they are prepared to trust, or who will go to church homes or hospital for the purposes of documentation.

The proposed Bill seeks to alienate us forcibly from such people by reason of the provision that we will not be permitted to be both a land agent and a land broker, and it will even prevent us, if we let a house or flat, from preparing a simple tenancy agreement between the landlord and the tenant. Legal opinion has been received that subsection (3) of section 61 can be interpreted to mean that all land brokers who also hold a land agents licence will be prohibited from preparing any instruments whatsoever including documents for other agents' sales, private sales, mortgages, registration of marriage, etc. This would mean that I would have to surrender one of my licences, and I cannot afford to do it. It is abundantly clear that if such documentary work has to be "farmed out" it must surely result in greater cost to the parties.

He goes on to talk about the process being morally and ethically wrong and against the principles of British justice to prevent a man or woman carrying out a service to his fellow man for which he or she is fully qualified and capable. Here we have a partnership of 64 years standing, and for some reason it must give up one of its licences.

I have explained as best I can the problems which such people face. I have sought the reasons. I have asked what these brokers have done to deserve it. I have asked the Government to give me cases where licences have been cancelled, and I believe, when the whole question is weighed up, there is no doubt that any reasonable person reviewing this legislation must come down on the side that it is morally wrong and an extremely unethical and bad feature to be written into legislation that people who carry out their work in a trustworthy way and to high standards of ethics should have their livelihood adversely affected.

Finally, I read one more letter from a partnership in the southern suburbs:

Our great alarm and concern which we mentioned earlier is centred upon section 61, subsections (2) and (3). This section prevents us from continuing our business which has been established in this area for many years. A great part of our business comprises general conveyancing and Real Property Act work, for example, the registration of marriages and deaths, transfers to joint names, preparation of mortgages, generally acting where asked in transactions by people who sell their homes privately, also handling work for people and companies who have purchased homes through other land agents and request us to handle the settlement. Most of these requests come from people we have acted for in the past.

The section stated poses a direct and unnecessary threat to the entire land broking system, from our viewpoint. Qualifications earned by hard study must, by this Bill, be peremptorily null and void. As the principals of this organization, and likewise many other principals in a similar position, we will be unable to pursue the occupation of a land broker. Surely the cancellation of the right of a person to engage in his legal occupation is a denial of basic human rights.

We cannot get anything stronger than that, or anything more honest in its demand for opposition to this measure. I ask the Government, with all the reasonableness I can bring to bear in view of what I have said, to have another look at this measure, and to have another think about the whole problem. I hope it will reconsider whether to continue with this measure to cover licensed land brokers, land agents and business agents in the severe way it has done here.

I favour tightening up the legislation, but to pursue some form of vendetta against licensed land brokers is grossly unjust and unfair. I will vote for the second reading of the Bill so that it can pass into Committee, when I can see what changes the Government has in mind. However, unless the clauses that affect licensed land brokers are changed from their present form, I intend to vote against the third reading.

The Hon. L. R. HART secured the adjournment of the debate.

LISTENING DEVICES BILL

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

The Hon. A. J. SHARD (Chief Secretary): I move:

That this Bill be now read a second time.

It is the first of a series of measures which will be introduced into this House and which are intended to protect the "right of privacy" of the individual. The particular invasion of that right that is dealt with in this measure is that which results from the use of listening devices or, as they are more popularly known, "bugging devices". In substance, this Bill proposes that the use of such devices will be largely prohibited. It also imposes a total prohibition on the communication or publication of information obtained by the unlawful use of the devices. The substantial prohibition proposed is, however, subject to two exceptions. The first exception relates to the use of listening devices by members of the Police Force in the course of their duty. The second exception relates to the use of devices by persons to record conversations to which they are a party.

I will now consider the Bill in some detail. Clauses 1 and 2 are formal. Clause 3 provides, amongst other things, for definitions of "listening device" and "private conversation". Although it is considered that the definition of "listening device" is reasonably self-explanatory, I point out to honourable members that a "private conversation", as defined, includes any conversation carried on in circumstances that may reasonably be taken to indicate that any (and I emphasize the word "any") party to the conversation desires it to be confined to the parties thereto.

Clause 4 prohibits, subject to the exceptions proposed later in the measure, the use of a listening device to overhear, record, monitor or listen to any private conversation. The provision, of course, does not preclude the use of a listening device where the parties to a conversation consent to its use. Clause 5 provides a substantial penalty for a person who disseminates information obtained from the misuse of a listening device. Some would consider that this dissemination of the information is even more reprehensible than the recording of it.

Clause 6 provides for the lawful use of a listening device by a member of the Police Force in the course of his duty. Subclauses (1) and (2) together require the approval of a judge of the Local Court to be obtained for the use, and provide that the listening device must be used in accordance with the terms of the approval. Subclause (3) provides for the use of a listening device by a member of the Police Force acting in the course of his duty where the delay in seeking the approval would frustrate the purpose for which it is intended to use the device. In addition, the member of the Police Force must be satisfied on reasonable grounds that, if there had been time to make an application for approval, it would have been granted.

Subclause (4) provides that the responsible Minister shall be formally advised of each use of a listening device under this provision. Subclauses (5) and (6) are intended to prohibit any improper disclosure of information obtained by members of the Police Force and others under this provision. Clause 7 permits a person (including a member of the Police Force) who is a party to a private conversation to make a record of that conversation in the course of his duty, in the public interest or for the protection of his lawful interests, and also gives that person a limited right to publish or communicate that information derived from the use of that listening device.

Clause 8 is intended to control the possession of listening devices that are of their nature clearly suitable for use as clandestine "bugging devices". Subclause (1) gives the Minister power to "declare" these devices by notice in the *Gazette,* and upon such declaration the provisions of the clause will apply. In passing, I mention that, although on the face of it the power to "declare" the devices is extensive, the

plain common sense of the matter dictates that this power should be used most sparingly, since the Minister or his delegate will otherwise be deluged with applications for consents under the succeeding provisions of this clause.

Subclause (2) provides that a person shall not have in his possession custody or control of any declared listening device unless he has the Minister's consent. A substantial penalty **is** provided for a breach of this provision. Subclause (3) provides reasonable flexibility in the granting of consents under this provision, and also permits the consent to be granted subject to conditions, restrictions or limitations. Subclause (4) provides for the revocation of a consent. Subclause (5) is intended to ensure that any condition, limitation or restriction to which the consent is subject shall be adhered to. Subclause (6) provides for the Minister to delegate his powers in relation to the granting of consents under this provision.

Clause 9 provides that the Minister, having the administration of this measure, shall cause **a** report to be prepared specifying the use made by the police of listening devices under clause 6 of the Bill. The report must distinguish between uses authorized by a judge and those not authorized by a judge. A general statement of the purposes for which the device is used must also be provided. Subclause (2) provides for such a report to be laid on the table of this Council.

Clause 10 permits a person charged with an offence against this Act to elect to be tried by jury as if the offence with which he was charged was an indictable offence. If the defendant does not so elect, he may be proceeded against in a summary manner. Subclause (4) extends to a maximum of two years the time within which a prosecution for an offence against this Bill may be brought. It is suggested that this extension is reasonable since, of their nature, offences against this Bill are committed in a clandestine manner.

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

UNFAIR ADVERTISING ACT AMENDMENT BILL

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

The Hon. A. J. SHARD (Chief Secretary): I move:

That this Bill be now read a second time.

It is intended to make two substantial changes to the principal Act, the Unfair Advertising Act, 1970-1971. The first change is to extend the ambit of the Act to cover advertisements relating to land which, as defined in the Acts Interpretation Act, includes houses and buildings. Since for many people the purchase of a home represents, in money terms, the most important single transaction of their life, it seems reasonable to ensure that advertisements, on which their negotiations may be based, do not contain unfair statements. The second change proposed is to distinguish between those who derive commercial benefit from advertisements and those whose association with the production of advertisements does not have this involvement.

I will now consider the Bill in some detail. Clauses 1 and 2 are formal. Clause 3 amends section 2 of the principal Act, first, by striking out the definition of "publish" and expressing the concept of "publication" in a somewhat different form (no change of principle is envisaged here) and, secondly, by providing that a statement that goods, services or land may be obtained by means of a deposit, which is not accompanied by a further statement as to the cash price of the goods, will be an unfair statement within the meaning of the measure.

Clause 4 amends section 3 of the principal Act, first, by extending the ambit of the section to cover advertisements relating to land; secondly, by re-enacting subsection (2) of the section, this being the subsection that sets out a defence to a prosecution for a contravention of subsection (1) of section 3. In its new form subsection (2) casts a positive duty on those involved in the publication of advertisements to take all reasonable steps to ensure that advertisements do not contain unfair statements; and, thirdly, by striking out subsections (4), (5) and (6) with a view to reinserting them later.

Clause 5 enacts three new sections in the principal Act, of which the most important is new section 3a. This provides that where an advertisement is published "for the purposes of the business of an advertiser" and that advertisement contains an unfair statement the advertiser shall be liable. Proposed new subsection (2) in this section provides for two averments in the complaint, both of which in appropriate circumstances it should not be difficult for a defendant to disprove since both of the averments relate to matters that are clearly within the knowledge of the defendant advertiser. Proposed new section 3b re-enacts section 3 (4) of the principal Act. This provides for a general defence in a case where the unfair statement is of such a nature that

no reasonable person would rely on it. Proposed new section 3 c re-enacts in almost identical terms subsections (5) and (6) of section 3 of the principal Act, which provided for the consent of the Attorney-General to prosecutions under the Act.

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

CONSUMER CREDIT BILL

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

OMBUDSMAN BILL

Adjourned debate on second reading.

(Continued from October 31. Page 2523.)

The Hon. F. J. POTTER (Central No. 2): I support the second reading of this important Bill, from which the citizens of this State can derive much benefit in the future. As the name implies, the creation of this office originated in Sweden some years ago. It was pioneered, I think, in the English-speaking countries mainly as a result of a Bill introduced in the New Zealand Parliament some few years ago. The contribution made to the whole concept of an ombudsman derives, within the English-speaking world, largely from the status enjoyed by the ombudsman appointed by the New Zealand Government. That was an appointment recommended by the Parliament of that country. The whole system of an ombudsman and his power to inquire into administrative acts and decisions works very well in what may be called liberal democratic countries.

If one looks at the list of countries that have adopted this idea, one sees what I mean when I use that expression. It can be said that we shall see only a comparatively small percentage of grievances settled satisfactorily, finally, and perhaps exclusively, by the ombudsman himself. We may not expect to hope that more than 10 per cent to 15 per cent of all matters that come to his office will finally be the subject of some recommendation from him. That is not to say, of course, that his success in dealing with matters may not be significantly higher than that low percentage. I remember clearly the criticism being voiced by a speaker from the British delegation to a Commonwealth Parliamentary Association conference that I attended two or three years ago that one of the greatest problems is not so much the problem of procedure in Parliament or separation of Parliament from the people as the vast growth of administrative decisions that are being poured out by tribunals of one kind or another today; how to grapple with this vast mass of administrative decisions, all of which in some way or another affects individuals, is the real problem in a democracy today.

The Hon. R. C. DeGaris: It is also a problem for Parliament.

The Hon. F. J. POTTER: Yes; and it seems that the process is ever-increasing. This Parliament alone has added enormously to the number of administrative decisions that will be made by boards, tribunals and committees of one kind or another. When I said earlier that I suspected that perhaps only a small percentage of the matters submitted to the ombudsman would be dealt with finally in the form of a recommendation from him, in spite of the broad powers given to him under this Bill I had in mind that there will be some areas (and particularly those areas where decisions are based on general policies laid down by Ministers following a certain political philosophy) that will be difficult for the ombudsman to penetrate. That is obvious, and perhaps we should not expect too much of him in that regard.

The Hon. R. C. DeGaris: We may find that people generally are expecting too much of him now.

The Hon. F. J. POTTER: Maybe; but it is still fair to say that the mere instigation of an investigation, or the threat of an instigation of an investigation, can produce results—and I hope that will be the case. It can be said that the mere existence of the office of ombudsman will bring a sharpened awareness to people in the Public Service and other administrative bodies charged with the making of decisions, that perhaps they should be a little more circumspect about matters than they have been in the past, because they will be aware that, even if those decisions do not get reversed, they may be criticized all the same.

I appreciate the fact that the Hon. Mr. Cameron said, "If we do not watch out, this will create another lot of paper work in our Public Service departments", as a kind of protection or insurance against criticism. I hope that will not necessarily arise. Last year I read a lecture, about the ombudsman given by Professor Sawer at the university. His interesting theory, which he propounded in the lecture, was that there could grow up a kind of new concept of jurisprudence, which he called the jurisprudence of ombudsmen. He said that if the system worked well in the way it ought to work, it should be linked with possible areas of law reform. I think that he made a point. It may be that these law reforms

will not be on a very broad scale; I think that they will eventuate in minor ways as a result of the decisions made in connection with cases of injustice that must be corrected.

As a result of action they could lead to law reform, even though it may only be of a minor kind. I was interested to hear the Hon. Mr. Cameron say yesterday that certain difficulties face the ordinary citizen in a country such as ours in that he is forced to rely on the law to protect him in certain circumstances. I think it is true to say, and I acknowledge it, that the countries which take their system of law from the common law of England have developed certain procedural difficulties over the many years during which the system has grown up and been practised. I think the Hon. Mr. Cameron was right when he said that legal remedies could be very technical. When this process is undertaken it becomes very expensive to the ordinary citizen and, at the same time, some of the concepts which the law uses in arriving at its decisions are based on concepts which have been based on ideas that are much in the past.

The Hon. A. M. Whyte: Perhaps there should be not so much red tape.

The Hon. F. J. POTTER: That is an aspect of the law that we must admit. It is expensive and has some rather antique ideas about it. It also has a great procedural apparatus that one must go through. As against that, the ombudsman being set up under this Bill will exercise his jurisdiction and study the complaints of individuals, and it will cost the individual nothing.

The Hon. M. B. Cameron: A very important point.

The Hon. F. J. POTTER: Yes. The second point is that, using his jurisdiction, he can go immediately to the official people who make decisions and to the files they keep. In other words, he will have a direct line to the officials and to their documents: there is no red tape and no apparatus. The other aspect is that, as a contrast to the law which often has a somewhat narrow concept of justice, the ombudsman will have a very broad concept of what is just and fair, and I think he will exercise that right and jurisdiction in conformity with his own ideas. Consequently, he will not be trammelled by any precedents or tradition of law, but can be contemporary in his approach to a matter.

In this respect, one need only look at the very broad powers given to the ombudsman under clause 25, which empowers him to investigate anything that appears to him to have been made contrary to law and is unreasonable, unjust, oppressive or improperly discriminatory, or is done for an improper purpose, or is done in the exercise of a power or discretion for which the reasons were not given but should have been given, or is based wholly or in part on a mistake of law or fact, or that the decision in his opinion was wrong. That is a broad jurisdiction and a broad basis for action. The Government is to be commended for allowing the ombudsman to be appointed under the Bill to have such wide powers. This is the kind of thing it is important we should have in a liberal democracy, because we must have in contrast to—

The Hon. C. R. Story: Is there any difference between a liberal democracy and a conservative democracy?

The Hon. D. H. L. Banfield: My word there is: you should see it in action here sometimes!

The Hon. C. R. Story: I was wondering about the degree of democracy?

The Hon. F. J. POTTER: When I say "liberal democracy" I am not talking about liberal in any political sense but in the sense in which we cherish certain freedoms. We cherish above all else the right to private property and private enterprise in our democracy. True, in our kind of democracy the basic thing on which we exist is our right to private property because it is this to which the law gives close attention and protection. When we have that kind of existence there must be a rule structure in order to protect that right to private property. The contrast to the kind of democracy which we know and under which we live is dictatorship, which has not only a rule structure but a power structure to support it. As we live in a democracy with its rule structure, I think that the ombudsman and his office will be able to do something to cut through that structure. As I said earlier, we should not be too optimistic that the ombudsman will be able to cure all evils and right all wrongs. We must be willing to accept limited achievements on his part. I think I can foresee that much of his work will come from information supplied to him by members of Parliament. If, as Professor Sawer visualized, he creates his own little system of jurisprudence, of a kind which is slowly emerging in countries that have appointed an ombudsman perhaps we will have from his recommendations a basis for reform of relevant laws. I support the Bill.

The Hon. G. J. GILFILLAN secured the adjournment of the debate.

SWIMMING POOLS (SAFETY) BILL

Adjourned debate on second reading.

(Continued from October 31. Page 2528.)

The Hon. M. B. CAMERON (Southern): I wholeheartedly support this Bill. Being a father of some young children, I know the value of protecting children against unguarded pools. I can assure the Council that I have spent uneasy afternoons when I have taken my children to visit friends who have unfenced swimming pools. I believe we should promote the current trend toward teaching infants to swim at an early age. Some people in the community spend long hours each summer in giving voluntary service in connection with learn-to-swim campaigns; such campaigns should be encouraged in every possible way. It would be interesting to know how many people are unable to swim; even if people can swim only a few strokes, they may be able to save their life in an emergency. It is not difficult to learn to swim, and it is essential in a modern society.

Many fathers spend long hours teaching their children to play various sports that are not useful in saving lives; it would be better if some of that time was spent in teaching children to swim, because this skill is useful for the duration of a person's life. This Bill caters particularly for children up to five years of age, for whom swimming pools represent a great temptation. If a parent in the suburbs has a neighbour with an unprotected pool, the parent may become very worried about the possibility of his children wandering into the neighbour's yard.

I agree with the Hon. Mr. Springett that it would be difficult to decide whether a hedge was strong enough to stop a small child from getting through it. One honourable member referred to boxthorn hedges, but I point out that boxthorns have been declared weeds. I question whether the height of the fence provided in the Bill is sufficient; I am certain that a five-year-old child is capable of climbing over a fence 1.2 m high.

The Hon. D. H. L. Banfield: Would you please convert that height to feet?

The Hon. M. B. CAMERON: I never look backwards. Perhaps the height provided in the Bill should be increased, because many children would find no difficulty in getting over a fence of that height. I have been approached by some people in the Adelaide Hills who have a dam that must be completely accessible to fire trucks in the summer; those trucks may need to go to the dam to fill their tanks with water. So, it is important that the trucks should not be obstructed by a fence. We should remember that, during a bush fire, property and lives can be lost in a matter of minutes. The people who have raised this matter with me are wondering whether the dam will be declared a pool.

The Hon. A. J. Shard: That would not come under the definition of "swimming pool", would it?

The Hon. M. B. CAMERON: The Bill covers a pool used for paddling, and I point out that children can walk into this dam. If the Minister starts examining every dam of this kind, he will have quite a job. Of course, some dams should be fenced. I support the Bill.

The Hon. JESSIE COOPER secured the adjournment of the debate.

CONSUMER TRANSACTIONS BILL

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

ADJOURNMENT

At 10.6 p.m. the Council adjourned until Thursday, November 2, at 2.15 p.m.