LEGISLATIVE COUNCIL

Tuesday, November 7, 1972

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

QUESTIONS

BRUCELLOSIS AND TUBERCULOSIS

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

Leave granted.

The Hon. R. C. DeGARIS: I noticed in this morning's press an announcement that the Commonwealth Government had made available to the mainland States an extra $1,500,000 for the eradication of brucellosis and tuberculosis. Does the Minister care to comment on that announcement?

The Hon. T. M. CASEY: As I have told the Council several times, it was stated at the meeting of the Agricultural Council at MacKay, which I think was held last month, that the money the Commonwealth Government was willing to make available for the eradication of brucellosis and tuberculosis would not be spent because the States could not match the allocation on a $1 for $1 basis. I also said that I would make representations to the Commonwealth Government to have the money being held by the Treasury made available to the States rather than its being allocated on a $1 for $1 basis. This course of action has been decided upon by the Commonwealth Government. Indeed, I was notified late Friday evening by the Minister for Primary Industry (Hon. Ian Sinclair) that the Commonwealth would now make available to the States $1,500,000 to assist in the eradication of brucellosis and tuberculosis. The allocations to the individual States have not yet been finalized but, as soon as they have, I shall be happy to inform the Council.

ADELAIDE RESIDENTS SOCIETY

The Hon. C. M. HILL: I seek leave to make a statement prior to asking a question of the Minister of Lands, representing the Minister of Local Government.

Leave granted.

The Hon. C. M. HILL: I have received from the Adelaide Residents Society a letter dated November 2, to which several pages are attached. The Adelaide Residents Society, I understand, is a group of residents and other people interested specifically in the welfare of those people who live within the boundaries of the Adelaide City Council, and particularly in the southern region of the city. Part of the letter reads as follows:

A disturbing series of events has occurred which we consider must not go unchecked if the potential of the environment of the City of Adelaide is to be achieved. The case in question is the redevelopment of 142 South Terrace, as offices. The Adelaide Residents Society Inc. has been presented with what appears to be a legitimate cause for complaint. . . We solicit your assistance in your capacity as a member of Parliament to enable us to obtain the objective view we are seeking. We consider a public inquiry must be initiated to clarify this particular matter and obviate the recurrence of such an outrage.

So that I may be fully informed of the opinions and attitude of the Adelaide City Council in this matter before considering any further action, will the Minister of Local Government obtain for me a report from the Adelaide City Council of the council's views and replies to claims made by the Adelaide Residents Society in the letter and attachment, which I shall be pleased to make available to the Minister?

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

CROWN LANDS AND PASTORAL ACTS

The Hon. C. R. STORY: I ask leave to make a short statement with a view to asking a question of the Minister of Lands.

Leave granted.

The Hon. C. R. STORY: With the indulgence of the Council, first I should like to say how pleased we are to see the Minister back in his seat, having represented this Parliament successfully in his oversea tour for the Commonwealth Parliamentary Association. Can the Minister say whether the Government intends to introduce in this session of Parliament any amendments to the Crown Lands Act and the Pastoral Act?

The Hon. A. F. KNEEBONE: First, let me thank the honourable member for his kind words about my trip to Malawi and other places, a report on which will be made in due course. I think that notice is being given today in another place of an amendment to the Crown Lands Act. Regarding the Pastoral Act, I believe that no amendment will be introduced this session.

AFRICAN DAISY

The Hon. M. B. CAMERON: I seek leave to make a statement prior to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. M. B. CAMERON: I read in a weekend newspaper that the Minister of Agriculture was busy assisting local government bodies and the Adelaide Lions Club to eradicate African daisy in the Adelaide Hills but that not much response was received to the call for helpers, perhaps because of insufficient finance being made available to the body concerned. I am sure that this problem cannot be solved by one effort on the part of one Lions Club. A report in this morning's *Advertiser* states that the Clerk of the Gumeracha District Council (Mr. Grosvenor) has called on the Government to make additional funds available and has served notice on the Torrens Valley Lions Club to destroy weeds within the hundred of Talunga. Although the notice has no legal backing (because the Lions Club is not the owner of the land), the council hopes that the Government will make it a grant, as it did in the case of the Adelaide Lions Club. Can the Minister say whether the Government intends further to assist councils to rid their areas of African daisy?

The Hon. T. M. CASEY: Not at this stage.

OPAL MINING

The Hon. R. A. GEDDES: On behalf of the Hon. Mr. Whyte, I ask the Chief Secretary whether he has a reply to my colleague's question of October 19 regarding the activities of illegal opal miners?

The Hon. A. J. SHARD: The Minister of Development and Mines has informed me that it is intended to introduce legislation in the current session in an attempt to overcome illegal mining activities at Coober Pedy.

GRASSHOPPERS

The Hon. G. J. GILFILLAN: I seek leave to make a statement prior to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. G. J. GILFILLAN: It is becoming obvious that the grasshopper problem in the North is much more widespread than was originally estimated. Recently some large hatchings of grasshoppers have occurred between Jamestown and Spalding, and the area involved could be far more widespread. Because this district is one of the better districts of the State and is still green, there is an opportunity for the grasshoppers to mature, so I believe that the situation could be quite serious. At this time of the year many paddocks are shut up and not examined daily by the owners, so I ask whether the Minister, through his department, will make every endeavour to have this matter publicized in order that the owners can be alerted to the situation and, as a result, inspect their paddocks regularly with a view to spraying.

The Hon. T. M. CASEY: I am willing to do that.

The Hon. C. R. STORY: I seek leave to make a short statement with a view to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. C. R. STORY: Has the Minister received any reports of a build-up of grasshoppers in the Upper Murray and Riverland areas of South Australia? Grasshoppers incubate at about the time the harvest is on, from late December till mid-January, and this is particularly harmful in the case of stone fruits, where the fruit is cut in halves and sulphured and the cups fill with natural juice. At the hopper stage, the grasshoppers can be devastating in these circumstances. I had experience of this in 1937-38, when they were indeed bad. Will the Minister's officers examine whether the winged grasshoppers are in this area at present, and whether eggs were laid last year or during the current season?

The Hon. T. M. CASEY: I will get my officers to examine the situation and I will bring down a report for the honourable member.

RURAL RECONSTRUCTION

The Hon. R. A. GEDDES: I endorse the Hon. Mr. Story's remarks in welcoming back to this Council the Minister of Lands. Has he a reply to my recent question as to whether any rural reconstruction funds will revert to the Commonwealth Government?

The Hon. A. F. KNEEBONE: I thank the honourable member for welcoming me back to this Council. Funds made available by the Commonwealth for rural reconstruction purposes were initially provided over a period of four years. As demands for these funds in some other States substantially exceeded the proportions allocated over the four-year period, the Commonwealth agreed that the first $100,000,000 would be made available in two years, that is, up to June 30, 1973. The Commonwealth also indicated that it would be prepared to provide an additional $15,000,000 in 1973-74. Hence the total funds available are now $115,000,000, of which this State is entitled to 12 per cent, that is, $13,800,000. An objective of the scheme is that 50 per cent of funds be applied to farm build-up, and there has been a serious lag in applications in

this State for funds for this purpose. However, in recent weeks the demand has increased; nevertheless, substantial funds are still available, and I am anxious that this form of assistance should be availed of by farmers to the full extent of the funds provided.

Although this State is entitled to $13,800,000, it may well be placed under considerable pressure to forgo some of this assistance if it is clearly indicated that it will not be used within a reasonable period, as compared with other States; and it could be a possibility, not necessarily a probability, that funds could be diverted for use elsewhere. Unless the maximum use is made of these funds, irrespective of whether any amounts are diverted elsewhere, I feel that it will be extremely difficult, if not impossible, to maintain this State's present share of any further funds which may be made available for rural reconstruction, beyond those presently committed. I appreciate the fact that this publication has taken the opportunity to inform farmers of the assistance which is available, and I urge them to make use of it, wherever possible.

PROPERTY LAWS

The Hon. F. J. POTTER: Has the Chief Secretary a reply to my recent question about the Law of Property Act?

The Hon. A. J. SHARD: My colleague the Attorney-General reports that amendments to the Law of Property Act are being prepared at present and will be introduced this session. As a result of representations made to me by the banks and other interested bodies, an amendment to the Law of Property Act passed in the previous session of Parliament has been shown to need alteration so as not to impede the workings of commerce.

PENAL REFORM COMMITTEE

The Hon. M. B. CAMERON: I seek leave to make a short statement prior to asking a question of the Chief Secretary.

Leave granted.

The Hon. M. B. CAMERON: I noticed in today's *Advertiser* that the Penal Reform Committee set up by the Government has completed its inquiry, and that a report is being prepared and will be submitted to the Government before the end of the year. Will the report be available to Parliament before the end of this session; if not, will it be made available to members?

The Hon. A. J. SHARD: I am not the Minister who set up that committee. However, I shall refer the question to the Minister concerned and bring down a reply as soon as possible. As yet I have seen no report.

WEEDS

The Hon. Sir ARTHUR RYMILL: Has the Minister of Agriculture a reply to my question about weeds, asked on October 24?

The Hon. T. M. CASEY: The department has not reprinted its former publication *Declared Weeds of S.A.* because, first, it was costly; secondly, many weeds could not be identified readily from the photographs. A third reason for the discontinuance of the pamphlet is that herbicide control recommendations change rapidly as safer, more selective, and cheaper products become available. Three different forms of publication are now issued by the department:

1. A booklet *Herbicides for Weed Control* which is issued every second year and which gives up-to-date weed control recommendations for all weeds in all crops.
2. A series of brief leaflets known as *Weed Control Notes* which describe each weed and outline methods of control.
3. Colour plates of weeds which are serious problems. I have brought several examples of these plates with me today and will be pleased to let the honourable member have them if he so desires.

DRAINAGE RATES

The Hon. M. B. CAMERON: I seek leave to make a short explanation prior to asking a question of the Minister of Lands.

Leave granted.

The Hon. M. B. CAMERON: My question concerns South-Eastern drainage rates. Rates notices have been issued to all people involved in the blanket scheme, and in a considerable number of cases (in fact, in the majority of cases) the rates are subject to appeal. Nowhere on the rates notice does there appear any indication of whether the amount due will be refunded or whether the fine to be imposed, if the rates are not paid, will be refunded. Considerable confusion has resulted, because it has been estimated that it will take a considerable time to hear all these appeals. Can the Minister say whether some notification will be given to the ratepayers as to whether rates will be refunded in the event of a successful appeal, and whether or not rates must be paid under protest?

The Hon. A. F. KNEEBONE: Since my return at the end of last week I have not had an opportunity to look at this matter, but I

will make inquiries as to what has been done, and to see what stage the appeals have reached. I will bring down a reply to the honourable member's question as soon as I can get the information.

POLICE DUTIES

The Hon. M. B. CAMERON: No doubt the matter I am about to raise has been raised previously. The Commissioner of Police said last week that he would prefer the men under his control not to be involved in testing people for drivers licences. Will the Chief Secretary ascertain whether this matter affecting police particularly in the metropolitan area has been examined, and will the Government pursue it to see whether there is some way for police officers, who have been trained for much more important matters in the community, to be relieved of this task?

The Hon. A. J. SHARD: This matter has been raised not so much by the present Commissioner as by former Commissioners, who have considered this duty to be outside the scope of the Police Force. I understand that the Minister of Roads and Transport is at present examining this matter and will, no doubt, have a report on it. I have not received a direct request from the present Commissioner to examine the matter. However, I shall be happy to refer it to my colleague and, if something can be done to relieve the Police Force of this work, the police themselves and the community may be better off.

KANGAROO ISLAND REGULATIONS

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

Leave granted.

The Hon. R. C. DeGARIS: This question, which possibly involves a matter of Government policy, should be directed to the Chief Secretary, or perhaps the Minister of Lands, representing the Minister of Environment and Conservation. As members of Cabinet know, planning regulations concerning Kangaroo Island as a whole have been drafted. These regulations are being discussed by the two councils on Kangaroo Island and, indeed, many citizen groups are being formed to consider them. I have been told that the regulations have not yet been studied thoroughly by the people on the island, who are asking that the regulations be not tabled until they have had a full opportunity to understand them. They also ask that the regulations be not presented until Parliament is sitting.

The Hon. A. F. KNEEBONE: Except perhaps for the last part of his question, the honourable member asked a question along similar lines on October 24. I understood him to ask that the regulations be not tabled when the Council is not sitting.

The Hon. R. C. DeGaris: That is so.

The Hon. A. F. KNEEBONE: In reply to the Leader's previous question, the Minister of Environment and Conservation has informed me that it is not possible to give any definite date when planning regulations covering Kangaroo Island will be before Parliament. However, he assures me that it will not be this session. Regarding the Leader's question that the regulations be not presented while the Council is not sitting, I shall be happy to refer the matter to my colleague and see what reply I can obtain.

LAMB SLAUGHTERING

The Hon. Sir ARTHUR RYMILL: In the latest issue of the *Chronicle,* the writer on the lamb market asked why restrictions should be placed on the slaughter at the abattoirs of lambs (and not sheep) that have a short time before they lose their bloom. Will the Minister investigate this matter and obtain a reply for me? I should also like to know who regulates the intake (I understand that some sort of committee exists for this purpose) in the various sections of the Gepps Cross abattoir.

The Hon. T. M. CASEY: A committee known as the operations committee, the members of which are drawn from all sections of the industry, is responsible for this matter. Apparently, it has done reasonably well in latter years, although this year it seems to be experiencing more trouble than normally. However, the committee has made a few corrections, some even as late as last week. Although I gave a report to the Council on this matter last week, I will follow up the honourable member's question and bring down a report for him.

BOLIVAR WATER

The Hon. H. K. KEMP: I seek leave to make a statement prior to asking a question of the Minister of Agriculture, representing the Minister of Works.

Leave granted.

The Hon. H. K. KEMP: The distribution of Bolivar water has repeatedly been the subject of questions in another place in the last few weeks. There are obvious discrepancies between the answers given and the truth regarding what has happened. I ask for a full

statement by the Minister of Works on the Government's policy and its future programme. I refer to several points, which I do not need to canvass in detail.

The Minister said that the future distribution of the water was frozen except for a 4in. main that was to be installed to serve some properties in the Angle Vale district. In fact, an 8in. main was installed, access to which is being sold (and I use those words deliberately and with full meaning) for more than $2,000 to 10-acre blocks that have been subdivided. Recently, negotiations have been going on between the interested people in this district with a view to having a public distribution body set up in the form of a trust.

It is certain (I say this again as a studied statement) that, if the Commonwealth Government is approached, this scheme will be backed by money from the water development fund. This would provide for a distribution through the established industry in this district, which is of great monetary and social importance to this State and which will require practically all the water available from the Bolivar distribution channel.

In the last two weeks, it has come to my knowledge and the knowledge of many other people interested in this matter that 1,200 acres in one parcel and an unspecified acreage in another parcel along the Bolivar waste channel has been taken over by a syndicate. This 1,200 acres of land, developed only for extensive grazing and possibly cereal-growing, can be developed to become an intensive irrigation scheme; two heavy-duty power lines have been installed to the sumps that could serve this area. The matter has gone further, in that already to those sumps pipes have been laid out ready for assembly for the distribution of water over that 1,200-acre area.

If this development goes forward, the established industry in that area, which, as I have said, is of vast importance to this State, can close up shop. It is known that the underground water beds have sufficient reserves in them to sustain the present pumping rate for another two years, but the pumping rate, even at the greatly reduced rate imposed by the present restrictions, is still currently five times the replenishment rate, so that the whole of this district will become completely at the mercy of the distribution from the Bolivar channel.

This consortium, which apparently has obtained permission, in spite of the Minister's promise, to use these waters, has already spent well over $100,000 and will, apparently, get service before anyone else can complete his scheme. This matter has gone on for a long time. It is certain, from the Minister's answer and the promise he has made, that he does not know what is going on; and that is why there should be an inquiry.

He could not possibly have said, "There will be no more water after the 4in. pipeline goes through" and not have known about the 8in. pipeline that was being installed. He could not possibly have given the undertaking that there would be no more distribution when a consortium in the district had spent more than $100,000 on buying land—

The PRESIDENT: Order! The honourable member is debating the matter rather than explaining his question.

The Hon. H. K. KEMP: The matter is of such importance that I seek leave to continue my explanation.

Leave granted.

The Hon. H. K. KEMP: We have continually asked questions on this matter over many years. We were told that, when a series of tests by the Agriculture Department was completed at a cost of $20,000 over a two-year period, a decision would be made. A decision has been made, apparently completely independently of the Ministers concerned, because such a large sum is not spent unless an undertaking has been given somewhere. Will the Minister investigate just what is going on and what promises have been made in his name? Also, will he look closely at the possibility that some graft has been involved?

The Hon. T. M. CASEY: I will refer the honourable member's question to my colleague and bring back a reply as soon as it is available.

CATTLE COMPENSATION FUND

The Hon. R. C. DeGARIS: Will the Minister of Agriculture obtain for me a report on how much money has been spent from the Cattle Compensation Fund in 1970-71 and 1971-72 for the purpose of compensation? Also, will he find out how much money has been used from that fund for the eradication of tuberculosis and any other expenditure made from that fund during those two years?

The Hon. T. M. CASEY: I will obtain the information for the honourable member.

CONSUMER CREDIT BILL

Second reading.

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

That this Bill be now read a second time.

This Bill and its companion Bill, the Consumer Transactions Bill, are a further stage in the implementation of the Government's consumer protection programme. The Bill deals largely with the topic of money-lending and consumer credit, although there are certain modifications of the law relating to the sale of goods as it applies to consumer transactions. During the years following the passing of the uniform Hire-purchase Agreements Act in 1960, the realization grew that the provisions of that Act and the Money-lenders Act were inadequate to provide the public with the protection it needed in relation to consumer purchases and the credit required for those purchases. Largely as a consequence of the initiatives of the present Premier (then Attorney-General), the Standing Committee of Attorneys-General decided in 1966 to establish a committee drawn from the Adelaide Law School to study and report on the law relating to consumer credit and moneylending.

The members of that committee were Professor Arthur Rogerson, Mr. M. J. Detmold, and Mr. M. J. Trebilcock (now Professor Trebilcock of the University of Toronto). Their report was presented on February 25, 1969, and was a comprehensive and penetrating study of the topic. I acknowledge the great debt that the Government, the State of South Australia and the whole of Australia owe to these men for their public-spirited labours. At the request of the Attorneys-General, a committee of the Law Council of Australia under the chairmanship of Mr. T. Molomby, a Melbourne solicitor, embarked on a study of the means of implementing the principles contained in the Rogerson report. Once again, we are all deeply indebted to the members of that committee for the valuable report that was produced on February 18, 1972. The provisions of the Bill do not apply to transactions where the amount of credit provided exceeds $10,000, unless the credit is provided for the purchase of a house. The need for legislation of this kind appears sufficiently from the following passage from the Adelaide Law School (Rogerson) report:

In the last analysis, however, we have probably been most strongly influenced by a desire to see justice and fair play in consumer transactions. However hard it may be to assign precise meanings to these concepts, it is a fact that we have become aware, in the course of our investigation, of practices and conduct which no-one could possibly condone, ranging from out-and-out fraud to shabby reliance on technicalities to defeat the purposes of beneficial legislation. The only people to profit from these activities are the wrongdoers. Honest lenders, honest dealers, and duped consumers are inevitably the sufferers. Moreover, since the credit industry is so highly competitive, there is an ineluctable tendency for the standards of the honest lender and the honest dealer to be lowered, if they are to survive in business. We propose a number of measures to strike at the dishonest lender and dealer. Inevitably, and unfortunately, these will affect and perhaps hamper the honest. We think, however, that we have reduced this to a minimum and that the reputable will have nothing to fear if our proposals are implemented.

The point is emphasized in the following passage from the Law Council of Australia Committee (Molomby) report:

The Need for Reform

1.1.4 The committee recognizes, and its terms of reference emphasize, that an important sector of the Australian economy is concerned with the provisions of credit. More and more credit is being made available to private persons as well as to businesses. Credit is provided where the payment of a debt is deferred. This may arise in the case of the deferment of payment for goods or services supplied or in the case of an ordinary loan repayable in the future. The need to recast the laws which govern consumer credit transactions is widely recognized both in Australia and overseas. The Crowther committee report lists seven groups of defects in the present law in the United Kingdom. These are as follows:

(i) Regulation of transactions according to their form instead of according to their substance and function.
(ii) The failure to distinguish consumer from commercial transactions.
(iii) The artificial separation of the law relating to lending from the law relating to security for loans.
(iv) The absence of any rational policy in relation to third party rights.
(v) Excessive technicality.
(vi) Lack of consistent policy in relation to sanctions for breach of statutory provisions.
(vii) Overall, the irrelevance of credit law to present-day requirements, and the resultant failure to provide just solutions to common problems.

1.1.5 All these defects are present in Victoria, as they are elsewhere in Australia. The most cursory examination of the legal nature of present consumer credit transactions and the legislation which regulates them shows only too clearly the defects categorized by the Crowther committee. In Victoria, as in the United Kingdom, the chief failure of existing law is concern with legal form rather than commercial substance and the chief symptom is a proliferation of forms of consumer credit designed to achieve the same commercial result but regulated in different ways. Previous legislation has been content to regulate each form of consumer credit separately, and this

has served to emphasize still further matters of form rather than substance. Details of the proliferation of forms of consumer credit are given in chapter 2.1.

The Committee's Conclusion

1.1.6 In the committee's opinion the presence of these defects leads to the conclusion that there is a clear need for reform in this area. Such reform can only be achieved by legislation. Accordingly, the committee recommends that legislation be introduced to effect the reforms desired. The balance of this report is based upon this fundamental conclusion.

The Bill repeals the Money-lenders Act, which, in the words of the Rogerson report, has "been influenced to a considerable degree by old attitudes which regarded most money-lenders as rapacious usurers and most borrowers as necessitous paupers. While no doubt persons of both types still exist, and must be catered for by the law, these old attitudes are scarcely apposite in the context of the modern finance company or the modern consumer, who is, as often as not, borrowing not to buy a crust with which to sustain himself and his family but to finance an oversea tour, or some such luxury".

The aim of the Bill is to provide protection for borrowers in a manner that will not prevent or impede fair and legitimate business practice. Where there are large disparities in the relative bargaining power of credit providers and consumers, statutory regulation is necessary to ensure that consumers are not over-reached by reason of their weaker position. However, the need for such regulation diminishes in the case of money-lending transactions between commercial enterprises, which are capable of negotiating terms that are mutually satisfactory. Hence the provisions of the Bill apply only to transactions entered into by consumers. A consumer is a natural person and hence the provision of credit to corporations does not come within the ambit of the Bill.

The Bill replaces the old system under which money-lenders were granted licences by a local court after police investigation into the suitability of applicants by a system of licensing controlled by a specialist credit tribunal. The Commissioner for Prices and Consumer Affairs will act as an investigating authority to advise the tribunal on the commercial standing of the applicants for licences. The Credit Tribunal is a new body constituted of a Local Court Judge as Chairman, one representative of consumers and one representative of commerce. Although the main function of the tribunal will be to deal with licensing matters, it also has various other statutory jurisdictions such as the jurisdiction to reopen and recast the consumer credit transactions that are harsh or unconscionable.

Those required to be licensed as credit providers under the new system are persons whose business is, or includes, the provision of credit, or who hold themselves out in any way as carrying on that business. Exemption from licensing is provided, as under the Money-lenders Act, for those bodies such as banks, building societies, insurance companies, which are already subject to control. Exemption is also provided for persons carrying on business in the course of which they do not provide credit upon which a credit charge at a rate of interest exceeding 10 per cent per annum is made. The corresponding rate of interest under the Money-lenders Act was 12 per cent per annum.

The Bill provides for the disclosure of information to be made in all credit contracts entered into by credit providers with consumers. A credit contract is any contract or agreement under which credit is provided by a credit provider to, or for the use or benefit of, a consumer and includes a sale by instalments. While credit is defined in the Bill in very general terms to mean any advance of money or moneys worth made in expectation of repayment or any forbearance to require payment of any money owing made in expectation of subsequent repayment, not all credit contracts which at first sight would appear to be controlled by the provisions of the Bill are in fact so controlled. While the milkman, retail store, local garage, etc., which allow customers to run monthly accounts are granting credit in the terms of the definition, such people are not, unless they charge interest at a rate exceeding 10 per cent per annum, subject to the legislation (apart from those provisions empowering the tribunal or a court to recast unconscionable credit transactions). Furthermore, where a retailer desires to provide revolving charge accounts on which credit charges in excess of 10 per cent per annum are imposed, he may apply to the tribunal for authority to maintain such accounts on behalf of his customers. Where the authority is granted and the accounts are maintained in accordance with conditions stipulated by the tribunal, the provisions of the new Act do not affect the provision of credit by means of the account.

Sales by instalments are regulated by the provisions of the Bill regardless of whether the credit provider is required to be licensed or not. Special reasons exist why this should be

so. A sale by instalments is defined as a consumer contract for the sale of goods under which the consumer is entitled to discharge his pecuniary obligations under the contract in three or more instalments ("consumer contract" here refers to a consumer contract as defined in the Consumer Transactions Bill). Such a contract is one in which a consumer purchases any goods or services, or takes any goods on hire (whether or not the contract purports to confer any right or option on the consumer to purchase the goods) or acquires by any other means the use or benefit of any goods or services under which the consideration to be paid or provided by the consumer does not exceed $10,000. A sale by instalments is, in substance, a transaction of the kind covered by a hire-purchase agreement. Hire-purchase clothes a transaction with a legal form that does not correspond with the substance of the transaction.

Almost invariably a consumer enters into a hire-purchase agreement with a view to acquiring title to the goods subject to the agreement. The true purpose of such agreements is recognized in the Consumer Transactions Bill, which abolishes hire-purchase agreements, conferring upon any such purported agreement the character of a sale by instalment. Under the present Hire-Purchase Agreements Act a person who enters into a hire-purchase agreement is entitled to be supplied with detailed information as to the extent of his indebtedness, how this is calculated, the amount of each instalment to be paid to the credit provider, the number of such instalments, and so on. He is also entitled to various other statutory protections of a kind provided in this Bill.

It should be observed that the Hire-Purchase Agreements Act applies not only to agreements that provide for a hiring of goods with a right or option of purchase but also to sales by instalment where the vendor retains title beyond the date of delivery of the goods to the purchaser. By providing that any sale by instalments is regulated by the provisions of this Bill, regardless of whether the credit provider is required to be licensed, the *status quo* is being substantially preserved.

Clauses 1, 2 and 3 are formal. Clause 4 repeals the Money-lenders Act. Clause 5 contains the definitions necessary for the interpretation of the Bill. Clause 6 exempts certain persons and bodies from the requirement to be licensed as credit providers and provides that credit contracts entered into by them are not subject to the provisions of this Bill. Clause 6 (2) provides that the provision exempting credit contracts referred to in subclause (1) does not apply in respect of sales by instalment. This clause also provides that revolving charge accounts are to be exempted from the provisions of the new Act where they are operated in accordance with terms and conditions stipulated by the tribunal. Clause 7 commits the general administration of this measure to the Commissioner for Prices and Consumer Affairs.

Clause 8 gives the Commissioner a power, such as he has under the Prices Act, to delegate his powers to his officers. Such a delegation is not, however, permissible unless the officer to whom the Commissioner proposes to make the delegation is an officer to whom the Commissioner is by regulation authorized to make the delegation. Thus, Parliament will retain control of the extent to which delegation of powers is permissible under the new Act. Clause 9 provides that the Commissioner is to report annually to the Minister on the administration of the Act and that the Minister shall, as soon as practicable, cause a copy of the report to be laid before each House of Parliament.

Clause 10 protects persons acting in the administration of the Act from liability where their actions have been done in good faith and in the performance or purported performance of their duties under the Act. Clause 11 imposes the same obligations of secrecy on persons engaged in administering this Act as is imposed on persons administering the Prices Act. Clause 12 gives the Commissioner and his officers powers to enter and inspect businesses to investigate suspected breaches of the new legislation. This is similar to the power that the Commissioner has under the Prices Act. Subclause (2) provides that the power must be exercised so as to avoid any unnecessary interference with the business subject to investigation. Clause 13 establishes a credit tribunal consisting of five members. Provision is made for the Chairman to be a local court judge and for appropriate consumer and commercial representation on the tribunal. Clause 14 prescribes the term of office of the Chairman and provides for the appointment of a Deputy Chairman.

Clause 15 sets out the term of office, and manner of removal, of the consumer and commercial representatives on the tribunal and contains a standard provision for the filling of casual vacancies. Clause 16 provides for the payment of allowances and expenses to members of the tribunal. Clause 17 is the usual provision to guard against the possibility of the

acts of the tribunal being invalidated merely by reason of a vacancy in the office of a member. Clause 18 provides that when the tribunal is sitting in the exercise of its jurisdiction it shall be constituted of the Chairman, one member representing consumers and one member representing commercial interests. The tribunal may, however, be constituted of the Chairman sitting alone in certain matters to be defined by regulation. These will, of course, be the less important matters that do not justify the attendance of all members of the tribunal.

Clause 19 provides that the Chairman shall preside and determine questions of law and procedure but that other matters are to be decided by majority decision of the sitting members. Clause 20 ensures that a party to proceedings before the tribunal will receive adequate notice of the proceedings and deals with other matters of procedure. Clause 21 confers the usual powers upon the tribunal to summon persons and send for books, papers and documents. Clause 22 empowers the tribunal to make such orders for costs as the tribunal considers just and reasonable. Clause 23 requires the tribunal to give the reasons for its decisions or orders in writing. Clause 24 empowers the tribunal to state a case upon questions of law for the opinion of the Supreme Court. Clause 25 provides for an appeal to the Supreme Court from a decision of the tribunal. Clause 26 provides that orders of the tribunal may be suspended pending the hearing of an appeal by the Supreme Court.

Clause 27 provides for the appointment of a Registrar of the tribunal. Clause 28 provides that no person shall carry on business as a credit provider unless he is duly licensed. If a credit provider is not licensed he is not entitled to recover any credit charge in respect of the credit provided by him and is liable to a penalty. Under the Money-lenders Act an unlicensed money-lender was not entitled to recover either principal or interest. Clause 29 prescribes the manner in which an application for a licence must be made. Clause 30 sets out the conditions that must be fulfilled to entitle a person or a company to be granted a licence. The major departure from the requirements of the Money-lenders Act is that the person or company, as the case may be, must have sufficient financial resources to carry on business in a proper manner.

Clause 31 provides for the renewal of licences. Clause 32 provides for the surrender of licences. Clause 33 provides that licences shall not be transferable. Under the Money-lenders Act a local court could order the transfer of a money-lenders licence. The transfer proceedings were as complicated as an application for a new licence. There seems little merit in retaining the transferability of a licence when the system for applying for a new licence is simple. Clause 34 gives the Commissioner power to make investigations for the purposes of any matter before the tribunal. Clause 35 enables the Commissioner to call upon the Police Force for assistance in investigating any matter before the tribunal.

Clause 36 empowers the tribunal to inquire into the conduct of persons licensed under the Act and to take any necessary disciplinary action. The Bill proposes a wider range of disciplinary action, ranging from a reprimand to cancellation of the licence, than is possible under the present law. Clause 37 requires credit providers to maintain a registered address from which they carry on business and where notices under the Act may be served upon them. However, a credit provider can carry on business at any address of which he has notified the Registrar. This is a simplification of existing requirements. Under the Money-lenders Act a money-lender is required to be licensed in respect of every address at which he carries on business. Clause 38 prohibits credit providers from carrying on business in any name other than the one in which they are licensed. This does not differ from the position under the present Money-lenders Act. Clause 39 requires licensed companies to employ a manager approved by the tribunal.

Clause 40 requires every credit contract (not being a sale by instalment) to be in writing and to set out details of the amount borrowed, the method of repayment, the total amount of credit charge and a statement of any amounts paid on account of stamp duty and such like. Credit providers must supply the consumer with a copy of the credit contract and a statement setting out the provisions of the Act that afford protection to the consumer. This is much the same as the Money-lenders Act provisions, with the exception that a penalty is provided for noncompliance, whereas under the Money-lenders Act a limitation was imposed on the amount of interest a money-lender who had not complied with the provisions could recover. Provision is also made for disclosure of the rate at which interest is to be charged. This is to be as required by regulation. The detailed provisions for disclosure of rates of interest have not been included in the Bill itself because of the complexity of the subject. Whatever formula is

arrived at may be found to be wanting for some particular transactions. Thus, it is thought that the flexibility of a regulation is preferable. Changes can be made quickly so that business is not impeded by being required to use unworkable or unwieldy formulas for calculating interest rates.

Clause 41 sets out the information that must be contained in a credit contract which is a sale by instalment. The information required to be given is much the same as in the Hire-Purchase Agreements Act. There is no provision, as in the Hire-Purchase Agreements Act, that information shall be contained in a special form, of document. There have long been doubts as to whether any extra information could be included in a document of this type under the Hire-Purchase Agreements Act and whether it is possible to vary the order of giving the information. No such questions arise under this provision. Clause 42 makes void any provision in a credit contract which provides for the payment of compound interest. This provision is based upon a corresponding provision in the existing Money-lenders Act.

Clause 43 limits the amount a credit provider can recover on determination of the contract, either by reason of breach of contract by the consumer or pursuant to agreement between the parties. This is along the same lines as an existing provision of the Money-lenders Act. Clause 44 limits the amount a credit provider can recover on enforcement of a security taken to secure the amount of any payment due under a credit contract to the amount due under the security unless the contract prominently provides that the consumer or guarantor undertakes a personal liability in addition to the liability covered by the security. Clause 45 prohibits any person from recovering any fee for the procurement of credit. Once again, this is the same type of provision as presently exists under the Money-lenders Act.

Clause 46 enables a court or the tribunal to grant relief to a borrower where it considers that the terms of a credit contract, guarantee, or mortgage are unduly harsh or oppressive. The relief may be granted either by the tribunal on the application of the aggrieved person, or by a court in any proceedings instituted for the enforcement of the contract, guarantee, or mortgage. Clause 47 requires a credit provider to supply any person for whom he has provided credit, or a guarantor of such a person, with a statement of the state of his account. Clause 48 deals with the assignment by a credit provider of his interest under a credit contract. Where this occurs the assignor must furnish the assignee with information that he may require to comply with his obligations to the consumer. Clause 49 provides that, where a credit provider has assigned his interest in a credit contract, any claim or defence that the consumer could have raised against the assignor shall be available against the assignee.

Clause 50 in effect prevents the credit provider from securing repayment of an amount in excess of that due to him by obtaining negotiable instruments from the borrower to ensure payment to him of a fixed amount. This provision is based upon an existing provision of the Hire-Purchase Agreements Act. Clause 51 places limitation on the assignment to credit providers of interests in deceased estates or under deeds of settlement or trust. The purpose of the provision is to ensure that the consumer fully appreciates the consequences of any such assignment. Clause 52 protects a person who has entered into two or more credit contracts with the same credit provider by entitling him to specify to which contract or contracts the money paid by him is to be appropriated.

Clause 53 requires that credit granted under a credit contract shall be provided in cash or by cheque without deduction for interest or any other charge. Clause 54 provides that advertisements offering to provide credit must conform with any stipulation made by the Commissioner and must state the authorized name and address of the credit provider. This provision will enable the Commissioner to prescribe undesirable advertising practices without creating spurious and unnecessary impediments to legitimate advertising. Clause 55 prohibits the door-to-door canvassing of applications to borrow money except in limited circumstances. Clause 56 provides that all documents required to be in writing under the Act must be legible and, if printed, the type must be of a certain size. Clause 57 imposes a penalty on any consumer who makes false or misleading statements in an application for credit under the new Act. Clause 58 is an evidentiary provision. Clause 59 provides for the manner in which offences against the provisions of this Bill are to be tried. Clause 60 provides for the service of documents under the Act. Clause 61 enables the Governor to make regulations for the purpose of the new Act.

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

BUSH FIRES ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

It arises from submissions by, and discussions with, bodies and authorities interested in the operation of the principal Act, and covers a number of disparate matters. Topics dealt with in the Bill include: *(a)* a revision of the requirements as to obligations of bodies to insure persons engaged in fire-fighting operations under the Act; *(b)* a revision of the general level of penalties provided for under the Act to ensure that they are an appropriate deterrent; *(c)* a change in description from "inflammable" to "flammable", the latter word being, it is felt, less likely to confuse those whose mother tongue is not English; *(d)* the conversion of denominations of weights and measures in the Act expressed in English units of measurement to denominations expressed in metric units; and *(e)* a revision of the restrictions on the movement of aircraft on private airfields; together with a small number of other matters that will be mentioned in connection with the particular provision of the Bill that deals with them.

I now deal with the Bill in some detail. Clauses 1 and 2 are formal. Clause 3 provides for a definition of "nominated council" and for a metric conversion from 2gall. to 9 *l* in the case of portable water sprays; this conversion should ensure that all present portable sprays may be kept in use. Clause 4 provides for the declaration of a municipal or district council to be nominated as the council responsible for a fire-fighting organization, and further provides that the fire-fighting organization is to keep its nominated council informed of the current state of its membership. Clause 5 inserts a new heading in the principal Act.

Clause 6 is the operative provision as regards insurance against injury of fire fighters and is intended to make it quite clear just who is the responsible "employer" of the fire fighter for insurance purposes. Subsection (2) of proposed new section 36 applies the Workmen's Compensation Act, 1971, to the fire fighter's employment as such. The notional salary of the fire fighter for these purposes is fixed at the State living wage plus an amount to be prescribed; this salary is necessarily a notional one since this compensation provision applies only to unpaid fire fighters. Proposed new section 37 provides for the liability of the Minister as employer to be met out of the general revenue of the State. It might be noted that this Act, in terms, no longer imposes on a council the obligation to insure against a liability as an employer imposed on it by this Act, that obligation being imposed by the Workmen's Compensation Act, 1971. Clause 7 is consequential on the amendments proposed by clause 6, proposed new section 36 (1) *(b)* provides that fire party leaders will fall within the ambit of that section.

Clause 8 increases the penalty for an offence against section 43 that relates to burning of stubble during a time of fire risk to make the maximum penalty commensurate with the gravity of the offence. Clause 9 effects a metric conversion amendment and is self-explanatory. Clause 10 substitutes the word "flammable" for the word "inflammable" and is one of a large number of amendments of a similar nature, and makes a metric conversion amendment. Clause 11 effects a number of metric conversions to section 49 of the principal Act. Clause 12 increases the penalties for an offence against section 52 which relates to burning scrub during periods of fire risk and again recognizes the serious consequences that may flow from a breach of this section.

Clause 13 makes a metric conversion to section 54 of the principal Act. Clause 14 increases the penalties for an offence against section 59 which relates to burning scrub or stubble on Good Friday, Sunday or Christmas Day, as does clause 15 in relation to offences against section 60, which empowers councils to make by-laws prohibiting the burning of scrub or stubble and clause 16 in relation to section 61 which relates to restricting of fires in the open air.

Clause 17 again makes certain metric conversions, alters the word "inflammable" to "flammable" and effects certain increases in penalties for offences against section 62 of the principal Act. Clause 18 makes similar amendments to section 63, as does clause 19 to section 64. Clauses 20 and 21 together change the description of a situation of high fire risk from that of "serious fire risk" to that of "extreme fire danger" and, in addition, penalties for offences connected with that situation have been increased. Clause 22 increases penalties for offences against section 67 of the principal Act, makes further metric conversions, and alters references to "inflammable" to "flammable".

Clause 23 repeals and re-enacts section 68 of the principal Act to make it clear that this section applies only to the use of internal combustion engines within the boundaries of a property. The penalty for an offence against

this section has been increased. Clause 24 effects to section 69 certain metric conversions that relate to the fitting of spark arrestors on certain vehicles, and again increases the penalties for a breach of that section. Clause 25 increases the penalties for an offence against section 70, which relates to the provision of fire extinguishers on certain caravans.

Clause 26 enacts a new section 71 regulating aircraft movements on what might be called "private" airstrips and is generally self-explanatory. Clause 27 effects a metric conversion to section 72 of the Act which prohibits smoking near flammable matter, alters a reference to "inflammable", and increases the penalty for an offence against that section. Clause 28 increases the penalty for an offence against section 73 that relates to throwing burning material from vehicles. Clause 29 increases the penalty for an offence against section 74, which regulates the use of fires in rabbit fumigators. Clause 30 makes a metric conversion amendment to section 75, which deals with blasting of trees, and also increases the penalty for a breach of that section.

Clause 31 increases the penalty for a breach of section 76, which prohibits the use of ignitable wadding in cartridges. Clause 32 increases the penalty for a breach of section 77, which deals with fire protection in sawmills and proclaimed premises. Clause 33 revises the standard specification of certain matches the sale of which is prohibited and inserts the appropriate British standard. The penalty for a breach of this provision has also been increased. Clause 34 alters the reference to "inflammable" in section 79 of the Act as does clause 35 in relation to section 80. Clause 36 effects a metric conversion to section 81 of the Act.

Clause 37 sets out in some detail the power of a council to order the establishment of fire breaks and the rights of the council to establish such breaks at the expense of the owner or occupier of land affected. Clause 38 increases the penalty for an offence against section 82 of the Act. which obliges councils to provide adequate fire fighting equipment. Clause 39 effects a number of amendments to section 86, which deals with the powers of fire fighters under the Act. The effect of the amendments is to enable the powers to be exercised when there is a present danger of a fire. Previously, the powers could be exercised only when a fire had actually broken out. It is not difficult to imagine a situation arising that presents such a danger—for example, the case of an overturned petrol tanker on a busy road.

Clause 40 increases the penalty for an offence that involves a failure to comply with a direction under section 89 of the Act given by a fire control officer. Clause 41 effects a metric conversion to, and increases the penalty for an offence against, section 90 of the Act, which deals with the power of fire control officers and foresters to prohibit the lighting of fires, and clause 42 increases the penalty for an offence against section 91 of the Act for hindering officers in the execution of their duty under the Act. Clause 43 re-enacts section 92 of the principal Act and spells out in somewhat greater detail the powers of a police officer present in the vicinity of a fire.

Clause 44 increases the penalty provided for by section 94 of the Act in the case of a failure by a suspected person to disclose his name and address. Clause 45 increases the penalty provided for by section 94 of the Act in the case of offences relating to fire plugs, and clause 46 increases the penalty for an offence under section 95 relating to false alarms. Clause 47 amends section 96 and somewhat enlarges the duty on the part of coroners to hold inquests into fires. Clause 48 amends section 97 and extends the immunity already given to fire control officers and fire party leaders to police officers acting under the Act.

Clause 49 alters the word "inflammable" to "flammable" in section 99 of the Act. Clause 50 effects certain metric conversions to, and alters the word "inflammable" to "flammable" in, section 100 of the Act. This provision deals with liability for damage to dividing fences. Clause 51 effects a metric conversion to section 101, which deals with the right of an adjoining occupier to clear fire breaks on roads. Clause 52 provides for an additional regulation-making power dealing with the design, construction and maintenance of fire danger indicators and also increases from $100 to $200 the maximum penalty that can be provided for a breach of the regulations.

The Hon. R. A. GEDDES secured the adjournment of the debate.

CONSUMER TRANSACTIONS BILL

Second reading.

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

That this Bill be now read a second time.

This is a companion measure to the Consumer Credit Bill. The concepts embodied in the Bill are based on the principles embodied in the Rogerson Report on the Law relating to Consumer Credit and Money-lending and certain of the recommendations contained in that

report and the later Victorian and United Kingdom reports on consumer credit. The philosophy behind this measure is that consumer transactions should be governed by legislation that encourages forms of legal transactions which are simple and which accord with the commercial substance of the transaction. Transactions that are more complicated than they need to be to give effect to the commercial bargain between the parties should be discouraged.

In South Australia, as in the other States of Australia and the United Kingdom, a major deficiency of existing law is the proliferation of legal forms, which tends to obscure the commercial substance of transactions. Consequently, different forms of transaction by which a consumer may obtain goods on credit abound, all designed to achieve the same commercial result but regulated in different ways. Previous legislation, such as the hire-purchase legislation, has proved deficient because it is directed at a certain form of transaction. The result has been that the same transactions have continued but under different legal forms. This has effectively deprived the consumer of the protection that Parliament envisaged in formulating this protective legislation.

The Law Council Report on Fair Consumer Credit Laws lists 11 current forms of credit transaction, any one of which a person may use to buy a common article on credit. Even this list does not purport to be exhaustive. An analysis of this proliferation of forms of transaction indicates that the basic idea of them all is relatively simple. Commonly, they involve the acquisition of goods for which the consumer cannot pay, or chooses not to pay, at the time of the sale. The consumer is therefore given credit either by the seller or by some third party. There are in such cases two elements, the sale element and the loan element. In some cases the transaction also involves the giving of a security interest by the consumer to either the seller of the goods or the third party financier.

The view of the Rogerson committee and the later committees is that, provided an adequate security interest is available to the credit provider, the consumer sale on credit and the consumer loan are the only transactions required to satisfy all the needs which are, under the present law, being met by the use of a variety of methods, including hire-purchase. In accordance with this principle, the Bill provides for the abolition of hire-purchase agreements by conferring on such transactions the character of sales by instalments under the Consumer Credit Bill. Property passes to the consumer on delivery of the goods to him. The security interest in the goods which a vendor (or financier) would have had under a hire-purchase agreement by virtue of his property in the goods is now obtained by the vendor (or financier) taking a consumer mortgage over the goods.

During the course of consideration of the various reports and proposals on the subject, it became apparent that it was illogical to give protection to consumers who had obtained credit from the seller of goods or from some financial house closely associated with him (in this legislation called a linked credit provider) but not to protect the consumer who either arranged his own finance (for example, by way of bank overdraft) or who paid in cash out of his savings. Consequently, the legislation applies in some of its aspects to consumer contracts generally and not only to sales to consumers on credit.

Clauses 1, 2 and 3 are formal. Clause 4 repeals the Hire-Purchase Agreements Act. Clause 5 contains the definitions necessary for the interpretation of this Bill. Several of these require particular attention. A "consumer" is defined as a natural person who enters into a consumer contract or who is provided with credit under a credit contract or who enters into a consumer mortgage. A "consumer contract" is a contract entered into by a consumer for the purchase of any goods, for the supply of services, for the hire of goods or for the acquisition by any other means of the use or benefit of any goods and services, where the consideration does not exceed $10,000. Dispositions of goods to persons who trade in goods of that description are excluded from the definition, as are sales by auction. Thus, the legislation applies only to natural persons who obtain goods or services for less than $10,000 or, if hiring goods, pay no more than $10,000 in rental. All the reports have recognized that, however the persons protected by the legislation are defined, anomalies will arise. A simple monetary limit is recognized by both the Rogerson and the Law Council reports as the best means of delimiting the transactions to be covered by the new legislation.

The definition of "consumer contract" breaks new ground by including contracts for services and contracts for the hiring of goods that do not confer any right or option of purchase upon the consumer. No legislation has hitherto regulated transactions of this kind. The next definition to be noticed is that of

"consumer credit contract". A consumer credit contract is a credit contract, as defined under the Consumer Credit Bill, under which the amount of principal advanced does not exceed $10,000. A "consumer lease" is a consumer contract for the hiring of goods under which the period of hire exceeds four months but which does not confer on the consumer any right or option to purchase the goods. "Consumer mortgage" is any mortgage, charge or other security taken over goods to secure obligations under a consumer credit contract. This definition includes, and the Bill therefore permits, any of the existing types of security interest that may be taken over goods. The legal incidents of these security interests are, however, modified to some extent by the Bill.

"Guarantor" is defined to include a person who undertakes to indemnify a credit provider for failure by a consumer in carrying out his obligations. The provisions of the Hire-Purchase Agreements Act refer only to guarantees and not to indemnities and thus can be easily circumvented by framing a collateral arrangement as an indemnity rather than as a guarantee. The Rogerson committee recommended that, in consumer credit transactions, guarantees and indemnities should be put on an equal footing so that nothing should depend on what was little more than an accident of language. This definition implements that recommendation. "Hire-purchase agreement" is defined, in substance, as under the Hire-Purchase Agreements Act. A "linked supplier" is a person who is closely associated with a credit provider and takes part in the negotiations leading to the formation of a credit contract between that credit provider and a consumer. The closely associated credit provider is called a "linked credit provider" and the credit contract entered into by the linked credit provider is called a "linked consumer credit contract". These definitions are necessary to put into effect the recommendation of the Law Council report that, where a close commercial relationship exists between a credit provider and a supplier, the credit provider should underwrite some of the liabilities of the supplier in respect of consumer sales on credit.

"Services" are defined by enumerating certain services with which the consumer is most commonly concerned and which he is, in the Government's view, entitled to expect to be rendered with due care and skill. "Supplier" is a person who in the course of business enters into consumer contracts or conducts negotiations leading to the formation of consumer contracts. Thus, the legislation does not embrace contracts that are not made in the course of a trade or business. Contracts between neighbours, for example, are not covered by the legislation.

Clause 6 ensures that contracts that properly relate to goods and services to be delivered or rendered within the State will be covered by the legislation. Thus, avoidance of the legislation by utilizing rules of private international law is prevented. Clause 7 provides that, where a consumer enters into a contract with a supplier and the supplier knows that the consumer intends to seek credit for the purposes of performing his obligations under the contract, the consumer may rescind the contract if he is unsuccessful in obtaining credit, even though the goods may have been delivered to the consumer by the supplier. Hitherto, it has been possible for a consumer to enter into a contract to purchase goods and then discover that his application for credit is rejected. He is left holding goods for which he cannot pay and would never have bought if he had known that his application for credit would be rejected.

Clause 8 sets out the conditions and warranties that are to be implied in every consumer contract for the sale of goods. Previously the conditions and warranties implied by the Sale of Goods Act could always be excluded by agreement between the parties, and some of the conditions and warranties implied by the Hire-Purchase Act in hire-purchase agreements could be excluded in the case of second-hand goods. This clause implies conditions and warranties, which cannot be excluded, in sales of goods for cash and sales of goods on credit (including in this term sales by instalments) where the consideration for the sale does not exceed $10,000. The conditions and warranties follow very closely those of the Sale of Goods Act. The salient difference is that under the Bill a supplier has a much more limited right to exclude implied terms from the contract.

Subclauses (1) and (2) follow the Sale of Goods Act, section 12, and the Hire-Purchase Agreements Act, section 5, in implying a condition that the seller has a right to sell the goods, a warranty that the goods shall be free from any charge or encumbrance and a warranty that the consumer shall have and enjoy quiet possession of the goods. Subclause (3) follows section 13 of the Sale of Goods Act. Subclause (4) follows the condition of merchantable quality in the Hire-Purchase

Agreements Act, and subclause (5) is a new provision designed to ensure that the criterion of "merchantable quality" is sufficiently flexible to cover both new and second-hand goods. Under the Hire-Purchase Agreements Act the condition could be excluded when the goods were second-hand. This distinction between new and second-hand goods is arbitrary and undesirable. The flexible condition envisaged by the Bill is thus a significant advance from existing law. Subclause (6) follows in effect, the condition of fitness for a particular purpose in the Hire-Purchase Agreements Act and the Sale of Goods Act, though under the Hire-Purchase Agreements Act this condition could be excluded when the goods were second-hand.

Clause 9 implies in every consumer contract for the provision of services a warranty that the services shall be rendered with due care and skill and that any material supplied in connection with those services shall be reasonably fit for the purpose for which it is supplied. This is a new provision, which embodies in contracts for the supply of services the common law standard of care and skill. Hitherto the parties have always been able to exclude this warranty by agreement, unless such a condition is implied by a special Statute dealing with a particular service. A warranty that the services and materials supplied in connection therewith shall be reasonably fit for the purpose for which they are supplied is also implied in every consumer contract for the provision of services. Clause 10 provides that the conditions and warranties implied by clauses 8 and 9 cannot be excluded, limited or modified by agreement. Conditions and warranties other than those implied by this Bill can be excluded only if the attention of the consumer is drawn specifically to the exclusion, limitation or modification. Non-excludable warranties are essential for the protection of consumer purchasers. It has proved all too easy to obtain the purchaser's signature to a clause excluding the operation of statutory warranties, thereby rendering the statutory protections ineffectual.

Clause 11 preserves all laws relating to the sale of goods and services except as modified by the provisions of this Bill. Clause 12 makes it clear that, where two or more suppliers are engaged in a consumer transaction, their liability to the consumer is to be joint and several. Clause 13 provides that, where a consumer can recover damages against a supplier for breach of a consumer contract, he can, if the supplier cannot pay in full, recover the amount outstanding from a linked credit provider. This is in line with the Law Council report recommendation that a credit provider who has close links with a supplier should be prepared to underwrite a default by that supplier.

Clause 14 provides that, where employees or agents of a supplier make statements about goods or services that are, or become, subject to a consumer contract, those statements shall be deemed to be statements of the supplier. This is similar to a provision in the Second-hand Motor Vehicles Act. It is very common for salesmen to make statements about goods and services that are subsequently repudiated by the supplier, who claims that the salesman had no authority to make those statements.

Clause 15 entitles a consumer to rescind a consumer contract, within a reasonable time after delivery of the goods, for breach of any condition on the part of the supplier. This is a modification of the law in the Sale of Goods Act. Under that Act once property in goods passes (and this usually occurs on delivery of the goods), a purchaser is not entitled to rescind the contract but only to sue for damages. This has long been recognized as anomalous and unsatisfactory. Clause 16 provides that where a consumer contract has been rescinded a consumer credit contract or a linked consumer credit contract made in respect of the consumer contract is automatically rescinded. This is a new provision designed to ensure that a consumer is not inhibited in exercising his right to rescind the contract. He would be so inhibited if his liability under the credit contract remained intact upon rescission of the consumer contract.

Clause 17 provides that the fact that goods are subject to a consumer mortgage shall not act as a bar to rescission. Clause 18 enables the tribunal to settle disputes between the parties on the rescission of a consumer contract, consumer credit contract or consumer mortgage. The tribunal referred to here is the Credit Tribunal established under the Credit Act. The tribunal has extensive powers under this Act to adjust relationships between the parties. Clause 19 provides that offers or applications made to credit providers for the purpose of enabling consumers to discharge their obligations under consumer contracts shall be revocable until the offer or application has been accepted by the credit provider. This is a new provision which is necessary to prevent the practice of some financiers who bind consumers to take credit when the consumer may have decided that he does not wish to continue with the purchase for which he needed credit. In such circumstances it is undesirable that the

consumer should be unilaterally bound to accept credit if the financier chooses to accept his application. Where negotiations have not advanced to finality it is fair that the consumer should have as much contractual freedom as the supplier and the credit provider.

Clause 20 makes it an offence for a supplier or any other person to receive a commission exceeding more than 10 per cent of the credit charge payable under the credit contract. This is similar to the provision in the Hire-Purchase Agreements Act. Clause 21 sets out the detailed information that must be contained in a consumer lease. This is a new provision and is designed to give a consumer who enters into a lease the same kind of information as a consumer who purchases goods on credit obtains. Clause 22 requires a supplier to give a consumer seven days notice before exercising his right to take possession of goods subject to a consumer lease. Clause 23 empowers the tribunal to grant relief against harsh and unconscionable terms of consumer leases. It also enables a consumer to terminate a lease by returning the goods to the lessor.

Clause 24 prevents the supplier from recovering an undue amount from a consumer on premature termination of a leasing agreement. Injustice can be caused if the lease provides for payment of an exorbitant amount on the termination of lease. A similar evil arose in hire-purchase transactions before the introduction of adequate statutory controls. Clause 25 abolishes hire-purchase by providing that property in goods which are subject to a hire-purchase agreement passes to the consumer on delivery of the goods. The interest of the supplier is protected by a mortgage, in terms to be prescribed by regulation, that will secure the payment of the amounts due under the contract. The agreement is accordingly to be treated as a sale by instalment. Clause 26 provides that a reference to a consumer mortgage in Part III also covers any credit contract imposing obligations on a consumer that are secured by the mortgage. Clause 27 enables a consumer to discharge his obligations under a consumer mortgage at any time and prevents the mortgagee from recovering excessive amounts from the consumer on early termination of the mortgage. This is similar to the early termination provision in the Hire-Purchase Agreements Act.

Clause 28 prevents a mortgagee from exercising his right to take possession of goods subject to a consumer mortgage without due notice. Notice does not have to be given when the mortgagee has reasonable grounds for believing the goods will be removed or concealed or when the tribunal has ordered that notice need not be given. The mortgagee must give the consumer notice of his rights under the new Act. This is analogous to the repossession provisions of the Hire-Purchase Agreements Act. Clause 29 requires the mortgagee to retain possession of repossessed goods for at lease 21 days before selling them. Clause 30 sets out the rights of a consumer whose goods have been repossessed. He has a right to have the goods redelivered to him if he remedies his breach or breaches of the mortgage or, failing that, he has a right to require the mortgagee to sell the goods to a person nominated by him. He has a right to any money in excess of that owing to the mortgagee which results from the sale of the goods. The mortgagee must sell goods which he has repossessed at the best price obtainable.

Clause 31 enables the consumer to return the mortgaged goods to the mortgagee at any time and requires him to exercise his power of sale in respect of the goods. This is similar to the provision in the Hire-Purchase Agreements Act permitting the hirer to determine the hiring at any time. Clause 32 enables the mortgagee to require the consumer to furnish information as to the whereabouts of goods over which he has a mortgage. Clause 33 enables the tribunal to permit a consumer to remove goods from the place where they are, according to the terms of the mortgage, required to be kept or controlled. This is designed to overcome the kind of situation in which, by the terms of the mortgage, goods are required to be kept in a certain place and it becomes impossible or inconvenient to keep them there. Removal of the goods from that place, without the consent of the mortgagee, would be in breach of the mortgage. This provision enables the tribunal to consent to the removal of the goods if the mortgagee refuses his consent.

Clause 34 prevents goods subject to a consumer mortgage from becoming fixtures if they were not fixtures at the time of the creation of the mortgage. Clause 35 enables the tribunal to order the delivery of goods to the mortgagee when they are being detained unlawfully by the consumer. It is an offence not to comply with an order of the tribunal made under this clause. Clause 36 makes it an offence for a person to defraud the mortgagee by selling or disposing of goods subject to a consumer mortgage. Clause 37 protects an innocent purchaser for value of

goods which are subject to a consumer mortgage or a consumer lease by providing that he obtains good title to the goods, free of any charge over them. A purchaser does not, however, obtain a good title to the goods if there is reason to suspect a deficiency in the seller's title or if he is a dealer in goods of that kind. The Rogerson committee considered that this "watering down" of the security interest will not be the cause of significant loss to credit providers.

The committee was convinced that the hardship that an innocent third party may suffer in the case of a fraudulent disposition of secured goods far outweighs the slight diminution of profit that a credit provider might suffer if the legislation were designed to protect the individual purchaser. The individual has no sure way of finding out that a charge exists, and commonly has too few resources to sue the (probably indigent) defaulting consumer, who has been able to get the goods, and therefore to sell them only because he has been given credit. The penalties provided under clause 36 are designed to be a deterrent to the fraudulent disposition of goods. Clause 38 provides that where a workman does work on goods subject to a consumer lease or consumer mortgage he may obtain a workman's lien over those goods which prevails over the rights of the mortgagee or lessor. This is similar to the provision in the Hire-Purchase Agreements Act.

Clause 39 enables a consumer who is for some reason, such as sickness or unemployment, temporarily unable to discharge his obligations under a consumer credit contract, lease or mortgage to apply to the tribunal for relief against the consequences of breach of the contract, lease or mortgage. The tribunal in granting any such relief must ensure that justice is done between all contracting parties. This new provision is based on recommendations in both the Rogerson and the Law Council reports. Clause 40 defines the contracts of insurance to which Part VI of the new Act is to apply. Clause 41 provides that where a consumer is required under a consumer contract, credit contract, or consumer mortgage to insure goods he is not to be required to insure with a particular insurer or to insure against unreasonable risks. Clause 42 gives a court or the tribunal power to relieve against breaches of a condition in an insurance contract, provided that the insurer is not prejudiced by the breach. Clause 43 sets out what must be contained in insurance contracts that are taken out in conjunction with consumer contracts, credit contracts or mortgages. Relief is given to a consumer against unfair arbitration clauses in such contracts. Clause 44 limits the liability of a guarantor to the liability of the consumer whose obligations he has guaranteed.

Clause 45 provides that, where the guarantor agrees to undertake a separate liability independent of his liability upon the guarantee, the agreement shall be void unless the agreement is executed in the presence of an independent legal practitioner who is satisfied that the guarantor understands the effect of the agreement and has signed it voluntarily. Clause 46 provides for the summary disposal of proceedings for an offence (except an indictable offence) under the new Act. Clause 47 empowers the tribunal to grant extensions of time for the service of documents and such like.

Clause 48 makes void any purported attempt to exclude any of the mandatory provisions of the Bill. Clause 49 requires documents under the Bill to be clear and legible. Where any written contractual provision does not meet the prescribed standards of legibility, it is not enforceable against a consumer. This provision does not, however, prevent the recovery of principal amounts advanced under a credit contract. Clause 50 provides for the service of notices or documents under the provisions of the new Act. Clause 51 enables the Governor to make regulations for the purposes of the new Act.

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

PRICES ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

Its object is to extend the Prices Act for one further year commencing on January 1, 1973. The Prices Act has continued in operation since 1948 and has been of significant benefit to the people of this State. Maximum prices are fixed for a number of goods and services, some of which are important to people on low incomes and to primary producers. A number of arrangements exist with industries with regard to prior advice and discussion before proposed price increases are implemented. It is considered important that a restraining influence be exercised on price increases and also to ensure that the favourable cost structure in South Australia as compared with other States is maintained. Of

considerable benefit to wine grape growers is the fixing of minimum prices for wine grapes.

As required by the provisions of the Prices Act, a separate report on consumer protection covering the year to December 31, 1971, has been presented to Parliament. For the six months to June 30, 1972, 1,359 complaints were deemed to warrant investigation, compared to 984 for the same period in 1971. Legislation commencing since January 1, 1972, and being administered by the Prices Branch includes the Door to Door Sales Act from March 1, the Secondhand Motor Vehicles Act from April 1, the Mock Auctions Act from April 6, the Misrepresentation Act from May 18, and the Unordered Goods and Services Act from July 1. The extension of the operation of the Prices Act will enable the continuation of the price fixing and consumer protection provisions now contained in the Prices Act. Clause 1 is formal. Clause 2 amends section 53 of the principal Act by extending the operation of the Act to December 31, 1973.

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

INDUSTRIAL CONCILIATION AND ARBITRATION BILL

In Committee.

(Continued from November 2. Page 2668.)

Clause 83—"Provisions relating to automation."

The Hon. Sir ARTHUR RYMILL: I move:

In paragraph *(a)* to strike out "mechanization" and insert "automation"; and after "other" to insert "like".

I fear that, in moving these amendments, I am rather stealing the thunder of the Hon. Mrs. Cooper, who first pointed out that this provision was not quite consistent with the marginal note. We thought that the marginal note expressed the intention of the clause better than do some of the words in the clause itself. However, I am sure the honourable member is more concerned with having the matter rectified than with the question of who moves the amendments, which do not interfere with the Government's expressed object; rather, they are more definitive of that object. I believe that the Government is willing to accept the amendments.

The Hon. A. F. KNEEBONE (Minister of Lands): In the short time available to me since my return from overseas, I have tried to become familiar with this Bill. I appreciate the work done in connection with this Bill by my colleagues during my absence. The amendments are in line with the intention of the clause. I realize that the word "mechanization" is too wide and that the word "automation" is correct. The Government is therefore willing to accept the amendments.

The Hon. JESSIE COOPER: My thunder has been stilled, and I am quite happy.

Amendment carried; clause as amended passed.

Clauses 84 to 90 passed.

Clause 91—"Declared organization."

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

In subclause (2), after "applies", to strike out "unless it is expressly provided in that award that it shall so operate".

I intend to move only this part of my amendment because the argument placed before the Committee earlier about charitable and religious bodies was not accepted. If these words remain, they render the whole clause almost to no purpose. The question is quite clearly that, if the Minister decides that an organization is charitable, religious, or non-profit making, and if he decides that it is in the public interest that he should declare that organization for the purposes of this clause (which is that no award shall operate in respect of that organization), it is rather crazy to say that none of it applies unless the award itself says that this shall be the case. I suppose to some extent it is a drafting amendment, but it also involves a question of principle. The Minister decides whether to declare an organization, and he should not have the whole thing rendered nugatory by some provision of the award which could negate his decision.

The Hon. Sir ARTHUR RYMILL: What the Hon. Mr. Potter has said is correct. If the Minister intends that this organization he may declare shall not be subject to an award, he should be able to say so, and the court should not have the power to alter his decision. It seems to me that it is at the discretion of the Minister if it is amended in the manner suggested by the Hon. Mr. Potter.

Amendment carried; clause as amended passed.

Clauses 92 to 94 passed.

Clause 95—"Appeal to Court from decision of Industrial Magistrate."

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

In subclause (1), after "(1)", to insert "Where the amount of a claim exceeds two hundred dollars".

In effect, this amendment gives the Industrial Magistrate a jurisdiction of $200 that is not appealable. This will bring his jurisdiction into line with that of magistrates in the local court. In the existing Code, the Industrial Magistrate

had a non-appealable jurisdiction of $60, which was exactly the same as the non-appealable jurisdiction of magistrates in the local court. Some time ago that amount was raised to $200 in the local court, and I think it was overlooked at the time that the Industrial Magistrate's jurisdiction should have been similarly increased. It is sensible that there should be a small non-appealable jurisdiction for the Industrial Magistrate, particularly as his is a jurisdiction in which costs are not awarded. Under the clause as drafted, some fairly petty matters involving less than $200 could be the subject of irritating tactics by either employers or employees trying to score a point and taking the matter to appeal.

The Hon. A. F. KNEEBONE: The effect of this amendment would be to deny any person the right of appeal against a decision of the Industrial Magistrate if the amount of the claim (not the amount awarded) exceeded $200. It would be a simple matter for every application to be so framed that the amount claimed exceeded $200 so that there could be no appeal. It is contrary to all notions of justice that there should not be an appeal against any judicial decision. Further, there may be (and are) test cases taken which, although they could involve small amounts, involve a question of principle that could be applied to many other employees. In this respect this jurisdiction does not have a counterpart in the civil courts. There seems no reason why there should not be a right of appeal from the decision of the Industrial Magistrate. Therefore, I oppose the amendment.

The Committee divided on the amendment:

Ayes (5)—The Hons. M. B. Cameron, R. C. DeGaris, R. A. Geddes, F. J. Potter (teller), and E. K. Russack.

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

Majority of 5 for the Noes.

Amendment thus negatived.

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

In subclause (2) to strike out paragraph *(a)*.

Honourable members must realize that there is a contrast between clause 94, which involves an appeal from a judge to the Full Court, and clause 95, which covers an appeal from the Industrial Magistrate to a judge: costs are involved in relation to clause 94, whereas they are not involved in relation to clause 95. This whole process can be an aggressive one between employers and employees. Individuals must pay costs out of their own pockets, with no hope of recovering them from the other side. There is, therefore, a contrast between clauses 94 and 95. Consequently, there is no reason to provide for remissions to take fresh evidence. Although this sounds unusual, I want to do something to try to cut down this process.

The Hon. A. F. KNEEBONE: I cannot understand the honourable member's reasoning. I should have thought that, in order to arrive at a just decision, fresh evidence should be taken when it was available. I cannot therefore accept the amendment.

The Hon. Sir ARTHUR RYMILL: I support the amendment, for virtually the same reason as the Minister used to persuade me to support him on the previous amendment. This is against the normal processes of the law: it really constitutes an appeal as a rehearing, and it is not customary to take fresh evidence on appeal.

The Hon. F. J. POTTER: The position is exactly as the Hon. Sir Arthur Rymill has stated. Initially, the whole subclause was not in the Bill so the Government did not think it was necessary at all at one stage. Then, on the motion of a private member in another place, the Government, on the spur of the moment, repeated clause 94 (3), in my view forgetting that one provision involved costs and the other did not. I am not sure that the subclause should not be struck out from clause 94. However, it should certainly come out of this clause, as it makes the whole matter a rehearing and no costs could be awarded. I know how small matters can be carried on to inordinate lengths.

The Hon. A. F. KNEEBONE: It is the normal practice for all courts to have the power to call fresh evidence on the hearing of an appeal, although fresh evidence is not called in very many cases. It would be contrary to all accepted notions of the functions of appellate tribunals for the court not to have the power to take fresh evidence on the hearing of an appeal. It could lead to grave injustice if, for example, evidence was wrongly excluded in the initial hearing, which might, of course, be the whole reason for the appeal.

The Hon. Sir ARTHUR RYMILL: I refer the Minister to paragraph *(c),* which provides that the appeal court may refer a decision back to the court whence the appeal arose. I suggest that, if fresh evidence was sought to be admitted, that would be the proper procedure to adopt.

The Hon. A. F. KNEEBONE: The Hon. Mr. Potter's whole argument was put on the basis of costs. If an appeal goes to the Full Court, to which fresh evidence is to be presented, and, because of this amendment, that court cannot hear the appeal but must refer it to the lower court for a further fresh hearing, and possibly there is another appeal, where does the argument in relation to costs arise?

The Hon. Sir ARTHUR RYMILL: It clearly arises because, first, this is probably what the court would do anyhow and, secondly, it would mean that, instead of a superior court spending all the time involved in taking fresh evidence, the lower court, before which the costs would probably be considerably lower, would spend that time.

The Hon. A. F. KNEEBONE: I submit that the Hon. Mr. Potter's argument goes to pot in relation to costs.

The Committee divided on the amendment:

Ayes (11)—The Hons. M. B. Cameron, Jessie Cooper, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, H. K. Kemp, F. J. Potter (teller), E. K. Russack, Sir Arthur Rymill, V. G. Springett, and C. R. Story.

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

Majority of 7 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 96—"Decision of tribunal to be final."

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

In paragraph *(b)* to strike out "or before a court or tribunal competent at law to exercise powers of the nature of those arising upon a writ of *certiorari* in relation thereto".

In the debate on this clause in another place it was suggested, although no amendment was moved, that the last three lines of paragraph *(b)* of this clause should not be retained. Having received the opinion of the President of the Industrial Court on the matter then raised, the Government agrees that the clause should be amended.

The Hon. F. J. POTTER: I do not oppose the amendment, but it reinforces my earlier statement that apparently the Government intends that there shall be no right of appeal to or review by any superior court concerning the decisions of this Industrial Commission or this Industrial Court. In other words, we are now removing the last possible ground on which the Supreme Court could, by a writ of *certiorari,* review the decisions of these bodies. Apparently, that was what was intended when the status of a Supreme Court judge was conferred upon the President of the court. This confirms what I then thought.

The Hon. R. C. DeGARIS: I am prepared at this stage to vote for the amendment but, when the Bill is recommitted, I shall be looking more deeply at this matter of appeal. The Hon. Mr. Potter mentioned the court achieving the status of the Supreme Court. I raised the matter in passing but now the pattern is emerging clearly that what the Hon. Mr. Potter said is true: that, in any matter that comes before the court, there will be an appeal to the Supreme Court. When we look at what can be an industrial dispute, we see that we are treading on dangerous ground when we reach the stage of there being no appeal whatsoever on any matter from this court to a superior court. I do not want the Committee to think that I favour that position.

Amendment carried; clause as amended passed.

Clause 97—"Right of appeal."

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

In subclause (1) *(a)* after "member" to insert "including an order made by the commission pursuant to section 111 of this Act".

The addition of these words will make it clear that there will be an appeal in respect of the matters under section 111 that are written into industrial agreements.

The Hon. A. F. KNEEBONE: Although the amendment does not really appear to be necessary, there is no objection to it as its purpose is merely to clarify the clause.

Amendment carried; clause as amended passed.

Clause 98 passed.

Clause 99—"Hearing of appeal."

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

In subclause (3) *(d)* after "member" to insert "or to the committee".

This is really only a drafting amendment to clarify what I think was intended. It is a question of who makes the award and who deals with the consideration of the matter. If this amendment is inserted, it will make it clear that the matter may be referred back to the commission or to the committee, as the case may be, either to make an award or to reconsider the matter.

The Hon. A. F. KNEEBONE: It is a drafting amendment, which is acceptable to the Government.

Amendment carried.

The Hon. F. J. POTTER moved:

In subclause (3) *(d) to* strike out "refer it back to the committee".

The Hon. A. F. KNEEBONE: The Government accepts this amendment.

Amendment carried.

The Hon. F. J. POTTER moved:

In subclause (3) *(f)* to strike out "any variation of".

The Hon. Sir ARTHUR RYMILL: The amendments hitherto made would make the clause read "constituted by a single member or committee to make an award for reconsideration". The words "for reconsideration" should also be struck out.

The Hon. F. J. POTTER: I thought I had that matter right. We can discuss it later. My amendment deals with the hearing of an appeal. The power of the commission should not be limited only to fixing a date for which a variation of an award can be made; it must also include the actual making of an award and any variation of that award. My amendment will mean that the power of the court will be clear. It is only a drafting amendment.

The Hon. Sir ARTHUR RYMILL: I have now reread this clause. The amendment is acceptable.

The Hon. A. F. KNEEBONE: Although the amendment is only a drafting amendment, it is unsatisfactory as it stands. There are three cases to be taken care of. First, where a stay of proceedings has been granted or where the date of operation has been appealed against; these cases would be covered by the amendment. However, the amendment would not cover cases where a stay of proceedings has not been granted and the variation of the award is to come into effect from some date other than that originally fixed, nor would it cover a case where the Full Commission makes an award by virtue of subclause 3 *(e)*. Rather than strike out "any variation of", it would be better to insert after "any" the words "award or". Paragraph *(f)* would then read "subject to this Act fix a date as from which any award or variation of any award made by the committee or the commission constituted by a single member shall come into operation".

The Hon. F. J. POTTER: If the Minister so moves, I will withdraw my amendment.

The CHAIRMAN: Does the Minister wish to move in that direction?

The Hon. A. F. KNEEBONE: Yes, Mr. Chairman.

The Hon. F. J. POTTER: Then, Sir, I seek leave to withdraw the amendment.

Leave granted; amendment withdrawn.

The Hon. A. F. KNEEBONE moved:

In subclause (3) *(f)* after "any" to insert "award or".

Amendment carried; clause as amended passed.

Clauses 100 to 103 passed.

Clause 104—"Definitions."

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

To strike out "Full Commission" and insert "court".

In clauses 104, 105 and 106 I have only one amendment to move. Division III, which deals with the Registrar, is a new Division that does not appear in the Industrial Code. Division III, which is an attempt to define "the Registrar", also deals with appeals from his decision. The Registrar of the court is an important officer; his main functions in respect of this legislation are to draw up the terms of an award and also to decide whether he should register a union or an association under the legislation. Both those functions are straightout legal matters and do not involve decisions on matters of industrial policy, which are the prime function of the commission. If the Registrar has not done his job properly in respect of the two functions I have referred to, it is fair that there should be an appeal from his decision. However, as those functions are related to legal matters, I believe the appeal should go to a single judge of the court. In the Commonwealth court, an appeal related to the jurisdiction of the Registrar lies to a single judge. I therefore do not believe it is sensible that the appeal in connection with this provision should lie to the Full Commission.

The Hon. A. F. KNEEBONE: I do not agree. The Industrial Registrar is empowered to determine various matters concerning the registration of associations. The Government considers it is appropriate that appeals against the Registrar's decision should be heard by a Full Commission constituted of two judges and one commissioner. Although normally matters of law are involved in these appeals, it is considered that it would be very helpful for one of the tribunal hearing the appeal to be a commissioner. All of the commissioners have had extensive experience in industry, and this experience would be invaluable in many cases in considering issues that were raised concerning registration and rules of associations. I therefore oppose the amendment.

The Committee divided on the amendment:

Ayes (6)—The Hons. Jessie Cooper, R. C. DeGaris, C. M. Hill, F. J. Potter (teller), E. K. Russack, and C. R. Story.

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

Majority of 4 for the Noes.

Amendment thus negatived; clause passed.

Clauses 105 to 113 passed.

Clause 114—"Application of Act to industrial agreements made under former Acts."

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

To strike out "and" second occurring; and to strike out paragraph *(d)*.

If my amendment is not carried, the legislation will apply and relate to existing three-year-old agreements, which could be adversely affected as a result. I hope the Government will accept the amendment.

The Hon. A. F. KNEEBONE: Yes.

Amendments carried; clause as amended passed.

Clauses 115 and 116 passed.

Clause 117—"Method of dealing with application for registration."

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

In subclause (5) *(a)* after "Commonwealth" to insert "unless it has the consent of that organization".

This is a drafting amendment that makes the matter clear. If it has the consent of the organization it can be registered.

The Hon. A. F. KNEEBONE: The object of this paragraph is to ensure that two associations with identical names, or nearly identical names, are not registered, because members of the public might be deceived or confused by the similarity of the names of two organizations. It seems immaterial whether two organizations agree to have identical or similar names because that would not cause any less confusion in the public mind. A similar type of provision to that contained in the Bill has existed for many years without causing any trouble and there seems to be no reason for this amendment. I therefore oppose the amendment.

Amendment negatived; clause passed.

Clauses 118 to 121 passed.

Clause 122—"Change of rules of associations."

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

In subclause (5) to strike out "as adjourned" and insert "so adjourned".

This is a drafting amendment.

Amendment carried; clause as amended passed.

Clauses 123 to 129 passed.

Clause 130—"Registered association to send yearly financial statement to Registrar."

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

In subclause (1) to strike out "prescribed" and insert "required by the Registrar".

It is almost impossible to prescribe by regulation the information that might be sought; in fact, it is impossible for the Registrar of Companies to do this. It is much better that we should leave it to the Registrar to require what information he wants. I have some hope that this amendment will be acceptable. The purpose of the clause is that a registered association must send yearly financial statements to the Registrar. Those statements are a duly audited balance-sheet of the assets and liabilities and a duly audited statement of the receipts and payments, and the balance-sheet and statements must be in the form and contain such information as is prescribed. I am simply asking that the word "prescribed", which must mean "prescribed by regulation", should be changed to "required by the Registrar". I do not think it is possible to satisfactorily, by means of regulations, prescribe the information required.

The Hon. A. F. KNEEBONE: I am sorry to disappoint the honourable member. We believe there must be some certainty in the information which must be lodged annually with the Industrial Registrar, particularly as there is a penalty for non-compliance with this requirement. Because there is a penalty it seems essential that the requirements which have to be complied with should be contained in the regulations and should not be left to the discretion of the Registrar. I think honourable members would agree that where a penalty is involved we cannot leave to chance what might be required. This is an annual occurrence, so it is easy for it to be covered by the regulations.

The Hon. Sir ARTHUR RYMILL: I must agree with the Minister. I do not see in this the difficulties the Hon. Mr. Potter foresees. I would think the prescribed information would not be anything like the sort of information that companies are prescribed to furnish under the Companies Act. It would be valuable for organizations and associations to know exactly what information they must furnish, and for it not to be left to the whims from time to time of the Registrar, however excellent a person he may be, to say what he wants almost daily, as it were.

Amendment negatived; clause passed.

Clauses 131 to 136 passed.

Clause 137—"Amalgamation of registered associations."

The Hon. A. F. KNEEBONE: I move to insert the following new subclause:

(5) A resolution referred to in subsection (2) of this section shall expressly approve the proposed constitution and rules of the body comprising the amalgamating associations, which constitution shall in its ambit of membership substantially be that of all of the said associations and the said body shall be deemed to have been constituted forthwith upon the

passing of the last resolution as aforesaid of the amalgamating associations.

This amendment concerns another matter that was raised in Committee in another place, but in respect of which no amendment was moved. After obtaining the views of the President of the Industrial Court, the Government agrees that an additional subclause should be added to the present clause 137 to properly give effect to the purpose of the section.

Amendment carried; clause as amended passed.

Clauses 138 to 142 passed.

Clause 143—"Effect of cancellation of registration."

The Hon. R. C. DeGARIS: In considering this clause, one must also look at the whole of Division II and clause 138. Will the Minister say whether the cancellation of the incorporation of an association applies to South Australia only? What would be the position if an association was incorporated in another State?

The Hon. A. F. KNEEBONE: If the honourable member examines clause 133, he will see that it covers the cancellation of registration of an association in the South Australian court. That provision therefore affects incorporations in this State only. This sort of provision is contained in industrial legislation throughout Australia and, therefore, if a registration or incorporation is handled in another State, action will have to be taken in that State.

Clause passed.

Clause 144 passed.

Clause 145—"Certain acts or omissions not torts."

The Hon. R. C. DeGARIS: Although I am willing to continue with this contentious clause, I wonder whether, much progress having been made, the Minister would be willing to report progress now.

The Hon. A. F. KNEEBONE: I remind honourable members that the Government intends Parliament to rise in just over a fortnight and that it is anxious to make as much progress as possible on the Bill. If the Leader is concerned about this clause only, I am willing to defer consideration of it and to proceed with the remaining clauses.

The Hon. R. C. DeGARIS: I am willing to proceed with the clause, the implementation of which will, as I said in the second reading debate, remove from people who have been wronged the right to take civil proceedings for damages. It will also remove the deterrent to those who seek to perpetuate such a wrong. The Bill purports to give redress not by way of action for damages but by the implementation of some of the penal clauses. Honourable members know the attitude of the Labor Party to penal clauses and that the situation could arise soon in which all penal clauses would be removed. A clear indication of this has already been given not only at the State level but also at the Commonwealth level.

If in future the court or commission is ineffective in extracting fines in relation to offences against civil liberties, and individuals, because of clause 145, are denied access to the civil court, I wonder whether we are contemplating a complete return to the law of the jungle, whereby the individual's only way of seeking recourse is by taking matters into his own hands. I realize that the whole matter of tort liability has caused Parliaments around the world to find other means of handling the problem. I have already referred in the second reading debate to the situation in Great Britain, whose approach to the matter I would be willing to consider.

An extremely difficult situation could arise if this clause was left as it stands. It is remarkable that in tort actions the employer has not used recourse to this part of the law anywhere near as frequently as have trade unionists (in other words, the workers) in relation to their problems. Many instances of this could be given. We are told, for example, that the Bill contains no provisions regarding compulsory unionism. However, because of clause 145 the commission could be placed in an invidious position: a strike could be threatened if an employee who was not a member of a union was not dismissed by a company. However, if in the face of certain threats the company involved subsequently dismissed him, the employee could take action because of interference with his own civil liberties. In that case, what would the commission do? The commission would be in a difficult position, for it would have to make a pronouncement supporting compulsory unionism or a pronouncement not supporting compulsory unionism. In those circumstances, it would find itself in an untenable position.

I have not the answer to this problem; neither has this Committee or the Government. However, by this clause we are taking a step that will place the public at a great disadvantage. Under this Bill, any matter can be declared an industrial dispute, and there is no appeal from this jurisdiction to any other court. I do not know that I can find the answer to this problem but at

this stage, with no other solution apparent, I shall be forced to vote against the clause.

The Hon. A. F. KNEEBONE: Although I was not here during the main debate on this matter, both here and in another place, I have read the speeches made and the effective answer given by the Hon. Mr. Banfield to submissions made on this clause. We on this side of the Chamber have industrial experience going back over many years. As the Hon. Mr. Banfield said the other day, the use of this type of procedure was not thought of for about 30 years, until recently. I know it has been used for other purposes, too. I have had experience of handling industrial matters in civil courts, and that experience has not been very good. In my own trade there was an employer who would blatantly disregard the provisions of the award, and it was difficult to keep up with him. He was employing youths as trade apprentices, which was forbidden by the award; he did it about half a dozen times. When the matter was heard in a civil court, all the employer got was a fine of £1 for repeatedly breaking the terms of the award. That may not be quite the same as what we are now considering, but that was my experience and that of the unions in the civil courts.

The Hon. C. R. Story: What was the maximum penalty in that case?

The Hon. A. F. KNEEBONE: I do not know, but that was the amount of the fine imposed. This clause will result in taking a distinctly industrial matter to the court and treating the matter there. For the information of the Hon. Mr. DeGaris, I have been told that the British Industrial Relations Act is a disaster and is not being used at the moment because it is so strongly opposed by the Trades Union Congress. That is what we are talking about now. It has been said that the inclusion of this clause arises from the recent Kangaroo Island dispute, when the action taken in regard to Mr. Dunford brought about a solution to the problem. It did not—it only widened the dispute. If we keep making that sort of process available to people, it will only continue to widen disputes and will bring down the conciliation and arbitration procedure in this State, because people will not want to use it if that is the action to be taken. Instead of preventing strikes and industrial unrest, this sort of action will only serve to increase them. I know the temper of the unions.

The Commonwealth and other Governments have been trying to wage the present Commonwealth election campaign on law and order. They have tried to step up disputes among people in an endeavour not to solve but to prolong them. It will lead to a worsening of industrial relations. We used to boast about South Australia's industrial relations, but that was before this type of action was taken. I know the feelings of people in industry generally and in my own industry, which has always been reasonable in its attitude. No strike has taken place for over 70 years in my industry but, if this sort of action was taken against officials of my union, strikes would take place. I strongly support the clause.

The Hon. R. C. DeGARIS: Talk of using industrial unrest for political purposes by the Commonwealth Government has little to do with this clause. Possibly the first and most important form of tort liability not included in this clause relates to trespass on property or goods. This clause contains a number of areas in which a person can take civil action against an association, an officer of an association or a member of an association. They include death or physical injury (both criminal offences, anyway), physical damage to property and defamation. If this situation exists, what action is available to a person in respect of trespass on his property or building? No action can be taken as far as I can see. I do not know whether the question of a secondary boycott applies in which an association which is not in dispute with an employer but which merely informs the employer that the supply of goods and services to someone else will result in strike action. What action can that person take? There are four areas: death, physical injury, damage to property, or defamation.

If this clause is proceeded with, would nuisance, which sometimes extends to trespass and which contemplates interference with the right of members of the public to use highways, or attempts to block access or egress, be actionable? I think that no action could be taken. I believe that none of us knows where this will lead. Although I appreciate that some attempts should be made to overcome the difficulties that may exist regarding the use of common law, I believe the clause goes beyond what is required. I do not think anyone could predict what would be the outcome of legislation of this kind. Further, the Minister has not answered my main point.

The Hon. A. F. KNEEBONE: Action for trespass can be taken under the Police Offences Act, but the trespass must be proved. I know what happened in the case about which we have been talking. Some people can be

asked reasonably to leave, whereas others are threatened with all kinds of physical action if they do not leave. There are faults on all sides in these disputes.

The Hon. R. C. DeGaris: I realize that.

The Hon. F. J. POTTER: This is one of the most important clauses in the Bill and is an entirely new clause. Its object is to protect an association or an officer of the association acting in such capacity, or a member of the association individually. The clause would have the effect of depriving an individual of going to the Supreme Court or any other court to exercise his civil remedies. The remedies are twofold: for damages suffered as a result of the action taken by the association or the officer of the association, or in the form of an injunction to demand that a certain course of conduct cease on penalty of contempt of court. These civil remedies have existed for hundreds of years and they exist at common law. No fines are involved in these civil proceedings.

These remedies have not been used in *quasi* industrial or industrial matters in this State until recently, although I know that it has always been known that the remedies existed and could be used. I do not know whether they have been used extensively in other jurisdictions, but I do not think they have been used much in Australia. If we pass the clause it will take away from the individual his right to get these types of remedy in this kind of situation, but I do not know how to solve this problem. I do not like removing this jurisdiction because, unfortunately, we do not have much law and order in our industrial sector at present. I do not know that some kind of half-way house could be used. It might be possible in certain circumstances to allow the Industrial Court to grant injunctions and award damages.

I have not suggested that before, because it is not an easy matter to tackle. We have been told we should rely on conciliation (a point strongly put by unions), but we cannot expect conciliation to work in every circumstance, because in some cases it does not achieve the desired result. This is a knotty problem. I see the points on both sides and sympathize with the trade union movement in the dilemma that confronts it, because I know that it is almost impossible to resist a claim seeking damages. The act which has been complained about is an act which directly results in damage. I know that these disputes will arise mainly over preference to unionists or employment of non-union labour. As the Hon. Mr. DeGaris said, they can also arise in connection with secondary boycotts involving people not in the dispute, and they can also arise in connection with demarcation disputes, in which the poor employer is the meat in the sandwich.

Whether he can successfully work out his problem by taking these proceedings is another matter. I am inclined to agree with the Minister that these proceedings do not necessarily solve the problem, but they do somehow seem to bring a speedy end to a situation. Whether or not the complainant gets his damages or his injunction, it is surprising how the use of this age-old remedy seems at least to get some temporary patching up of the situation. On the two or three occasions when the remedy has been used in South Australia, it has not really solved the dispute; there has still been some life in the old volcano. So, the problem is difficult. I do not know that we will solve it by passing this clause and taking away from an individual his civil rights.

The Hon. M. B. CAMERON: I support the views advanced by the Hon. Mr. DeGaris and the Hon. Mr. Potter. A person's civil rights must have first priority. In the Kangaroo Island dispute, the individual involved had some recourse to the courts. Of course, the eventual result was a blanket ban on the entire Kangaroo Island community, but that was a very rare case. Any other individual in the State could have taken the same remedy through the courts without having the same effect on the community; it just happened in the recent case that the Kangaroo Island community was a community that could be isolated by the application of a blanket ban. It seems completely wrong to take away the rights of every individual because of one case.

The Hon. D. H. L. BANFIELD: It was significant that the Hon. Mr. Potter said that industrial relations were not very good. I point out that it was because of the lack of conciliation that the Kangaroo Island dispute became so serious. During that dispute tort action was used for the first time in 70 years. In Queensland there is no provision in this connection for tort action. Further, Great Britain attempted two or three times to overcome this matter, only to find that someone was able to get around it. The Hon. Mr. DeGaris referred to the question of trespass, and the Minister has already said that action can be taken under various Acts to deal with trespass. This Bill deals mainly with conciliation. It is significant that the tort action in the Kangaroo Island dispute was not taken

by a registered association. Registered associations that believe in conciliation do not take tort action, simply because they want to maintain good industrial relations.

One individual may stand out from others in an association and, in spite of the advice given to him, he may want to resort to tort action; such an individual can upset a whole industry. A case has already been referred to where a court could have awarded damages of $100,000 against a union; if that had happened, the union could have gone out of business. Do members opposite believe that there should be no unions, or do they believe that industry benefits considerably from the existence of unions? Surely it is better to deal with a union than with many individuals. If action were taken to break the unions, the employers would find themselves in queer street.

The Hon. F. J. POTTER: The submission made by the Hon. Mr. DeGaris (that the tort liability relating to trespass is removed) is correct. The Police Offences Act provides for the offence of being unlawfully on premises, but that is really the only remedy that would exist, and it is not really applicable in these circumstances; it really relates to a peeping Tom or a person of that kind.

The Hon. R. C. DeGARIS: Throughout this debate I have said that in some ways I understand the union's predicament. A union is concerned about what might happen if a very big organization did not play the game. That union might take action against that organization, which might have contractual obligations interfered with as a result. The organization could then take action against the union for damages of $100,000 or even $1,000,000. I understand the union's fears in that regard, but we must also bear in mind the position of the small man in the community who does not have the protection that he should have in relation to pressure tactics, whether they emanate from a large business organization or from a union. Some of the things that have been done by employers deserve our condemnation, as do some of the things that have been done by trade union secretaries. These two factors are quite important and relevant. Where does the individual, the smaller man who has not got a large association behind him, stand in relation to the law of the land and in relation to action being taken against him that could have extreme ramifications and indeed could bankrupt him overnight? What redress has that person if this clause goes through? I have some sympathy for the position of the union, but I am asking that the Minister and the Government members in this Chamber consider, too, the position of the small person who could find himself completely squeezed by powerful organizations, whether employer or employee organizations.

The Hon. D. H. L. Banfield: But action in the Kangaroo Island dispute was taken against an individual and that small man was going to finish up in gaol.

The Hon. R. C. DeGARIS: That is true. The only way out of that is to incorporate the Trades and Labor Council in this Bill so that action can be taken against the organization.

The Hon. D. H. L. Banfield: I thought you were going to say the Chamber of Manufactures.

The Hon. R. C. DeGARIS: That may be so. The only way in court action is to proceed against a person or an organization, and apparently in the Kangaroo Island case there was only one person against whom action could be taken, and that happened to be the secretary of the union in person. I had a tremendous feeling for the position in which Mr. Woolley was placed. I believe it was quite unfair.

The Hon. M. B. Cameron: His was a test case.

The Hon. D. H. L. Banfield: His was a pressurized case.

The Hon. M. B. Cameron: Nonsense!

The Hon. R. C. DeGARIS: He was pressured. The point is that what we are seeking here is separating people into two massive organizations, yet where does the individual come in? What recourse has he to law to change his position or to right a wrong that has been perpetrated against him, whether it be union against union, employee against employee, employer against employer, or any other combination of the factors involved? We must tread very cautiously when we suddenly remove all these matters from recourse to civil action, although, as I have said, I have some sympathy with the fears of the unions in relation to the large organizations.

The Hon. G. J. GILFILLAN: I have listened to the debate with a good deal of interest. I am somewhat alarmed to hear the Government point of view in that it does not appear to seek to protect the rights of the individual. In the industrial arguments that have taken place over the past three years I do not believe in any case a claim for damages

was made. It was an appeal by a person to the courts to enable him to carry on his business. In the case of the Seven Stars, which I know quite well, some intimidating letters were written in that dispute, and it was an attempt to make employers stand over their employees to become union members. This has been a bone of contention, too, on Kangaroo Island, and this is not the first year it has happened there.

It has happened in previous seasons where other woolgrowers have been involved, but they did not resort to tort action, and this did not solve the problem, either. When this case came up, a number of them grouped together and had the courage to have a go, to see if they could, on a matter of principle, get the right restored to Mr. Woolley to dispose of his clip. We have a most important principle here. There is no thought of a course of action where huge fines should be imposed, but it is a matter of restoring civil rights and liberties, and I believe power should be retained for the person suffering an injustice to go to court and plead his case. Perhaps the matter of fines could be looked into and some limit placed—

The Hon. F. J. Potter: There is no fine involved.

The Hon. G. J. GILFILLAN: I am well aware of this, but this has been expressed by members opposite this afternoon, and we have heard that it could cost a firm $100,000.

The Hon. D. H. L. Banfield: It could, because of the damages.

The Hon. G. J. GILFILLAN: This clause involves a basic right. It is very old law, and the fact that it goes back so far means that it must have been recognized early in history that such a course of action should be available. I most certainly do not support the clause as it stands.

The Hon. R. A. GEDDES: The sincerity of the explanation given by the Hon. Mr. Potter regarding the problems posed by this clause is worth highlighting. In British law the right of appeal of either party has been channelled to a separate court so that both sides may be heard. Has the Government given serious consideration to a similar type of appeal? The Hon. Mr. Potter said he had given thought to it. If the Government is genuine in trying to help one side then surely it should be genuine in considering some right of appeal, some place where the aggrieved person can be heard. This could be written into the Bill to eliminate the problem of tort in civil action, which does not satisfy either party. I agree that, in the two cases before the Supreme Court in recent years, it would appear that satisfaction was not complete. The point has been made more than once that there are two sides to every argument. In the case of the pastoral industry, very often the person wishing to appeal under the law of tort is the small man—and I am leaving aside the Kangaroo Island case. Where will that man go in the future? The answer, presumably, according to clause 145, is that he will have nowhere to go.

The Hon. D. H. L. Banfield: Where did he go before 1970?

The Hon. R. A. GEDDES: I cannot answer that, as the honourable member probably knows full well. In his speech he showed that, in British law, Governments and Parliaments from time immemorial had tried to amend the law of tort, but man was always able to find a way around it, showing that in the British system where justice needed to be done man was able to find a way—

The Hon. D. H. L. Banfield: And where the loophole was found attempts were made to close it on three occasions.

The Hon. R. A. GEDDES: And that took centuries.

The Hon. D. H. L. Banfield: But we are not going to start from the year 1300, surely?

The Hon. R. A. GEDDES: No, but the honourable member asked why nothing had happened before 1970. I cannot answer the question.

The Hon. F. J. Potter: It could have happened. It existed—

The Hon. D. H. L. Banfield: So did good industrial relations.

The Hon. R. A. GEDDES: What will happen from 1972 onwards to the person who believes he has been unjustly treated? Will the Government consider that aspect?

The Hon. A. F. KNEEBONE: I have listened with much interest to the discussion on this matter, which the Hon. Mr. Geddes asked the Government to consider. Having had the Bill redrafted many times, the Government has arrived at the Bill now before honourable members. I know that certain things that have been suggested have been considered, and it was thought that this clause was the best way to deal with the matter. Do honourable members realize that, had it not been for the reasonable people in the trade union movement, who handled the Kangaroo Island dispute with kid gloves (as they were interested in seeing that the matter was settled), that dispute could have developed into a serious one covering the whole State?

Every one of us who attended the conferences that took place then saw the inflammatory nature of the handbills that were distributed to trade unions. I take my hat off to the trade union movement, which acted sensibly in ensuring that it would not fall into the trap of a great conflagration of industrial disputes in this State. Someone asked why this provision had not been used for 70-odd years: it was not used by either side in the industrial field because the men involved were reasonable men.

The Chief Secretary will remember the situation that obtained in the past. Although some people did not agree with the views of certain people on the employers' side, at least those responsible in my time and that of the Chief Secretary were reasonable men. We could talk to those men, who had control of many other people. Action of this type was not taken because they knew it would destroy the good industrial relationships that existed in this State. Had it not been for the good relationship that existed then, many of the industries that came to South Australia during the term of office of Sir Thomas Playford would not have come here. Sir Thomas used to boast about the industrial relationship that existed in this State, and fairly so, because it was only as a result of those good industrial relations that certain industries came here.

An employer makes much more profit if his workers are employed on a good basis. The course of action that has unfolded in the last two or three years will destroy this situation. I would be doing honourable members a disservice if I said they were interested in destroying our good industrial relations, because I know they are not: I think they are misguided in their attitude on this matter, thinking that they are doing the correct thing. It is important to this State that industrial relations should remain as they were prior to 1972 and not continue to deteriorate as they have done recently.

I have been in oversea countries and, although I have not stayed long, I have been able to witness the industrial situations obtaining there. Most honourable members know the set-up in America, for instance, where wage agreements are negotiated by bargaining. Those involved do not go to the courts: they bargain between themselves. In that country, strikes have been commonplace for many years. Indeed, the employees of one of the airlines on which I travelled had been on strike for a month, as a result of which I had to change my booking. I also went to England, where a building strike had been carried on for many weeks. Indeed, it continued while I was there. Did anyone try to take this sort of action? Had they done so, there would have been a general strike in England. The same sort of situation will obtain here if we are not careful. It will be in South Australia's best interests if this clause is allowed to remain in the Bill as it stands. Heaven help us if the reasonableness that has prevailed in the past does not prevail now.

In the past, being behind the scenes, I knew what had to be done to get people together following certain action that was taken. The trade union movement could have said, "Go to hell with it." However, it was only because of the efforts of people in industry, such as the Hon. Mr. Banfield, the Chief Secretary and I, who tried to get a reasonable point of view to prevail, that trouble was averted. If this provision is removed, people will think themselves clever. Although I do not wish to offend my learned friends in this Chamber, I think solicitors will suggest this sort of action to all sorts of people and, if that happens, God help industrial relations in this State.

The Hon. R. A. Geddes: Would this apply to Commonwealth awards?

The Hon. A. F. KNEEBONE: I am talking not about Commonwealth awards but about South Australia, in which I am interested. I am interested in ensuring that our industrial relations are on the same plane as they used to be. I ask honourable members to support the clause.

The Hon. R. C. DeGARIS: I do not think the Minister has grasped the situation. He has referred to the position in Great Britain, where strike after strike has occurred, and to the situation in America, where there have also been many strikes.

The Hon. G. J. Gilfillan: Usually when negotiating an agreement.

The Hon. A. F. Kneebone: It still affects the individual.

The Hon. R. C. DeGARIS: The position is that no civil action has been taken in Great Britain, and none has been taken here, except where the rights of the individual have been infringed. Under this Bill, a black ban will be imposed on a person who, having abided by the law and committed no wrong, considers that a wrong has been perpetrated against him. What will be his avenues for redress? He can only go to conciliation. How long will that take? Is there any guarantee that the conciliation agreement will be abided by, anyway?

What will it cost him in the meantime? It could bankrupt him, yet he has absolutely no redress when a wrong has been perpetrated against him.

Under clause 145 as it now stands, an individual could be completely crushed despite his having committed no wrong. I do not know the answer to this matter, although I wish I did. I believe there is a possible compromise, to which I referred in the second reading debate: before any civil action can be taken, there must be conciliation. However, if it can be shown that no wrong has been committed and that a person has a case for damages, he should be allowed to proceed with his civil action. This approach would assist in the present situation—a statutory provision that conciliation must be entered into. If the court has a right to refer to the Supreme Court for decision any action for compensation against a person, that may be one way out of it, but I do not think it is right to place any individual in a position where a wrong can be perpetrated against him and he has no action for compensation. That would be a wrong principle to adopt. I am sorry to have to vote against the clause, because I understand some of the fears of the trade union movement. Therefore, I ask the Government and the trade union movement to understand, too, that there is also the viewpoint of the small individual in our community.

The Committee divided on the clause:

Ayes (4)—The Hons. D. H. L. Banfield, T. M. Casey, A. F. Kneebone (teller), and A. J. Shard.

Noes (12)—The Hons. M. B. Cameron, Jessie Cooper, R. C. DeGaris (teller), R. A. Geddes, G. J. Gilfillan, C. M. Hill, H. K. Kemp, F. J. Potter, E. K. Russack, Sir Arthur Rymill, V. G. Springett, and C. R. Story.

Majority of 8 for the Noes.

Clause thus negatived.

Progress reported; Committee to sit again.

Later:

New clause 145a.

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

145a. (1) Where the Registrar is satisfied that any preson has, by reason of his religious belief, a genuine conscientious objection to being or becoming a member of a registered association or of paying any fees to a registered association, the Registrar shall, upon payment of the prescribed fee and subject to this section, grant that person a certificate in the prescribed form.

(2) A certificate under this section shall remain in force for a period of twelve months or such lesser period as is specified therein but on the expiration of a certificate under this section, the Registrar may, subject to subsection (1) of this section, grant a further certificate under this section.

(3) Notwithstanding anything in this Act or in any other Act or law, no differentiation shall be made for any purpose between the position of a person who is a member of a registered association and the position of a person who holds a certificate that is in force under this section in relation to that registered association in so far as the fact, that a person is or is not a member of that association, is relevant.

(4) In this section, the prescribed fee means an amount equal to the amount that would be paid by the person, to whom the certificate is to be granted, to the registered association if he were a member of the association in respect of which the certificate is to be granted throughout the period during which the certificate is expressed to be in force.

I have not devised a marginal note, but I assume that that will be done later. This clause deals with the difficult question of conscientious objection that some people in our community genuinely have on religious grounds to becoming a member of a union or an association or of paying fees to a union or an association. No doubt all honourable members have received certain requests from people recently about this matter. As there is provision in the Commonwealth Act in a somewhat clumsily worded lengthy section dealing with this matter, I think it is only fair and right that the few hundred people in South Australia who genuinely have this conscientious objection on religious grounds should be protected. I have made three attempts to draw a satisfactory clause that would be all-embracing. The Minister has an amendment to add a fifth subclause, which I have read and to which I do not object. It seems to me to be a matter entirely within the province of the Government into what account it should pay these moneys. The new clause satisfactorily deals with the situation and takes some of the sting out of the difficult problem of preference in employment to unionists.

The Hon. A. F. KNEEBONE: Although I accept the amendment, it does not say where the money shall be paid, so I have devised an amendment to cover that situation. No doubt all honourable members received letters from conscientious objectors that quoted various sections of the Bible, and it is interesting to see the interpretation that some people put on the scriptures. Today someone said to me, "What about the unionist who has a conscientious objection to working with a non-unionist? Is he a conscientious objector?"

The Hon. D. H. L. BANFIELD: The amendment is nothing new to the trade union movement, because, for many years, people who have had genuine conscientious objection to

becoming members of unions have been able to negotiate with the trade union movement. My own organization has granted exemptions to such people, who are not anti-unionists as such nor are they trying to evade payment of a union fee. The trade union movement does not object to such people being exempted, provided that they pay a sum equal to the union fee into a designated fund.

The Hon. V. G. SPRINGETT: No-one has greater respect than I for the Adelaide Children's Hospital, although some people have said harsh things about it. Should not conscientious objectors be able to nominate their own charity instead of being forced to pay to a designated charity against their will? People can have objections on grounds other than religious. Even an atheist may have a conscience, and such a person should be borne in mind.

The Hon. A. F. KNEEBONE: These sums of money are paid into court and then become Government property. It is a Government that makes the donation. As I have an amendment to the Hon. Mr. Potter's amendment, how should I handle it, Mr. Chairman?

The CHAIRMAN: The Minister wishes to amend the Hon. Mr. Potter's amendment?

The Hon. A. F. KNEEBONE: That is so.

The CHAIRMAN: It is an addition, a new subclause. Is the Minister objecting to the Hon. Mr. Potter's amendment going before his own?

The Hon. A. F. KNEEBONE: No.

The CHAIRMAN: That is what I want to get clear. The discussion was revolving around the Minister's amendment, and not around that of the Hon. Mr. Potter.

The Hon. JESSIE COOPER: I have an objection to the second line of the Hon. Mr. Potter's amendment, and my objection falls in line with the views of the Hon. Mr. Springett. Why should a man not join a union only because he has a conscientious objection by reason of his religious belief? I can support the Hon. Mr. Potter's amendment only if he deletes the words, "where the Registrar is satisfied that no person has, by reason of his religious belief, genuine objection". Why cannot it just be, "is satisfied that any person has a genuine conscientious objection"?

The Hon. F. J. POTTER: I considered this point. It does create a good deal of difficulty. It means there is no guideline laid down for the Registrar to determine what is a conscientious belief. I have no doubt some people have conscientious objections to becoming members of unions.

The Hon. Jessie Cooper: What about humanists?

The Hon. F. J. POTTER: I do not know about the humanists. We will get into a most difficult field where the Registrar has nothing to guide him as to what is a conscientious belief except, perhaps, the statement of the individual. Like the clauses which provide for exemption on conscientious grounds from national service, the grounds must be based on religious belief in order to succeed. That is the expression used in the Commonwealth Arbitration Act. No doubt there are other cases, but it would raise great difficulty for the Registrar on the question of establishing what is a conscientious objection on any grounds other than the stated ground of religious belief. I am not unsympathetic to the viewpoint expressed by the Hon. Mrs. Cooper, but it would be most difficult to try to leave it open.

The Hon. R. C. DeGARIS: We are getting into some rather strange areas. We have been assured throughout the debate on this Bill that this measure does not contain anything in relation to compulsory unionism, and yet we have this clause which says that the Registrar must be satisfied about certain things, but then there is a way out. Surely this is an indication that the only way out of compulsory unionism is a religious belief about being compelled to join a union. This rather contradicts the concept we have had put before us.

The Hon. A. J. Shard: It overcomes the preference clause.

The Hon. R. C. DeGARIS: I do not know that it does.

The Hon. A. J. Shard: It qualifies the matter. If he is a conscientious objector he meets the union on equal ground. That is what is does.

The Hon. A. F. Kneebone: The preference clause is only by discretion of the court.

The Hon. R. C. DeGARIS: It appears strange that the Chief Secretary says it overcomes the preference clause. I totally agree with the views of the Hon. Mrs. Cooper. Why should the objection have to be a religious objection? On the question of conscientious objection to national service, religious objection is only one of the objections. A person with no religious belief at all could have a conscientious objection. That is supported very strongly by the Labor Party in relation to national service. We are dealing with the question of compulsory unionism and preference to unionists. I cannot see any way in which this clause upholds the principles we have been assured are contained in this Bill. I have an amendment coming after this clause which I think

meets the situation much more satisfactorily. I cannot vote for this clause as it stands.

The Hon. C. R. STORY: I served in a unit during the war in which were two persons who were conscientious objectors. They did not get out of Australia. They served in various ways. They were not conscientious objectors in the way most people accept the term. These two people were humanists, and completely agnostic. I do not think we should pin this down to the ground of religion. It is a matter of conscientious objection, and that may not have anything to do with religion, but something to do with the person himself. It is left to the court to decide whether the person has a genuine conscientious objection to being a member of a union.

The Hon. F. J. Potter: He would have to justify it.

The Hon. C. R. STORY: He would have to justify it very strongly. If it is confined completely to religious grounds a number of people will be involved in it. I know of some religions which possibly would be able to convince the court quite conclusively that this was objectionable.

The Hon. M. B. Cameron: He might be a member of the Civil Liberties Group.

The Hon. C. R. STORY: He might be, but I rather doubt it because he would then be a progressive Liberal. Conscientious objection should not be restricted to religious grounds. It is far wider than that.

The Hon. F. J. POTTER: I have looked at the proposed amendment of the Hon. Mr. DeGaris, and I do not think the two amendments are necessarily inconsistent. His amendment deals with a slightly different subject, the direct question of compulsory unionism, making it clear that the Bill does not in any way impose any form of compulsory unionism on a person and that no preference or differentiation in other circumstances is to apply to any person who is not a member of a union. My amendment is restricted to this matter of conscientious objection on religious grounds. I do not see how the Committee would be inconsistent in voting for my amendment and that of the Leader of the Opposition. Mine deals specifically with the problem of a man who has a conscientious objection either of becoming a member of a union or of having anything to do with unions. True, he could be prejudiced in the matter of employment in that, if some provision is not made for such a person, he could suffer because he would not obtain the preference in employment that unionists would obtain.

I agree with the Leader that the provision regarding the payment of union dues comes closer to compulsory unionism than the mere matter of preference. However, despite the arguments one hears from time to time, a thin line divides the two. Honourable members have heard earlier the argument about the people who, because they have a conscientious objection to working with a non-unionist, may take certain action. That aspect is the closest thing to requiring compulsory unionism that I can visualize. It is important that the amendments concerning conscientious objection on religious grounds should be proceeded with. I do not see any great inconsistency between the Leader's amendment and my amendment.

The Hon. R. C. DeGARIS: It appears that there is some inconsistency between my amendment and the Hon. Mr. Potter's amendment, as the latter seems at least to pay some lip service to the concept of compulsory unionism. This worries me in connection with my amendment.

Amendment carried.

The Hon. A. F. KNEEBONE moved to insert the following new subclause:

(5) The Registrar shall, from time to time, pay to the Honorary Treasurer of The Adelaide Children's Hospital Incorporated for the purposes of that hospital, amounts equal to the amounts from time to time received by him in respect of the prescribed fees under this section and the receipt of the Honorary Treasurer shall be a full and sufficient discharge to the Registrar in respect of the amounts so paid.

The Hon. V. G. SPRINGETT: Although I have much respect for the Adelaide Children's Hospital and the work it does, not everyone shares that respect. It seems wrong that the Government should take a subscription from the worker and, willy-nilly, pay it to that hospital or any other organization of its choice. This money is being obtained from the worker, who should have the right to say to which charity it should go.

Amendment carried; new clause as amended passed.

Clause 146—"Industrial Gazette."

The Hon. R. C. DeGARIS: Does the Government expect the *Industrial Gazette* to have the same coverage as the existing *Government Gazette?* It has been suggested that the former may have a more limited circulation, so that the matters appearing therein will not be as widely known as those appearing in the *Government Gazette.*

The Hon. A. F. KNEEBONE: The Chief Secretary answered this question most effectively in closing the second reading debate, when he said:

Although it is not an important matter, I think I should refer to the comment that the Hon. Mr. DeGaris made, that there was no requirement in the Bill for decisions of the court or the commission to be published in the *Gazette.* There is no such requirement at present: the Industrial Code requires publication of awards in the *Gazette,* and this is continued by the Bill. Provision is made for the possible publication of an *Industrial Gazette* because in a year about 30 per cent of the pages in a *Government Gazette* are awards. About 2,000 copies of the *Gazette* are printed each week, but a survey made since the present Industrial Code was enacted indicated that only about 300 subscribers are interested in awards. If savings in costs of printing can be achieved by printing a separate *Industrial Gazette,* the Bill will enable it to be done—

it is saying not that it is going to be done but that it will enable it to be done—

South Australia is the only State in which awards are published in the *Government Gazette:* New South Wales, Western Australia and Queensland each publish separate *Industrial Gazettes,* while in the other two States they are printed in loose form only.

The Hon. R. C. DeGARIS: I thank the Minister for that information. I had overlooked the fact that the Chief Secretary had replied to the second reading debate.

Clause passed.

New clause 146a—"Compulsory unionism, etc."

The Hon. R. C. DeGARIS: I move to insert the following new clause:

146a. (1) Notwithstanding anything in this Act, no award or order shall be construed as imposing, directly or indirectly, any requirement or obligation on any person to become or remain a member of an association or to apply for membership of any association and any such purported requirement or obligation shall be void and of no effect.

(2) Subject to subsection (1) of this section and section 158 of this Act, an award shall only provide for preference in employment to members of a registered association of employees in circumstances where and to the extent that all factors relevant to the employment of such members and the other person or persons affected or likely to be affected by the award or order are otherwise equal.

I refer now to several awards—first, the Pastoral Award, which contains the phrase "other things being equal". Clause 42 of the Clothing Trades and Dry Cleaning Award provides:

As between members of the Clothing and Allied Trades Union of Australia and other persons offering or desiring service or employment at the same time, preference shall be given to such members at the time of engagement or retrenchment, other relevant things being equal.

Clause 19 of the Pipe (Reinforced Concrete) Making Award provides:

Preference of employment shall be given to financial members of the Australian Workers' Union, other things being equal.

This is a fair provision. One could talk about the rural areas and the situation on Kangaroo Island. There are isolated areas like Kangaroo Island. I have known itinerant workers, some good and some bad, working in shearing sheds, and on small properties the shearers live in the house of the property owner. When workers are living with an employer in his house for some time, other things must be equal in relation to employment. Some people find it difficult to fit into that type of situation. I have found on occasion that I could not employ people because of the difficulty of having them in the house with me. For that reason this new clause is necessary.

Clause 29 (1) *(c)* empowers the commission by award to authorize that preference in employment shall, in relation to such matters, in such manner and subject to such conditions as are specified in the award, be given to members of a registered association of employees. The above prescription follows closely the wording of section 47 *(l)* of the Commonwealth Act, which has as a general rule refrained from granting preference to unionists unless it is shown that the employers in any particular industry have discriminated against them in the selection of employees. The courts have taken the view that they are reluctant to interfere with the employer's freedom of choice in selecting his employees, but where the freedom of choice was abused the court would check the abuse by all means in its power. In circumstances where an employer refused to give an undertaking against discrimination, the court would make an order for preference if the union proved a clear case of unfair treatment. What is being put before the Committee is that the term "preference to unionists" must be seen and be prescribed for in such a way that it applies with equal force to an employer's entitlement to insist upon his preference as to a union's right to insist upon employment of members of any specific union. I have already given examples of where I think it is reasonable to expect that relevant things should be equal in the granting of preference to unionists. We must distinguish carefully between preference to unionists and compulsory unionism. It is a very fine line that divides those two, and this new clause is necessary so that we can easily distinguish where that line lies.

The Hon. A. F. KNEEBONE: I was interested to hear the Leader say (I hope I did not misunderstand him) that he could not employ some people because he would have to have them in the house with him. I hope he did not mean that he could not sit down with a trade unionist.

The Hon. R. C. DeGaris: Not at all.

The Hon. A. F. KNEEBONE: I have been mixed up with trade unionists, and I have sat down with employers on many occasions.

The Hon. R. C. DeGaris: That is a wrong construction. There are some people with whom it is difficult to sit down.

The Hon. A. F. KNEEBONE: I know some fine unionists, but there are many anti-unionists I would not sit down with.

The Hon. R. C. DeGaris: I agree with that.

The Hon. A. F. KNEEBONE: Then again I have known people, who have had a conscious objection to unionists, with whom I would be expected to fraternize. I accept the Leader's assurance that he did not mean what I thought he meant. There does not appear to be any reason for a new clause of this kind to be inserted. By clause 29, the Industrial Commission is authorized to provide in an award that preference in employment shall be given to members of a registered trade union, in relation to those matters that are set out in the award, in the manner of and subject to those conditions that are also set out in the award.

What the amendment seeks to do is include in the Act details of a matter that the Bill leaves to the discretion of the Industrial Commission in each award, having regard to the circumstances of the industry concerned. Earlier this session, a Bill was laid aside because it included details of industrial matters that the Opposition considered should be left to the Industrial Commission to determine. Now that the Government is leaving the Industrial Commission the authority to include conditions in an award, we have an amendment seeking to spell out in the legislation matters that can well be left to the Industrial Commission to determine. I repeat that clause 29 (1) *(c)* authorizes the commission to specify the manner in which preference in employment can be granted to members of trade unions and the conditions that are to apply to that preference.

The Hon. G. J. GILFILLAN: I support the new clause. I am sure the Minister misconstrued what the Leader said. Many small employers are in close contact with their employees, and they are often good friends, especially in shearing sheds, delicatessens, roadhouses, etc.

The Hon. A. F. Kneebone: There's nothing wrong with employers associating with unionists.

The Hon. G. J. GILFILLAN: That is not the point. Freedom of choice should be allowed. Too much accent is placed on whether a person is a union member. This is not a true industrial matter but only a condition of employment. Surely there is still sufficient freedom in this country to enable both the employer and employee some latitude in employment.

The Hon. R. C. DeGARIS: I think the Minister misunderstood my point. In the Kangaroo Island dispute, the trade union secretary said, "I will have two union shearers here for you tomorrow." That is taking away the right of the employer in a delicate situation to choose the people he will employ. If the employee is living in the house with the employer and his family—

The Hon. D. H. L. Banfield: They weren't doing that in the Kangaroo Island dispute.

The Hon. R. C. DeGARIS: I do not know whether or not they were.

The Hon. D. H. L. Banfield: I'm telling you they were not.

The Hon. R. C. DeGARIS: If itinerant labour had to be employed, they would have had to live in the house with the husband and wife because that was the only accommodation.

The Hon. R. A. Geddes: Not only on Kangaroo Island.

The Hon. R. C. DeGARIS: No. I am not speaking against trade unionists, but I am saying that the employer may have been forced to accept two people in his employ who might not have been able to fit satisfactorily into that environment. Every honourable member knows the kind of thing I am referring to: in this situation, there is no right of the employer to choose his labour.

The Hon. A. F. Kneebone: He hasn't that right when he employs a contractor.

The Hon. C. R. Story: But the contractor arranges his own accommodation.

The Hon. R. C. DeGARIS: Yes. The group must exist as a family for three or four weeks, and all things are not equal in that situation. I and other honourable members have had personal experience of this matter. It is a difficult situation where the employer's home is the centre of activities for four or five weeks. Surely there must be trade unionists and employers whom the Minister would not want in his own home for four or five

weeks. A similar provision is contained in several awards. I ask the Committee to support my amendment.

The Committee divided on the new clause:

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

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

Majority of 6 for the Ayes.

New clause thus inserted.

Clauses 147 to 153 passed.

Clause 154—"Employees to be paid in money."

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

In subclause (1) to strike out "remuneration" first occurring and insert "wages or other payments".

The term "wages or other payments" is used in section 89 of the Industrial Code. The word "remuneration", a new word, has been included in the Bill to try to bring the concepts together, but it raises problems, because one could ask: what is meant by remuneration, and could a travelling allowance be called remuneration? For those reasons I believe that the term "wages or other payments" is clearer.

The Hon. A. F. KNEEBONE: I accept the amendment.

Amendment carried.

The Hon. F. J. POTTER moved:

In subclause (1) to strike out "remuneration" second occurring and insert "wages or other payments".

Amendment carried; clause as amended passed.

Clause 155 passed.

Clause 156—"Penalties."

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

After "fine" first occurring to insert "or part thereof".

This amendment will put the clause into substantially the same form as that of the provision already existing. I do not think it is right that a registered association should be entitled to get, by statutory right, the whole of a fine imposed on an employer if proceedings are taken by that association. The present measure provides that a part of the fine may be paid towards the costs of the union in the proceedings if the court feels so inclined; that is really as far as it ought to go. It is wrong in principle that a complainant should be automatically entitled to the whole of the fine imposed; it might be provocative of unnecessary litigation.

The Hon. A. F. KNEEBONE: The Government's view is that, if it is necessary for a trade union official to have to lay a complaint against an employer for breach of an award, any penalty incurred by that employer should be used towards recompensing the union for the cost it has incurred in the action. Really, all that the union official has been doing is ensuring that the law is complied with. It does not appear unreasonable that, if a court finds that the defendant has in fact been breaching the law, the person who has taken the time and trouble to rectify the wrong should have his expenses paid in part at least. I therefore oppose the amendment.

The Hon. F. J. POTTER: What the Minister has said is not unreasonable depends on the fine imposed. If a fairly substantial fine is imposed, the union will make a profit out of the deal.

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

The Hon. F. J. POTTER: It depends on the circumstances of the case. While some cases involve much time and trouble, others are very simple. So, while in some circumstances the fine might not be adequate, in other circumstances the fine would be nothing more than a profit for the union. This matter ought therefore to be left with the court.

The Hon. R. C. DeGARIS: I strongly support the views of the Hon. Mr. Potter. When I looked at this clause, I thought that it could be called the "dobber's clause". It is reasonable that a fine or a part thereof should be made available; if the costs are high, perhaps the total fine should go to the complainant. However, it should be left to the court in its discretion to decide what is fair. If we are to adopt a principle, that principle must be followed throughout. We are following the same principle here as the principle we followed in the previous clause. We have laid down guidelines for the court, and the court will make its decision on the basis of those guidelines.

The Committee divided on the amendment:

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

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

Majority of 6 for the Ayes.

Amendment thus carried.

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

To strike out "shall" first occurring and insert "may, in the discretion of the Court"; and to insert after "association" second occurring "to be applied in or towards the payment of the costs of the proceedings".

These two amendments are consequential.

Amendments carried; clause as amended passed.

Clause 157—"Employee not to be dismissed for taking part in industrial proceedings."

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

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

The clause deals with the reasons why an employee may not be dismissed, and those reasons are for taking part in industrial proceedings of one sort or another. This provision that the employee cannot be dismissed because of being involved in an industrial dispute did not apply previously; it is new. Even if he is out on an unlawful strike he cannot be dismissed. The provision should not be there, and I move for its deletion.

The Hon. A. F. KNEEBONE: I always thought the Hon. Mr. Potter was reasonable in these matters. It is absolutely amazing that anyone should attempt to defend an employer who dismisses one of his employees because that employee takes part or is involved in an industrial dispute. While this sort of attitude could have been understood 100 years ago it is inconceivable that it should still persist. Surely an employee is entitled to some protection and should not run the risk of losing his job just because he is involved in some way in a dispute. I ask the Committee not to vote for the amendment.

The Hon. R. C. DeGARIS: I am concerned about this matter, as no doubt is the Minister. Clause 157 deals with the question that an employee cannot be dismissed. As I understand it, a person can be dismissed for taking part in a lawful industrial dispute which it is quite legitimate for him to be involved in. I would like the view of the Hon. Mr. Potter on that set of circumstances.

The Hon. F. J. POTTER: The clause deals with the circumstances under which a person cannot be dismissed. If an employee is taking part in an industrial dispute, which may be of a protracted nature, the employer, for the whole of this time, has no remedy to dismiss the man on this ground. If the employee is unlawfully taking part in an unauthorized strike, or a strike contrary to the provisions of the Act, then again he cannot be dismissed. He must be kept on the pay-roll, and for that reason alone no proceedings can be taken against him. This provision in the Bill is new and it would stultify the employer in any attempt to take action. He could not exercise his lawful rights which he might normally exercise against an employee engaging in an unlawful activity. That is the simplest explanation I can give.

The Hon. R. C. DeGARIS: The deletion of this clause does not necessarily do just that. If the clause resulted in what the Hon. Mr. Potter believes could be an injustice I would probably be on his side. As I see it, by deleting this an employee can be dismissed purely for being involved in an industrial dispute that might be completely justified. That is the point that concerns me.

The Hon. A. J. Shard: If they did dismiss him they would not settle the dispute.

The Hon. R. C. DeGARIS: That is hardly a conciliatory statement.

The Hon. A. J. Shard: It is a fact.

The Hon. R. C. DeGARIS: That may be so, but we are dealing with a Bill relating to conciliation. At this stage I will have to vote against the Hon. Mr. Potter's amendment, but there is some ground for rethinking an amendment along the lines he is concerned about.

Amendment negatived.

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

In subclause (4) to strike out "damages and".

This concerns the matter of a prosecution, and the awarding of damages has no place whatsoever in a prosecution, in my submission. If the man has been wrongfully dismissed and the proceedings are brought to court for conviction for that offence, then the court could award a penalty. Under earlier sections in the Act, a man can be ordered to be restored to his old job and he can receive all the money he has lost.

The Hon. D. H. L. Banfield: It doesn't say that here, though.

The Hon. F. J. POTTER: It does not have to be stated. It is in section 15.

The Hon. A. F. Kneebone: Isn't that part of the damages?

The Hon. F. J. POTTER: No, because section 15 provides that, if a man is dismissed from his employment, he can be reinstated on terms not less favourable than those applying to him before he was dismissed, and the court may order certain sums to be paid, and so on.

The Hon. A. F. Kneebone: Why are you cutting it out here, because they are the damages?

The Hon. F. J. POTTER: I do not think it is limited to that and I do not know what his damages would be, other than the wages he would have received.

The Hon. A. F. Kneebone: It has to be proved that there are damages.

The Hon. F. J. POTTER: I know, and I was saying that it is inappropriate in a prosecution to award damages. That is a civil remedy, not one that arises in a prosecution for a breach of an award. If this provision is deleted, there will be nothing to prevent a person from getting his back pay.

The Hon. A. F. KNEEBONE: Section 90 (4) of the Code provides that if the defendant is convicted, the dismissal shall be deemed to be a wrongful dismissal, and the special magistrate may, in addition to any penalty for the offence, award such sum as he deems proper by way of damages and costs, which sum may be recovered in the same way as a penalty imposed for an offence against the Code. Therefore, the provision is not new. It is at present in the Code and, indeed, has been there since it was promulgated. I therefore see no reason why we should delete it now. I ask the Committee not to support the amendment.

Amendment negatived; clause passed.

Clauses 158 to 161 passed.

Clause 162—"Notice by employers."

The Hon. R. C. DeGARIS: This clause provides that every employer shall, on request, make available to employees a copy of the Code and of the Workmen's Compensation Act. Usually, copies of awards that are binding on employers and employees are supplied. However, to require employers to supply to employees a copy of the Code and of the Workmen's Compensation Act seems strange and, indeed, almost to be an attempt to make the Government Printing Department pay.

The Hon. A. J. Shard: It is only for the purposes of inspection.

The Hon. R. C. DeGARIS: Despite that, it is strange that every employer should have to do so.

The Hon. A. J. Shard: Every employer would in his own interests have copies.

The Hon. A. F. KNEEBONE: Having deliberated on this matter, the Government has decided to include in the Bill conditions of employment. An award also exists, in which there are conditions of employment. Both these should be made available to the people concerned. This is the reason for requiring that copies of the Code and of the Workmen's Compensation Act, the provisions of which are of interest to everyone, should be supplied, not just to employees but to supervisors, and so on. I cannot see anything wrong with this provision and, indeed, it is not a snide move on the Government's part to make the Government Printing Department pay.

The Hon. G. J. GILFILLAN: It is to the advantage not only of the employers but also the employees for copies of legislation to be available. It is not only the employer who misuses his employees: often I have seen industrial trouble start because the employees have not known their rights.

The Hon. A. F. Kneebone: Because of a misunderstanding.

The Hon. G. J. GILFILLAN: That is so. The problem is created not by the employer but by the people outside. I therefore request that in the administration of this legislation consideration be given to the aspect that human nature is not infallible and that many employers will not be able to keep up with all the amendments that are carried.

Clause passed.

Clauses 163 and 164 passed.

Clause 165—"Contempt by witness."

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

In subclause (3) after "determined" to insert "summarily or".

This is a drafting amendment to bring the provision in line with the section in the Code. It is necessary to have those words; otherwise, the Industrial Court has to look for its powers within the court, and summarily it gets power under the Justices Act. For instance, the Industrial Magistrate can use his powers under the Justices Act. Under the terms of the definition, he is also a special magistrate appointed under the provisions of the Justices Act. These words must be inserted so that he can use the summary powers that a magistrate has.

The Hon. A. F. KNEEBONE: The Government intends that proceedings for contempt of the court shall be determined by the Industrial Court. This is consistent with its attitude that industrial matters should be determined before the Industrial Court and not in the civil courts.

Amendment negatived; clause passed.

Clause 166 passed.

Clause 167—"Punishment for contempt of Court or Commission."

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

In subclause (2) after "determined" to insert "summarily or".

I do not think the Minister understands what I am trying to do here. When one sits as a court, one has to find what one's powers are within the court. If there is no definition of what one's powers are, one does not know what penalties one can impose, whereas, if

one deals with a matter summarily, the summary jurisdiction provisions apply.

The Hon. A. F. KNEEBONE: If we agree to this amendment, we are providing an opportunity for a matter being taken from the Industrial Court to a civil court, which the Government does not want to happen. We are consistent in opposing this amendment.

Amendment negatived.

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

In subclause (2), after "Court" second and third occurring, to strike out "or Commission".

This clause deals with punishment for contempt of court. I do not like the provision; it is wrong that any commissioner should have power forthwith to convict and impose a penalty on a person who he thinks is guilty of contempt of himself. This amendment will have the effect that, if the contempt occurs in the presence of the court, the court can deal with it there and then; but, if the contempt is of a commissioner, the commissioner must report the matter to the court, which will impose the necessary fine for the contempt if it is satisfied that contempt has occurred. What is a contempt of court is a matter for the court, and not lay people on the commission, to decide.

The Hon. A. F. KNEEBONE: If a person commits contempt of the Industrial Commission when appearing before a single commissioner, it seems perfectly reasonable that the commissioner concerned should be able to deal with the contempt rather than having to refer the matter to another tribunal. I oppose this amendment.

The Committee divided on the amendment:

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

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

Majority of 6 for the Ayes.

Amendment thus carried; clause as amended passed.

Remaining clauses (168 to 177), schedule and title passed.

Bill reported with amendments.

The Hon. R. C. DeGARIS moved:

That the Bill be recommitted for the reconsideration of all clauses.

The Hon. A. J. SHARD (Chief Secretary): When the Bill is recommitted, could we know the clauses with which we shall deal again?

The Hon. R. C. DeGARIS (Leader of the Opposition): Until we study the Bill we do not know what clauses have been affected by the amendments that have been made.

Motion carried.

LAND AND BUSINESS AGENTS BILL

Adjourned debate on second reading.

(Continued from November 2. Page 2671.)

The Hon. E. K. RUSSACK (Midland): The land broking system in South Australia has worked well for 111 years. It is efficient, and it operates at low cost for those dealing in property, particularly for those buying their own homes. No known charge of malpractice has ever been made against a practising land broker during that period. It has been the common practice in the past for a purchaser to have a person of his own choice handling a transaction on his behalf, and frequently the purchaser nominates a land broker who is not employed by a land agent and sometimes the purchaser nominates an independent solicitor. The present system allows this freedom of choice, but the Bill will destroy it. The fact that some land brokers are employed by land agents keeps the transaction within one business office, and the transaction is therefore completed swiftly, efficiently, conveniently and at very low cost.

The land broker operates under the requirements of his separate licence, and he is bound to carry out his obligations under the terms of the contract and in accordance with the Real Property Act and other legislation; he is under a monetary bond to do that. Every land broker is licensed by the Government only after passing a rigid examination. Further, every land broker, whether employed by a land agent or practising independently, is personally responsible for his actions under sections 232 and 272 of the Real Property Act, and he is bonded under that Act.

The integrity of the licensed land broker in South Australia since 1861 has been in accordance with the highest standards of professional service. The Real Estate Institute of South Australia is unaware of any malpractice by a land broker in the last 111 years. I therefore find it hard to believe that the reported recommendation to the Attorney-General from the Land Agents Board can be supported by evidence. I believe that no valid reason has been advanced for an alteration to the present practice.

The Hon. R. C. DeGaris: There are probably valid reasons why the present practice should continue.

The Hon. E. K. RUSSACK: Yes, and I shall be advancing some of those reasons. In all the other States, real property documentation work is done by solicitors. Sometimes the vendor appoints a solicitor and the purchaser appoints a different solicitor, but in many cases one solicitor acts for both parties; in other States, conveyancing costs are between four and five times higher than in South Australia for a home of average price, and they are up to 25 times higher for a property worth $100,000. In other States, delays and inconvenience are experienced that are not experienced in South Australia under the present system. For a property valued at $12,000 with a mortgage of $8,000, the total fee for the completion of the necessary documents in New South Wales is $404; in Victoria it is $304; and in South Australia it is between $50 and $60. For a property worth $100,000 with a mortgage of $50,000, the fee for the completion of the necessary documents in New South Wales is $1,463; in Victoria it is $1,083; and in South Australia it is between $50 and $60.

The South Australian system is the finest in the world, and it has been practised efficiently and at low cost for over a century. So, there is no adequate reason for it to be changed; in fact, any change would be a retrograde step and would result in less efficiency, more delays and higher costs for the general public. A petition signed by about 30,000 people was recently presented asking that the present conveyancing procedure be retained. Young people who are saving to buy a home would be the type of people most affected by this Bill. The South Australian method of documentation and settlement is the envy of people in other States of Australia and in other countries. The South Australian Government employs land brokers in the Crown Solicitor's Office, the Housing Trust and other institutions, such as the State Bank. Further, land brokers are widely employed by private banks, building societies and other institutions. Can the Chief Secretary say whether it will be the Government's policy to discontinue the services of such people?

As I understand the Bill, three classes of people will be affected. The first is the person licensed as a land agent and land broker and operating his own business. If this measure passes, he will be unable to continue in the dual capacity; he must choose one or the other. Secondly, there is a partnership where one partner is licensed as a land agent and the other as a land broker. That partnership will have to be dissolved and a choice made as to whether the licensed broker will go into business on his own account. Then we find the position of a company where a broker is employed. If he was employed prior to September 1, 1972, he may be retained (if he is not a director of the company or has no official capacity in its management) until his services terminate with the company. He cannot be employed by any other company in this capacity, nor can that company employ another broker. That is final.

This is why I would like to know whether brokers will continue to be employed in Government departments when those presently serving have their services terminated. Will more brokers be employed in the Crown Solicitor's Office, the South Australian Housing Trust, the State Bank, and so on? Many people are concerned about this measure because their livelihood will be taken from them. I do not say this lightly. It is possible that some people operating in the country may have to cease business entirely and seek alternative employment. Clerks, typists, and other people will find their employment terminated because there will be insufficient business for their services to be retained. That is a fact. Many letters have been quoted, but I should like to mention one originating from a partnership in which one man is a land agent and the other a land broker. Should this Bill become law, these two people will have to dissolve their partnership and endeavour to find other ways of earning a living.

The Hon. D. H. L. Banfield: Why would they have to do that?

The Hon. E. K. RUSSACK: Simply because they can acquire sufficient business in the partnership, but I have heard the views of some brokers who are acting in this dual capacity. One told me that 20 per cent of his business is concerned with brokerage and the rest is shared between work as a land agent, accountancy and other types of agency. Another man, operating in the fringe metropolitan area, told me that his business would be cut in half and his income would be reduced to near the minimum wage. He mentioned the basic wage. That is why these people will have to seek other employment.

The Hon. D. H. L. Banfield: Why couldn't he take business from other firms?

The Hon. E. K. RUSSACK: Take the person operating in the country—

The Hon. D. H. L. Banfield: No, this man, the partnership you said was broken up.

The Hon. C. R. Story: He cannot get any more sales in a country town than he would have been getting in the past.

The Hon. E. K. RUSSACK: The letter states:

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.

This section also denies the public their freedom of choice and as we are not a large organization and therefore have not employed a land broker we will now lose a large proportion of our business that has taken a long time to establish. In view of the facts outlined above, you will readily see the disastrous situation that will be created by this section, which is absolutely unnecessary for the public's protection and appears to be completely against their wishes.

Apart from the matter of losing business, a principle is involved here. Why should people suddenly have their business taken from them, through no illegal practice or malpractice of any kind, when they have carried on business in a legal manner, in a proper manner, and been of assistance to the public? Why should this happen to these people? Many country land agents and land brokers, as well as some in Adelaide, would have their livelihood seriously affected because they could not get a living from either one of the two occupations.

I quote from another letter, this time from a fairly large licensed land agent and business agent in a country area. He says:

As an individual citizen who believes strongly in the rights of the individual and in his protection against fraud, coercion or injustice, I support the Government in its present endeavours to legislate for consumer protection but in this instance I do honestly and firmly believe that such protection will best be served by retaining the law governing land brokers as it is at present with the alteration I have suggested.

Earlier in his letter he had suggested an alteration. The letter continues:

In this connection I wish to mention a statement made to me personally by a Registrar-General of Deeds of South Australia of a discussion he had held a few years back with a Senior Registrar of the Victorian Titles Office regarding the efficiency of the running of their respective departments in Melbourne and Adelaide and the Victorian official said to the South Australian Registrar-General, "Your department in South Australia has one great advantage over our Victorian Department in that you have licensed land brokers in S.A."

I would like to give an illustration of what will happen in a country area. I assure the Council that the facts I am about to give, having come from a person of integrity, are correct. This is not an isolated case, as it would apply to all country areas in the State. I refer mainly to the Barossa Valley and, more generally, to the area from Gawler to Burra and across to Waikerie, which measures about 100 square miles and in which there are only two solicitors, both in Tanunda. I can speak on behalf of only one of the solicitors, who claims that he has at present all the work with which he can possibly cope. Indeed, he finds it difficult to cope with all of it. Should this measure pass, those two solicitors will be the only people in the area who will be able to prepare documents for the conveyance of land.

The Hon. T. M. Casey: What if the land broker started an office up there? There is nothing to stop that.

The Hon. E. K. RUSSACK: One would need to do other things to enable one to obtain a decent living. That is why in the country the two must go together. Many of these people are stock agents as well as land agents, and they must have these other interests. At present, purchasers have the right to choose: the legal profession is not excluded. If one has the right to choose, I am certain that, if malpractices have occurred, one will choose the person one can trust. Therefore, while land brokers and land agents are being chosen to perform this work, they are being accepted by the public.

In the area to which I referred there are only two land agents at Kapunda, and there is no solicitor at Eudunda or Waikerie. The advantage to the public in relation to the land broker and land agents is three-fold. First, the system is efficient; secondly, it saves time; and, thirdly, it is a low-cost efficient method of doing conveyancing work. Although I have been speaking on behalf of land brokers and land agents, these are not the only people who will suffer: the general public will also suffer. I have been given permission to say that, if this measure

passes, at least one person in the offices in Angaston and Tanunda will have to be dismissed. The firms doing this work are family businesses with about 75 years standing. If firms such as these can carry on business in a country area for three quarters of a century, they must have been conducting a legitimate and honest business.

The area to which I referred, including the Barossa Valley, is by no means the only example I could give. A man from a country town who employs three typists rang me recently to say that he will, if he is denied the right of his land broker's licence, have to dispense with the services of some of his staff. This is a real consideration in country areas. It has been suggested that some cases have involved malpractice. However, during the past 12 months about 155,000 documents have been completed, of which about 120,000 have been handled by land brokers. As about three documents are involved in each settlement, one can see that there must have been about 40,000 settlements. If only 100 of these were not carried out in a proper manner, it would represent only .25 per cent of the total number involved. However, there has been no concrete proof that in 111 years there have been any instances of malpractice by land brokers.

Therefore, although I will vote for the second reading of the Bill, I hope that some amendments will be moved so that the Bill, when it becomes law, will be in a better form than it is at present and that land agents and land brokers will not suddenly be cut off from their employment. I hope, too, that the system which has proved to be satisfactory over so many years will continue. Although all honourable members must accept that change must occur if it is necessary and desirable, there must be valid reasons for change. I and many others consider, however, that logical reasons have not in this case been advanced why change should occur.

Any change that occurs must be for the better. However, if the present situation is changed those negotiating the purchase and sale of properties will find, first, that negotiations will take longer, secondly, that it will prove more expensive and, thirdly and more importantly, that people will be deprived of their livelihood. I stress that this aspect must be justified if the present procedure is to be amended. Had the present situation not worked so well in the past and had malpractices occurred, the matter would have been viewed in a different light. That this system has been carried on for so long illustrates that it should be continued. If it was the introduction of a new system, I would say there would be some doubt about it but, because it is a proven system that has operated in the State successfully for so long, it should be continued. As I have suggested, I shall vote for the second reading so that the Bill can get into the Committee stage, where I hope some amendments will be accepted which will justify the continued existence of the land broker and the land agent under a system similar to the present one.

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

OMBUDSMAN BILL

In Committee.

(Continued from November 2. Page 2673.)

Clause 3—"Interpretation."

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

In subclause (1) *(a)* to strike out "in the exercise of judicial powers" and insert "while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process".

This is perhaps a better way of expressing the concept covered by the words proposed to be omitted. The new expression is a little wider but it is clearer.

Amendment carried; clause as amended passed.

Clauses 4 to 8 passed.

Clause 9—"Delegation."

The Hon. R. C. DeGARIS: The Hon. Mr. Hart, who unfortunately is not at the moment in the Chamber, raised a point on this clause in the second reading debate, that the ombudsman should not be able to delegate the power to make an actual report, although he could delegate his powers up to the point of actually submitting a report.

The Hon. A. J. SHARD: I note that the Hon. Mr. Hart sees the need for the ombudsman to have an unfettered power of delegation and, further, that he expresses some disquiet with regard to the fact that, on the face of it, it includes the power to delegate his function of making a report or recommendation. I assure the Hon. Mr. Hart that it would be only in the rarest of unforeseen circumstances that it would be necessary for this power to be exercised. However, in the Government's view it is important that it should be there in case it is needed. Finally, I assure the Hon. Mr. Hart that the statutory bodies he mentioned are, in the terms of the

Bill, subject to the jurisdiction of the ombudsman since they are both authorities within the meaning of the measure.

The Hon. R. C. DeGARIS: I do not know what the Hon. Mr. Hart would do after receiving that report from the Chief Secretary, for which I thank him. I supported the honourable member's contention that any report made as a result of any investigation should come through the ombudsman under his signature. At present I am prepared to accept the Chief Secretary's explanation but I still think the Hon. Mr. Hart's point is valid.

Clause passed.

Clause 10—"Term of office of the ombudsman, etc."

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

In subclause (3) *(b)* to strike out "neither House of Parliament presents"; and after "from office" to insert "has not been presented by both Houses of Parliament".

The effect of these amendments is to make it quite clear that the ombudsman can be removed from office only by an address from both Houses of Parliament.

Amendments carried; clause as amended passed.

Remaining clauses (11 to 31), schedule and title passed.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL (GENERAL)

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

TORRENS COLLEGE OF ADVANCED EDUCATION BILL

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

COLLEGES OF ADVANCED EDUCATION BILL

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

UNFAIR ADVERTISING ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 2. Page 2672.)

The Hon. V. G. SPRINGETT (Southern): The power of advertising is extremely great: advertising does not have to be blatant to be successful. For instance, to advertise a cigarette it is unnecessary even to refer to the cigarette. Therefore, the snare to the unwary or the innocent is a real one. The ease and length of time available to a person who reads advertisements can be embarrassing in the results achieved in the name of the advertiser. The Bill makes clear one of the points at issue, namely, the case in which an advertisement states the deposit to be paid and how much is to be paid each week or month, without reference to the total cost. Today's *News* contains a perfect example: it sets out the deposit and the weekly payment, but there is no suggestion of how long is given to pay or what the total payment is; that is certainly a case for the protection of the public.

One of the main provisions in the Bill will bring houses and land into the issue. A certain couple I knew well decided to buy a house some years ago. They were living in England, and those honourable members who know England will know what I mean when I say that the advertisement attracted them. It referred to a half-timbered house, a lovely Tudor building in a sylvan setting. The advertisement stated that the hall was panelled and that there was heating throughout. This couple drove to the address, which was in a sylvan setting in a lovely, lightly wooded area. They approached the house. It was half timbered; the other half was corrugated iron. The hall was panelled in wood—in three-ply. The heating was by a slow combustion stove. That would come into the category of unfair advertising. Bearing in mind that the first change this Bill is concerned with relates to land, which includes housing and buildings, the example I have given indicates that there is a place for it. It will distinguish between those who derive commercial benefit from advertisements and those whose association with the production of advertisements does not have this involvement. That seems very reasonable indeed. Quite frankly, as the Hon. Mr. Story said, I see no good reason why one should go more deeply into this Bill, which I support.

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

SWIMMING POOLS (SAFETY) BILL

Adjourned debate on second reading.

(Continued from November 2. Page 2669.)

The Hon. C. M. HILL (Central No. 2): I support the Bill, and I commend the Government for its endeavour to save the lives of small children. We have had tragedies in South Australia, and some effort is being made by the Government as a result of those tragedies to see that swimming pools are safer than they have been previously. Considerable difficulty will be presented in the policing of this legislation, and I hope the Government will give the whole measure sufficient

publicity, because it would be only fair that people with existing pools should be informed adequately of the measures they must take to comply with the new law.

Clause 4 lists a considerable number of exclusions, such as very small pools, shallow pools, and public swimming pools, and the Minister has reserved the right to exclude any other class or kind of pool he believes should not be encompassed by the legislation. That gives him considerable power, but one can hope that he will use that power with care and due responsibility.

This is a difficult problem for which to legislate. We must all agree with that. Previous speakers in the debate have mentioned some of the problems the Government has encountered in framing the legislation, but it appears to me that, as I read clause 6, an adequate fence complying as to size and form surrounding the whole property might well satisfy the provisions of the legislation. In households where no small children live and where a pool has been installed, where adequate fencing and adequate gates are provided at the front of the house, such properties may comply with the legislation.

As I interpret clause 6 (4), if people have their properties adequately fenced and the fences and gates comply with the clause, they might not have to go to the added expense of building a separate fence around the pool. If that is so (and the Minister is nodding his head, indicating that probably it is), some publicity should be given to it.

In general terms, I support the Bill. I believe the Government was right in endeavouring to introduce some measure to prevent further unfortunate tragedies of the kind that have occurred in swimming pools in South Australia in recent times.

The Hon. R. A. GEDDES secured the adjournment of the debate.

LISTENING DEVICES BILL

Adjourned debate on second reading.

(Continued from November 2. Page 2675.)

The Hon. V. G. SPRINGETT (Southern): This Bill involves the very grave fundamentals of the rights of every citizen, and one right exists above all others: the right to privacy It is one of the hardest things to define. What is privacy? One of the simplest and perhaps the least complete definitions comes from the *Oxford Dictionary.* "Being withdrawn from society or public interest". Governments are not slow to restrict this right to be withdrawn from society or public interest if it is considered to be in the public and common interest that things shall not be held private and in private.

Naturally, authoritarian forms of government limit individual privacy to a greater extent than do democracies, because a man living in a withdrawn state cannot be controlled, and what he is thinking and desiring is more regarded with suspicion by authoritarianism than by democracy. Any individual has little ability to protect himself against Governmental and private snoopers. Sophisticated, modern electronic equipment are powerful weapons when used for acquiring information about a community.

The combined storage capacity of modern computers whose data have been collected in the interests of groups of people (medical histories, taxation details, brushes with the law, payment habits and trading standards) may all be legitimately collected but, if put in one combined memory box and collated together, leave the common man at a grave disadvantage. Wire tapping goes back a long way. I was surprised to learn this weekend when reading a certain book that in 1882 it was made illegal to intercept telegraph messages in California, while in the 1890's the police were known to be using wire tapping as a means of combating crime. By the same time, commercial and industrial espionage were already involved in the same procedures. Those involved in other crime generally were using these methods, so that the police had also to do so to try to combat them.

By the mid-1930's it was known that even the White House lines were being tapped. By the 1940's so many wires were being tapped illegally in New York City that officials hardly dared to disclose a confidence over the telephone because it could be picked up. Some of the problems and mistakes were not confined solely to America. Modern, sophisticated methods of bugging conversations and discussions make wire tapping itself almost primitive. Obviously, there are times and circumstances in which there is a place for officialdom to use listening devices. One of the problems in this Bill is that it suggests the authorities can use such devices only if they first obtain the consent of a judge. This seems to be putting a muzzle and blinkers on the authorities that wish to use this method in combating crime. They must have access to these methods of crime detection if they are to be successful in our interests. To give us the degree of privacy we consider to be our right and, at the same time, to ensure

that degree of security we expect from authority is a fine point. We must certainly put our trust in the law enforcement departments if we are to achieve those objects. Clause 8 (2) provides as follows:

A person shall not without the consent of the Minister (which the Minister is hereby empowered to give) have in his possession, custody or control any declared listening device.

I own a memo recorder and, with a microphone, I can record in a hall any lecture that is being given. Is that a listening device?

The Hon. A. J. Shard: I think so.

The Hon. V. G. SPRINGETT: So do I, yet I use it day after day and week after week.

The Hon. A. J. Shard: In your profession you would have no trouble.

The Hon. R. C. DeGaris: I think we are concerned with the bugging of conversations.

The Hon. V. G. SPRINGETT: That is the point. If one can use one's machine for picking up conversations, it will be difficult to enforce such occurrences as envisaged in the Bill.

The Hon. R. A. Geddes: It is aimed at the person who misuses it.

The Hon. V. G. SPRINGETT: In other words, the machinery is not at fault: the people who use it are at fault. Honourable members know that embassies, board rooms, bedrooms, cars, receptions and private houses are all being bugged. It is terribly easy for one with instruments no bigger than a pin's head to do so. It is also easy by the transfer from a distant source of light waves into sound waves, to pick up what is being said. All these things are disturbing and, indeed, frightening to the ordinary citizen.

Any recording for later use against the wish or agreement of any party (and I stress "any") to a conversation is forbidden in clause 3. I imagine that the use of such a recording could intrude into the laws concerning blackmail. I was also interested to read this weekend what the Victorian Attorney-General had to say when introducing the Listening Devices Bill in the Victorian Parliament. He said:

What is the real value of greater individual liberty if it is to be obtained at the price of making crime harder to detect and punish and leaving it therefore safer to commit? What is the real value to a decent, law-abiding citizen of being in less danger of possible abuse of power by the police but in greater danger of fraud, theft, violence or death from criminals, large and small, organized and unorganized. Are the ordinary citizens of this country so devoted to the motion of privacy at all costs that they are prepared to guarantee it even to organized crime to gang bosses, pimps, procurers, drug peddlers and others?

The Victorian Attorney-General was there explaining his reasons for extensive exemptions, which obviously must be permitted. The trouble is that almost any form of privacy invasion can be, and is, defended on the grounds of public good. I do not know how we get out of this. So much legislation to make life bearable for the majority but controllable of the few against whom it is devised has to be enforceable on the one hand but excusable on the other hand. Although this Bill is right, it does not solve the problem of a man's rights, because it cannot control the misuse of listening devices.

The Hon. A. J. SHARD (Chief Secretary): I thank honourable members, particularly the Hon. Mr. Springett, for their contributions. I think the point raised by the honourable member is covered by clause 8 (2), which provides:

A person shall not without the consent of the Minister (which the Minister is hereby empowered to give) have in his possession, custody or control any declared listening device.

Clause 8 (1) provides:

The Minister may by notice published in the *Gazette* declare that this section shall apply to a listening device or a listening device of a class or kind specified in that notice and the Minister may by a notice published in a like manner revoke or amend any such declaration.

Although I agree that some of these things may happen, the legislation is not aimed at certain types of listening device: it is aimed at the really bad ones. I do not think the Hon. Mr. Springett would experience any problems in this respect. I thank him for his contribution, which was up to his usual high standard.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—"Interpretation."

The Hon. R. C. DeGARIS: I move:

To strike out " 'Judge' means a Judge as defined in the Local and District Criminal Courts Act, 1926-1971".

This refers really to clause 6, which deals with listening devices used by members of the Police Force. The procedure there is that approval must first be obtained from a judge. If a judge is not available to give the permission, the police may use the listening device if, in their opinion, a judge would have given his permission for its use. This is a clumsy way of going about it. My amendment leaves it entirely to the Commissioner of Police, or any person vested with his authority, to give the permission; but the rest of clause 6 remains—that once a month a full report must be made to the Minister of the occasions when the listening devices were used and the purpose for which they were used each time. That is a more

satisfactory way of doing it, rather than that the approval of a judge must be obtained before a listening device can be used. If a judge cannot be found, the onus is thrown back on the police officer in authority.

The Hon. C. R. STORY: I support the amendment. I agree that this places the great onus on the police officer of interpreting what any judge may do, because judges can be very crusty and I do not know how anyone could interpret using his powers as he would want them used. This amendment clears up the position. At the same time, the Minister has the oversight of the whole matter, and therefore Parliament is protected because members can, through the Minister, query anything that may happen.

The Hon. A. J. SHARD (Chief Secretary): The Government opposes this amendment since, in substance, it conflicts with what is conceived as being the fundamental basis of the measure, which is to "protect the right of privacy of persons from all"—and I emphasize "all"—"invasions." It is considered, of course, that there is a proper case for the use of these devices in the field of detection of crime. It is suggested that the present provisions provide suitable safeguards against the improper use of these devices and also permit of their ready use in circumstances of emergency. Whilst the Hon. Mr. DeGaris says they appear to be clumsy, it is suggested that a means of protecting the rights of persons should not be disregarded merely because it is clumsy.

The Hon. M. B. CAMERON: My first reaction is to oppose this amendment. However, in many other cases the power of discretion has been given to the Police Force. There is still the requirement that the police officer concerned must furnish the Minister with certain details, which seems to indicate that, on the one hand, the Government thinks the Police Force can handle the provisions of this Bill while, on the other hand, powers are taken away from it.

The Committee divided on the amendment:

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

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

Majority of 6 for the Ayes.

Amendment thus carried; clause as amended passed.

Clauses 4 and 5 passed.

Clause 6—"Lawful use of listening devices by members of the Police Force."

The Hon. R. C. DeGARIS: I move:

In subclause (1) to strike out all the words after "duty", and to strike out subclauses (2) and (3).

These amendments are consequential on the amendments that have been passed.

Amendments carried; clause as amended passed.

Clauses 7 and 8 passed.

Clause 9—"Annual report."

The Hon. R. C. DeGARIS: I move:

To strike out paragraphs *(a)* and *(b)* of subclause (1) and insert "the number of occasions on which a listening device was used under section 6 of this Act and the general purposes for which a listening device was used on each such occasion".

This amendment is also consequential on the amendments that have been passed.

Amendments carried; clause as amended passed.

Clause 10 and title passed.

Bill read a third time and passed.

LAND ACQUISITION ACT AMENDMENT BILL

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

ADJOURNMENT

At 10.55 p.m. the Council adjourned until Wednesday, November 8, at 2.15 p.m.