## LEGISLATIVE COUNCIL

Tuesday, November 11, 1975

The PRESIDENT (Hon. F. J. Potter) took the Chair at 2.15 p.m. and read prayers.

## QUESTIONS

### ROYAL ADELAIDE HOSPITAL

The Hon. C. M. HILL: I seek leave to make a statement prior to directing a question to the Minister of Health.

Leave granted.

The Hon. C. M. HILL: I hold correspondence from an employee of the Hospitals Department at the Royal Adelaide Hospital. The correspondence relates to conditions in the out-patients building, where about 30 to 40 people, mainly clerks and stenographers, are accommodated. The correspondent claims that the air-conditioning in this section is adequate for about 20 employees only and an unhealthy state of affairs exists; also, the efficiency of the employees is impaired. Complaints have been made to the Personnel Section of the Minister's department and the staff have been told that nothing can be done. An alternative proposal was put forward by the employees, I understand, to introduce flexitime, and the employees were told that, first, this would impair efficiency and, secondly, the Hospitals Department could not afford a clocking-in machine. The correspondent, who lives in the electoral district of Norwood, wrote to the Premier on September 30 of this year but has received no acknowledgment; nor has any action been taken about this letter. Will the Minister investigate this situation regarding this section of his employees and endeavour to provide healthy working conditions, including adequate air-conditioning; or, alternatively, will he consider introducing flexitime?

The Hon. D. H. L. BANFIELD: I will have investigations made about the complaints.

### ABANDONED CAR

The Hon. J. C. BURDETT: I seek leave to make a short explanation prior to directing a question to the Minister of Lands, representing the Minister of Transport.

Leave granted.

The Hon. J. C. BURDETT: I heard on radio station 5KA that an old car had been abandoned in the freeway on Glen Osmond Road, Glenunga, for about five weeks. It is close to the 277 Motel. Inquiries have been made about moving it of the corporation, the Police Department, and the Highways Department, but each has denied responsibility in the matter. The outcome is that the car is still there. The report stated that there is absolute chaos in the peak period in that area; cars getting into the inside lane find they are behind the abandoned car, and much confusion results. I sought a report by telephoning a reporter and was advised that this was the position. Some information was given me (and it was confirmed) that contact had been made with the corporation, the Police Department, and the Highways Department some time ago, but nothing had been done. I suggest this is a matter of urgency and as, in a couple of hours time, there will be another peak period, will the Minister, as it is a matter of urgency, see whether the Minister of Transport can do something about having the car removed?

The Hon. T. M. CASEY: I am willing to concur in the honourable member's wishes.

### ARTIFICIAL SHARK FINS

The Hon. J. A. CARNIE: I seek leave to make a brief statement before directing a question to the Minister of Health.

Leave granted.

The Hon. I. A. CARNIE: Recent reports from Sydney indicate that a company promoting the film *Jaws* (soon to open in that city) intends importing inflatable fins. These fins can be strapped on the back of a swimmer and are designed to resemble the dorsal fin of a shark. Many groups in Sydney, particularly the Lifesaving Association, have expressed concern about the dangers of these fins. It does not need much imagination to realise that the appearance of these fins on our beaches could cause widespread panic. In addition there is the very real danger that if these cause too many false alarms, swimmers could ignore a genuine shark alarm. Has the Government the power to stop irresponsible advertising of this nature? If it has, will it use this power, when the film opens in South Australia?

The Hon. D. H. L. BANFIELD: I will look into the position. I agree with the honourable member's contention regarding the possibility that these fins could cause trouble.

### PRIVATE ROOMS IN HOSPITALS

The Hon. R. A. GEDDES: I desire to direct a question to the Minister of Health. In Saturday's *Advertiser,* in a letter to the editor, Dr. A. Lane of Laura made the following comment, "Government policy is now that there will be no more private rooms built in hospitals in Australia for Medibank patients except for those desperately sick ... In country hospitals the ban on any ward smaller than four beds is to be absolute." Does this mean that finance will not be available from the Commonwealth or the State for additions to, or for the building of hospitals, either in the country or metropolitan area, for the construction of private wards?

The Hon. D. H. L. BANFIELD: All it means is that the doctor had a flight of fancy.

### ATTORNEY-GENERAL'S STATEMENT: HOMOSEXUALS

The Hon. J. C. BURDETT: I seek leave to make a short statement before asking a question of the Minister of Health.

Leave granted.

The Hon. I. C. BURDETT: On October 28, I directed a question to the Minister of Health, asking if he could check with the Attorney-General and report as to how the Attorney reconciled the statement he made in another place when a Bill was before the House of Assembly relating to homosexuals in schools with a statement he was reported to have made in New South Wales. On page 1428 of *Hansard* the Minister of Health said:

> I do not think the Attorney-General said what Mr. Burdett is now suggesting. My recollection is not exactly the same as Mr. Burdett's but I will refer the question to my colleague.

Has the Minister referred the question to his colleague? If so, can he give the answer?

The Hon D. H. L. BANFIELD: I think, if the honourable member read further on in *Hansard,* someone interjected and said, "bring back a reply"—

The Hon. J. C. Burdett: That was another question.

The Hon. D. H. L. BANFIELD: I am sorry—the question would have been referred to the Attorney-General. I have not got an answer.

## ENVIRONMENTAL DAMAGE

The Hon. A. M. WHYTE: I seek leave to make a short statement prior to asking a question of the Minister representing the Minister of Transport.

Leave granted.

The Hon. A. M. WHYTE: Today's *Advertiser* carries an article by Kym Tilbrook regarding damage to the environment caused by the transferring of a transportable school from Streaky Bay to Coober Pedy via station roads. For a long time we have been asking the Minister of Transport to investigate improving the road linking the Stuart Highway with the Eyre Highway. I believe the extra cost involved in transporting this school, to go around Port Augusta, was $6 000. A comparable cost has been borne by many people who would like to travel from Alice Springs to Perth or vice versa. Numerous requests have been made for the construction of a road of reasonable standard to link the Stuart Highway and the Eyre Highway. Will the Minister consult with his colleague to see whether some improvement can be effected in the situation? I believe the choice of a route is one for the Highways authorities. It is not a choice I should make, and the question does not stipulate any particular route, just so long as some improvement can be made.

The Hon. T. M. CASEY: I will refer the question to my colleague in another place and bring down a reply.

## LAND COMMISSION

The Hon. C. M. HILL: Has the Minister of Lands a reply to my recent question regarding the South Australian Land Commission?

The Hon. T. M. CASEY: The Land Commission has been able to reduce the time normally taken to secure approval to plans of subdivision under the Planning and Development Act because:

(i) On July 26, 1974, the Director, Premier's Department, under direction from Cabinet, advised all State Government departments and authorities having responsibilities and functions related to the subdivision of land for urban purposes that "priority is to be given to meeting the requirements of the South Australian Land Commission's subdivisional projects".

(ii) The commission has established a practice of detailed prior consultation with all authorities having functions related to land subdivision to ensure that their requirements are given full weight in the form of subdivision proposals ultimately submitted for approval. By this liaison process many of the problems that normally arise once a proposal plan has been submitted are settled before the plan is submitted.

It should be noted that, under the Planning and Development Act, the control of the subdivision of land is shared between the Director of Planning and the local government authority for the area in which the land is situated. Local government authorities are not required to observe the Cabinet directive; however, the commission has, by co-operative liaison with those authorities, followed the process described in (ii) above.

It should also be noted that, in its decision on appeals between Redeam Pty. Ltd. and the Director of Planning and the State Planning Authority in April, 1975, the Planning Appeal Board stated that land owned by the commission is Crown land for the purposes of the Planning and Development Act and that therefore commission land is not subject to the control of land subdivision provisions of that Act. Nevertheless, the commission at present submits its subdivision proposals to the control process prescribed in the Act and regulations.

In some instances the assistance of the commission and its predecessor, the Land Development Unit, Department of Lands, has been sought by private developers to resolve problems related to their subdivisional projects encountered in the approval process. Action by the commission has resulted in the resolution of some of these problems to the advantage of the private developer.

## DOCTORS

The Hon. C. M. HILL: I note that the 202 resident medical officers who met on November 5 regarding a salary claim are to meet again on November 26. As Parliament will be in recess at that time, has the Minister of Health anything further to report in relation to the resident medical officers and their salary claim?

The Hon. D. H. L. BANFIELD: No, other than to report that I am meeting representatives of the resident medical officers on Wednesday next.

## LOTTERY AND GAMING ACT AMENDMENT BILL

The Hon. T. M. CASEY (Minister of Tourism, Recreation and Sport) obtained leave and introduced a Bill for an Act to amend the Lottery and Gaming Act, 1936-1974. Read a first time.

The Hon. T. M. CASEY: I move:

*That this Bill be now read a second time.*

It is intended to deal with a situation that may arise in the foreseeable future following the amalgamation of the three metropolitan racing clubs. Honourable members may be aware that as from July 1, 1975, the South Australian Jockey Club Incorporated, the Adelaide Racing Club Incorporated and the Port Adelaide Racing Club Incorporated amalgamated to form a new club under the name of the South Australian Jockey Club Incorporated.

However, section 31b of the principal Act provides for each of these bodies to nominate a member of the South Australian Totalizator Agency Board. Since as from July 1 this year the three named bodies ceased to exist and a new body with, coincidentally, the same name as one of the three bodies came into existence, it is clear that some difficulty may arise in the event of an unexpected vacancy occurring on the Totalizator Agency Board. This Bill then provides for a general reorganisation of the board by reducing its members from nine members to five members. It remains for me to add that the form of the board proposed is the form of the board proposed in a Racing Bill that will in due course be placed before the Council.

Clause 1 is formal. Clause 2 provides for the amendment of the definition of the controlling authority for horse racing by making it clear that it is the South Australian Jockey Club Incorporated as constituted on and after July 1, 1975. Clause 3 provides for the amendment of section 31a of the principal Act by providing a definition of "the declared day" and for the fixing of that day by proclamation.

Clause 4 provides for the amendment of section 31b of the principal Act by providing for the reconstitution of the board on the declared day and for the vacation by members of the board of their offices on that day. Clause 5 provides for the amendment of section 31c of the principal Act by providing for a term of office, not exceeding four years, for members of the board. Clause 6 is a consequential amendment. It provides for the amendment of section 31d of the principal Act by providing for a quorum of three for meetings of the board as reconstituted.

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

## FAMILY RELATIONSHIPS BILL

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

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

*That this Bill be now read a second time.*

It is the first in a series of 10 Bills designed to give effect to the recommendations contained in two reports of the Law Reform Committee of South Australia; these reports are the eighteenth, relating to illegitimate children, and the twenty-eighth, relating to the reform of the law on intestacy and wills. The Law Reform Committee in its eighteenth report made recommendations designed "to destroy in so far as this is socially and legally possible the distinctive legal consequences of illegitimacy so as to assimilate the rights and the position of an illegitimate child to that of a legitimate one". It is, of course, impossible to legislate to remove the social stigma which attaches to an illegitimate child. The provisions of these Bills aim to remove some of the legal disabilities to which an illegitimate child, and in some cases the father of such a child, have hitherto been subjected.

Many modern Statutes have placed illegitimate children in the same position as those born legitimate; the law has come a long way since an illegitimate child was regarded as a mere thing, whose existence was unrecognised until it became a pauper, and whose only legitimate home was the poorhouse. However, the concept of illegitimacy remains, and whenever the Legislature decides to place an illegitimate child in the same position as a legitimate child it must spell this out. The important disabilities which still attach to an illegitimate person are in connection with the succession to property. Unless a will is carefully drawn, an illegitimate child will be excluded, for the word "child" when used in a will refers prima facie to a legitimate child. The father of an illegitimate child receives scant recognition by the law; he must maintain it, but has no say in its upbringing; he has no inheritance rights from it, even though he may have maintained it lavishly for many years. An illegitimate child can be adopted without his consent; he has no rights to the custody of the child.

The basic premise of this Bill is that the relationship of parent and child exists between a person and his father or mother, irrespective of whether he was born within or outside marriage. The Bill recognises that a mere assertion that a person is the father of a child is not sufficient to prove that he is the father. The Bill sets out the manner by which a person may be recognised as the father of a child and also provides that certain persons may apply to a court for a declaration as to the paternity of a child. Other provisions of the Bill reflect the policy of the Government that, where two people are living together in an established *de facto* relationship, the parties in that relationship should, for certain purposes, be entitled to the same rights and benefits as lawful spouses. The Bill provides for the methods by which one person will be recognised as the putative spouse of another person. Where the Government considers it proper that a putative spouse should be in the same position as a legal spouse, a provision to that effect will be included in the appropriate legislation. I seek leave to have the explanation of the clauses of the Bill inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Clauses I, 2 and 3 are formal. Clause 4 provides that the new Act will bind the Crown. This provision is inserted to ensure that where, for example, the Crown is competing with an illegitimate child for an interest in a deceased person's estate, the Crown will be bound by any declaration of paternity by virtue of which that interest is traced to the child. Clause 5 inserts two definitions required for the purposes of the new Act. It should be observed that the jurisdiction to make declaratory judgments under the Act will be exercisable by the Supreme Court or by a local court of full jurisdiction.

Clause 6 is designed to abolish the disabilities of illegitimacy of the law of the State. It provides, in effect, that relationships of consanguinity or affinity are to be traced and recognised whether a child is born within marriage, or outside marriage. However, the interpretation of instruments executed before the commencement of the new Act will not be affected by the new provision. Clause 7 sets out a comprehensive list of criteria for recognition of paternity of a child born outside marriage. Paternity will be recognised in the case of legitimation of the child; where paternity has been acknowledged in proceedings for registration of the birth; where paternity has been established by judgment of a court of competent jurisdiction otherwise than under the new Act; and, finally, where an adjudication of paternity has been made under the new Act.

Clause 8 preserves the presumption that a child born to a woman during her marriage, or within 10 months after her marriage has been dissolved is, in the absence of proof to the contrary, a child of its mother and her husband or former husband (as the case may be). Clause 9 establishes the right to apply for a declaration of paternity. An application may be made to the court by any of the following persons: (a) a female person who alleges that a person named in the application is the father of her child; *(b)* a person who alleges that the relationship of father and child exists between himself and some other person; or (c) a person (for example, an administrator or trustee) whose rights or obligations at law or in equity are affected according to whether the relationship of father and child exists between two particular persons. Where one of the persons in respect of whom the declaration is sought is dead, the court should not make a declaration unless the claim is supported by credible corroborative evidence.

Clause 10 provides that the new Act will not affect rules under which the domicile of a child is determined; the consequences of adoption of a child; or any proceedings under the Community Welfare Act in which paternity of a child is in issue. Clause 11 sets out the criteria on which a person is to be regarded as the putative spouse of another. The relationship will be established where cohabitation has persisted for five years or where cohabitation has persisted for a total of five years within the previous period of six years. The relationship may be established on the basis of a lesser period of cohabitation where the birth of a child has resulted from that relationship. It is important to observe that where the relationship is terminated by either party they each thereupon lose the character of putative spouse. A person may apply for a declaration under the new section where his pecuniary interests, or his obligations at law or in equity, are affected according to whether the relationship existed on a certain date. The relationship will not be recognised in the absence of a declaration under this new section.

Clause 12 protects an administrator or trustee of property in relation to claims that may arise against that property by virtue of the new Act. First, it provides that, where a person has an interest in property by reason of a relationship recognised under the Act, no action shall lie against an

administrator or trustee of property by virtue of any distribution of, or dealing with, the property made without actual notice of the relationship, and any distribution actually made will be undisturbed unless the beneficiary himself had notice of the relationship. Where a person claims to have an interest in property by virtue of the new Act, the administrator may require him to seek the appropriate declaration of that relationship under the new Act, and if he fails to commence proceedings with a view to obtaining that declaration, then no action will lie against the administrator by virtue of a distribution of property made on the assumption that the relationship does not exist, and beneficial interests taken as a result of the distribution will be undisturbed.

Clause 13 provides that proceedings under the new Act are to be held in private. A person who publishes the names of people involved in such proceedings is to be guilty of an offence and liable to a penalty not exceeding $1 000. Clause 14 is a procedural provision enabling a person to seek a declaration under the new Act in the course of other proceedings. In any such case there is to be a separate trial of issues arising under the new Act.

*Later:*

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

## ADMINISTRATION AND PROBATE ACT AMENDMENT BILL

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

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

*That this Bill he now read a second time.*

It is designed to give effect to recommendations of the twenty-eighth report of the South Australian Law Reform Committee relating to the reform of the law on intestacy and wills. The present law governing the distribution of an intestate's estate is a mixture of common law, United Kingdom Statutes enacted prior to 1836, and sections 53, 54, 55 and 55a of the Administration and Probate Act, 1919-1972, which to some extent amend the earlier United Kingdom Statutes. It is designed to remove certain anomalies in the present law of intestate succession and, at the same time, provides a complete statement of the law of intestate succession. T seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Clauses 1, 2 and 3 are formal. Clause 4 inserts definitions of "lawful spouse", "putative spouse", and "spouse". These definitions relate principally to the new Part dealing with intestacy. A person who was the putative spouse (as defined in the Family Relationships Bill) on the date of death of an intestate will have rights to participate in the distribution of his property. Clause 5 repeals section 23 of the principal Act. This section is now redundant in view of the provisions for recognition of foreign wills enacted as amendments to the Wills Act in 1966. Clause 6 extends the right of certain beneficiaries or creditors of a deceased person to obtain a special grant of administration over his estate to a person who was a *de facto* spouse of the deceased on the date of his death.

Clause 7 repeals the existing provisions of the principal Act relating to intestacy. These will be replaced by new Part IIIA. Clauses 8 and 9 increase the amount that may be paid out to the spouse of a deceased person by the Treasurer or by a bank, without production of probate, from $1 200 to $2 000. Clause 10 enacts new Part IIIA of the principal Act. This new Part is intended to constitute a new code dealing with intestate succession. Section 72a is a transitional provision. The new Part will apply only in respect of the estates of persons dying after the commencement of the amending Act. New section 72b sets out a number of definitions necessary for the purposes of the new Part. New section 72c provides that the administrator of an intestate estate holds the estate on trust for the benefit of the beneficiaries. Subject to the provisions of the new Part dealing with personal chattels left by the deceased, and a dwellinghouse that constituted the matrimonial home of the deceased and his spouse, the administrator is empowered to sell, or convert into money, property that forms part of the intestate estate.

New section 72d deals with a case in which a minor is entitled to participate in the distribution of an intestate estate. The property is to be held in trust for him until he attains the age of 18 years, or marries before attaining that age. New section 72e deals with the case where an intestate and his spouse die within a short time of each other. The Bill provides that, in such a case, the spouse will not be treated as having survived the intestate and thus having acquired an interest in the estate. This provision reduces the incidence of succession duties and makes for fairer distribution between next-of-kin where there are no issue of the marriage, or *de facto* relationship.

New section 72f provides for ascertaining the value of an intestate estate. New section 72g sets out the rules governing distribution of an intestate estate. These rules are as follows:

(*a*) where the intestate is survived by a spouse and by no issue—the spouse takes the whole estate;

*(b)* where the intestate is survived by a spouse and by issue, the spouse takes the first $10 000 and half the balance of the estate while the issue take the remainder;

*(c)* where the intestate is not survived by a spouse, but is survived by issue, the issue take the whole of the estate;

*(d)* where the intestate is not survived by a spouse or by issue, his relatives take the whole estate;

and

*(e)* if the intestate is not survived by a spouse, issue or relatives, the estate vests in the Crown.

New section 72h expands the provisions establishing the entitlement of a spouse to share in the distribution of an intestate estate. Where the deceased is survived by a spouse, the spouse is entitled to those personal chattels, and this entitlement does not reduce her share in the balance of the estate. Where a deceased person is survived by a lawful spouse and by a putative spouse, they are entitled, in equal shares, to the property that would have devolved on the spouse if the intestate had been survived by a single spouse. New section 72i sets out the rules for distribution of property to issue of the intestate.

New section 72j deals with distribution amongst relatives. (These provisions are applicable only where the deceased leaves no spouse or issue). Relatives are entitled to the estate in the following order of priority:

(*a*) parents of the intestate;

*(b)* brothers and sisters of the intestate (and where a brother or sister has died leaving issue, the issue take the share of the deceased brother or sister);

*(c)* grandparents of the intestate;

and

(*d*) uncles and aunts of the intestate (and where an uncle or aunt has died leaving issue, the issue take the share of the deceased uncle or aunt).

New section 72k modifies the rules of hotchpot. Under these rules certain gifts made by a deceased person are to be regarded as having been given in full or partial satisfaction of the share to which a beneficiary is entitled on an intestacy. These gifts are as follows:

(*a*) any gift exceeding $1 000 in value given within five years before the intestate's death (except a gift to a spouse);

and

(*b*) any gift given by a will which is not effective to dispose of the whole estate of the deceased person (who therefore dies intestate as to the residue of his estate).

However, the presumption that these gifts are to be taken into account in this manner may be rebutted by evidence that the deceased did not intend the gift to reduce the beneficiary's share in his estate. New section 721 provides that the spouse of an intestate is to have the option of acquiring the home that constituted their matrimonial home on the date of death of the intestate. New section 72m enables the spouse to continue to reside in the matrimonial home until the time for exercising the option expires. New section 72n provides that the new provisions do not affect the discretion of the Supreme Court in making provision out of an intestate estate for the benefit of any claimant under the Inheritance (Family Provision) Act. New section 72o provides that the Imperial Acts that formerly regulated distribution of intestate estates shall cease to operate in this State.

*Later:*

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

## ADOPTION OF CHILDREN ACT AMENDMENT BILL

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

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

*That this Bill be now read a second time.*

The amendments contained in it follow from the recommendations of the eighteenth report of the Law Reform Committee relating to illegitimacy and the provisions of the Family Relationships Act. The Bill removes references to illegitimacy and provides for the ascertainment of relationships in accordance with the provisions of the Family Relationships Bill. Hitherto, the consent of the father of an illegitimate to the adoption of that child has not been required, indeed, the father's consent was not only not required but there was no provision for him to even be notified that the mother was about to place the child for adoption. Thus situations could arise where the mother and father had been living together for a considerable period and have several children which the mother could consent to being adopted. The father, even if he wished to keep the children himself could not prevent adoption.

This Bill remedies this situation by requiring the consent of the mother and the father to the adoption of a child, where the father is recognised as the father of the child under the provisions of the Family Relationships Bill. This is in accordance with the Law Reform Committee's recommendation that not only should an illegitimate child have rights as against its father, but that the father should have rights in relation to the child. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Clauses 1 and 2 are formal. Clause 3 makes amendments to the definition section of the principal Act consequential upon the enactment of the Family Relationships Act. Clause 4 extends the classes of person whose consent is required for an adoption to cover the father of a child born outside marriage. However, in order to prevent undue delay in adoption procedures arising from this amendment, a provision is included to the effect that the father must have taken the appropriate steps for obtaining recognition of his paternity before the consent of the mother becomes irrevocable, that is, within 30 days after she signs the instrument of consent. Clause 5 makes consequential amendments.

*Later:*

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

## COMMUNITY WELFARE ACT AMENDMENT BILL

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

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

*That this Bill be now read a second time.*

It contains amendments which are necessary as a result of the provisions of the Family Relationships Bill. It removes references to illegitimacy and brings the position of a child born outside marriage into conformity with the position of a legitimate child. However, a person will not be recognised as the father of a child unless he is recognised as such under the Family Relationships Act or has had an affiliation order made against him. These provisions do not make any substantive alteration to the principal Act. The father of an illegitimate child is already obliged to pay for, or contribute towards, the maintenance of the child. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Clauses 1 and 2 are formal. Clause 3 amends certain definitions in the principal Act. The definitions are amended to remove references to illegitimacy. At the same time a reference to "child of the family" is removed from subsection (3). This concept is somewhat confusing, especially in view of the new amendments, and references to step-father and step-mother are included to cover the field formerly dealt with under the concept "child of the family". Clause 4 amends section 39 of the principal Act. This is the section under which a parent may apply to the Minister for an order placing his child under the care and control of the Minister. At present, where the child is illegitimate, only the consent of the mother is required. The new subsection will have the effect of requiring the consent of both parents before an order can be made under this section, but, if the father has not taken the appropriate steps to obtain recognition of his paternity before the date of the order, his consent will not be required. Clause 5 amends section 98 of the principal Act. This section deals with the order in which near relatives of a child are to be liable for its maintenance. The distinction between liability for maintenance of a legitimate child, on the one hand, and an illegitimate child, on the other, is removed.

Clauses 6 to 10 make drafting amendments consequential upon the removal of the status of illegitimacy under the law of the State. Clause 11 re-enacts a portion of section 114 of the principal Act. This section deals with an order for payment of funeral expenses of a deceased child. The re-enactment arises from the removal of the

concept of illegitimacy. Clauses 12 to 15 make consequential amendments. Clauses 16 and 17 deal with evidentiary matters. As legitimacy will no longer be a salient consideration for a court exercising jurisdiction under the new Act, an evidentiary provision relating to this matter is removed. Clauses 18 to 22 make consequential amendments.

*Later:*

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

## GUARDIANSHIP OF INFANTS ACT AMENDMENT BILL

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

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

*That this Bill be now read a second time.*

It contains amendments that are necessary as a result of the Family Relationships Bill. The Bill also makes certain other miscellaneous amendments to the principal Act. Hitherto, the provisions of the Guardianship of Infants Act applied only to legitimate children. The father of an illegitimate child was not the guardian of the child and was unable to apply under the Act for the custody of the child. This has caused great hardship in the past to fathers who were willing and anxious to look after their illegitimate children. Situations have arisen where the mother of the children has died and her parents have stepped in and taken the children, and the father has been unable to obtain custody of, or even access to, the children under the Act as it now stands.

The Bill amends the Act to cover infants born outside marriage so that fathers of such children have the same rights as the mothers. However, a person will not be recognised as the father of such a child unless he is recognised as such under the Family Relationships Act. Other amendments extend the powers of the court to enable it to grant custody of an infant to a person who is not a parent. While the Supreme Court has inherent powers to do this, the Family Court has not, and it is desirable that the Act should specifically provide that the court has power to grant custody to a person other than a parent. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Clauses 1 and 2 are formal. Clause 3 expands the definition of "infant", which is at present limited so that it relates only to a legitimate infant. Clause 4 repeals and consolidates sections 4 and 5 of the principal Act. It should be observed that this new section, which, like its predecessor, gave equal rights to the father and mother of a child in respect of its upbringing, will now apply in respect of the father of a child born outside marriage where he has taken steps to obtain recognition of his paternity under the Family Relationships Act.

Clause 5 repeals and re-enacts section 6 of the principal Act. The amendment expands the existing section to enable the court to give custody of an infant to a person other than its parent. This amendment was originally suggested by Judge Marshall following a case in which he found that custody of a child should have been granted to a grandparent but that he had no power to give effect to that finding. The amendment will enable the court to grant custody of a child to a suitable person who is not a parent of the child where the paramount interest of the child demands that that course be taken.

Clause 6 is a consequential amendment dealing with the case where a child is given into the custody of a person who is not its parent. In such a case, an order for maintenance may be made against either or both parents. Clause 7 is a consequential amendment. Clause 8 repeals section 14 of the principal Act. The provisions of this section are now to be covered by the new section 6 proposed by the Bill. Clauses 9 and 10 make consequential amendments. Clause 11 is a machinery provision. It provides that orders for maintenance under the principal Act may be enforced in the same manner as orders for maintenance under the Community Welfare Act. Clause 12 makes consequential amendments to section 21 of the principal Act. The new section makes it clear that the amendments do not affect the equitable jurisdiction of the Supreme Court to appoint and remove guardians.

*Later:*

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

## SUCCESSION DUTIES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 6. Page 1721.)

The Hon. JESSIE COOPER: I rise to speak briefly to this Bill. In fact, I wish to make only two observations. The first concerns the matrimonial home and the death duties it will still attract under this Bill. As I have said before, in dealing with legislation covering succession duty, this tax occurs at a time when people are already suffering the loss of a spouse and proves an unbearable burden at that time of tragedy.

I see no reason why the passing of the matrimonial home, or a portion of it, to one spouse on the death of the other should attract any duty at all. In 90 per cent of cases, the spouses are of about the same age and it is likely that, within five to 10 years, the home will again be passing to another party, probably to the children, when the normal processes of duty will apply. If this was done (that is, the matrimonial home passing to a spouse without attracting succession duty) it would overcome the common problem that the amount of duty payable forces the surviving spouse to sell the home that he or she has helped to build and maintain for many years, simply in order to find sufficient cash to meet succession duties.

The PRESIDENT: Order! There is too much audible conversation.

The Hon. JESSIE COOPER: This is an unnecessary hardship and a cruel change in life's circumstances for the remaining partner. If the Government was less greedy and more humane in its demands and did away with succession duty on the matrimonial home passing to a spouse, it would find that the result would be the passing of the home under dutiable conditions within a few years, in most cases. I suggest there would be no honourable member in this Council who did not know cases of extreme hardship in this field, and I believe that most honourable members will, therefore, be sympathetic towards the policy enunciated by the Public Service Association and conveyed to the honourable members of this Council by telegram last Thursday. It was signed by the General Secretary of the association and read:

Public Service Association believe that gifts passing between spouses while alive and the matrimonial home at death should be exempt from gift and succession duty. Request you endorse this policy.

Secondly, I see no reason why 50 per cent rebate should not be applied to ownership interest in secondary industry,

as is proposed in this Bill in rural industry. This is particularly necessary today for the rather simple reason that, in most medium to small business operations, inflation of unprecedented proportion has caused the complete absorption of fluid assets by the need to keep those businesses viable, and this at a time when industry appears to be wilting everywhere around us. Stated more simply perhaps, for the family that owns a small business, a death and the associated succession duty almost universally means the selling up of the business (as all cash has been absorbed in keeping the business active) and so the complete loss of the business. I repeat that I see no reason why 50 per cent rebate should not apply to metropolitan as well as rural assets.

The Hon. D. H. L. BANFIELD (Minister of Health): I thank honourable members for the attention they have given to this Bill. As stated in my second reading speech, the Government provides in this Bill for very generous remissions of succession duty. In particular, it has acted in the belief that relaxation of the incidence of the duty is justified in two main areas: in the case of duty on a dwellinghouse passing to a surviving spouse or to a descendant child who has a special claim to succeed to that property, and in the case of rural property. It is unable to agree that further concessions be granted to the extent suggested by honourable members in their second reading speeches. May I specifically refer to the following matters raised by honourable members.

Assigned assurance policies: The Hon. Mr. DeGaris has stated that he will seek to reinstate a provision in the existing legislation which provides more generous rebates of duty where a succession includes assigned assurance policies. He attempts to justify this by saying that he wishes to assist those who make sacrifices to ensure that their wives and children can meet the impact of death duties. The Government removed the provisions relating to these policies quite deliberately and does not propose to accept an amendment which seeks to perpetuate the special treatment afforded them in the past. Our considered view is that there is no more reason to encourage people to provide for their beneficiaries in this way than there is to encourage them to provide in any other way. Policies of this nature appear only infrequently in deceased estates, and it is the Government's belief that the special treatment afforded to them serves only to provide an advantage to those able to afford expert advice. The prudent man may still make provision for his beneficiaries in such a way that they are able to meet their liability for succession duties but the choice he makes as to how to do so will not be distorted by succession duty considerations and he will not be treated differently simply because he did not assign his assurance policies or because he preferred to hold his money in a bank account or special bonds or in some other way.

Quick successions: The Hon. Mr. DeGaris has stated that he would seek to change the quick succession relief from five to 10 years, in line with provisions applying in Western Australia. However, present provisions in South Australia compare favourably with the period of three years applying in New South Wales and Queensland and with the period of five years applying in Victoria and Tasmania. The Government does not propose to accept an amendment on this matter.

Rural rebate: The Hon. Mr. DeGaris proposes that rebates of 60 per cent be given where the beneficial interest in rural property does not exceed $80 000, that the rebate gradually decline to 40 per cent between $80 000 and $200 000 and remain at that percentage where the beneficial interest exceeds $200 000. His proposal is more generous than the Bill for successions with beneficial interests up to about $115 000, but less generous for successions where the interest is greater than this amount. The Government believes there is no justification for rebates in excess of 50 per cent for successions of rural property either below or above $80 000; therefore it will oppose the amendment.

Deduction of gift duty: The Hon. Mr. Burdett suggested that the provisions of clause 5 would operate to prevent a deduction of one-half of any gift duty liability that is due by the deceased at the time of death as a debt due by the estate. This deduction is permitted by section 13(1) of the Succession Duties Act, and the Government did not intend that new section 9, as enacted by clause 5 of the Bill, should remove that right. It is prepared to accept an amendment which will clarify its intention in the matter.

Daughter-housekeeper: The Hon. Mr. Burdett suggested that there had been some hardship in applying the daughter-housekeeper provision of the Succession Duties Act and referred to a case where a daughter was engaged almost wholly in looking after a parent and took in some dressmaking work, to the extent of about $1 a week, in that case rebate being withheld. The Commissioner of Succession Duties has informed me that he has been unable to locale any record of such a case being referred to him, and I suggest that Mr. Burdett should submit details of this case to me for investigation.

Rural properties-partnerships: The Hon. Mr. Burdett queried whether the rural rebate would extend to land held by a husband and wife as tenants in common where that land is a partnership asset. The Government is prepared to give an assurance that where land is owned in this way, the rural rebate provisions will be applied in respect of the interest of the deceased in that land in the same way as would apply if the land were not a partnership asset.

Building societies: The Hon. Mr. Burdett has also indicated that he will seek to amend the Bill to permit money on deposit with building societies to be treated in the same manner as moneys on deposit in a savings bank. The present provisions of the Act are limited to savings bank and are designed to protect revenue, as well as to facilitate the disposition of small savings bank accounts when no duty will be involved. However, any widening of this provision would increase the possibility of evasion of duty. The Government considers that there is no reason why the Act should be extended specifically to building societies when there are many other organisations in the community, including credit unions and finance companies, which may also hold money in the name of a deceased person. If the Succession Duties Office is satisfied in any estate that no succession duty will be involved and that the only asset is money in the name of the deceased, it issues the appropriate succession duties certificate without delay. The Government does not propose to accept such an amendment.

Valuation of shares: The Hon. Mr. Laidlaw has suggested that the practice of valuing shares at one date should be varied and that both the executors of an estate and the Commissioner of Succession Duties should be given the option of averaging the value of assets over three dates. The Government believes that uncertainty and difficulty would arise in a situation where options could be exercised and that, if any averaging were to be applied, it would need to be firmly in line with clear requirements in the legislation. If one of the three dates was some months after the date of death, there would be delays in valuation of the shares and in finalising the liability for duty. On

balance, the Government considers that it should not proceed with an amendment on this matter.

Bill read a second time.

The Hon. R. C. DeGARIS (Leader of the Opposition) moved:

That it be an instruction to the Committee of the Whole that it have power to consider a new clause relating to section 9b of the principal Act concerning quick successions.

Motion carried.

In Committee.

Clauses 1 to 4 passed.

Clause 5—"Calculation of net present value of property derived." ,

The Hon. J. C. BURDETT: I move:

In new section 9 *(a)* to strike out "any duty" and insert "any estate duties, succession duties, or other death duties".

I explained- this suggested amendment during the second reading debate. As the Minister of Health, in his reply, said that the Government would agree to the suggested amendment, I see no reason to outline it any further.

The CHAIRMAN: As this amendment must be moved in the form of a suggestion to the House of Assembly, I take it that the honourable member's motion is in that form.

Suggested amendment carried; clause as amended passed.

New clause 5a—"Relief from duty on successive deaths."

The Hon. R. C. DeGARIS (Leader of the Opposition): I move to insert the following new clause:

5a. Section 9b of the principal Act is amended—

(*a*) by striking out from subsection (2) the passage "five years" and inserting in lieu thereof the passage "nine years";

and

(*b*) by striking out subsection (3) and inserting in lieu thereof the following subsection:

(3) Subject to subsection (4) of this section, every such rebate shall be an amount equal to a percentage of the duty paid on the property (other than limited interests) which passed to the successor from his predecessor, and the percentage shall be determined in accordance with the following rules:

(*a*) if the successor died in the first year after the predecessor—ninety per cent;

(*b*) if the successor died in the second year after the predecessor—eighty per cent;

(*c*) if the successor died in the third year after the predecessor—seventy per cent;

(*d*) if the successor died in the fourth year after the predecessor—sixty per cent;

(*e*) if the successor died in the fifth year after the predecessor—fifty per cent;

(*f*) if the successor died in the sixth year after the predecessor—forty per cent;

(*g*) if the successor died in the seventh year after the predecessor—thirty per cent;

(*h*) if the successor died in the eighth year after the predecessor—twenty per cent;

(*i*) if the successor died in the ninth year after the predecessor—ten per cent.

I dealt fairly fully with this matter in the second reading debate on the Bill. I note the comments of the Minister in reply to the point I then made. I reiterate the case I gave in relating to quick succession. I have not the figures before me but I think I can deal with them from memory. In an estate of, say, $100 000 (as I pointed out, it could well involve a trade union secretary or other people receiving a lump sum payment for superannuation, and a house, car, and furniture may be included), the duty payable on the estate passing between the spouses is, from memory, about $17 000.

Then, say, after a period of five years the surviving spouse dies and passes that estate to a child, and duty is again very heavy. Over the period of five years, the amount of duty extracted from that estate could approximate 40 per cent of the total estate. At the moment, if an estate passes from the husband to the wife and then the wife dies within a matter of six months, extraction of duty is at the rate of 50 per cent in relation to the child. This would mean that the actual duty extracted from the estate in six months would amount to about 30 per cent to 32 per cent of that estate.

Western Australia has decided to make a move to extend the rebate on quick succession to a period of 10 years. I think it is reasonable that an estate should not have to withstand the full impact of death duties in such a short period as five years; or, as I pointed out, within six months there could be two extractions of duty, one at 100 per cent of the duty rate and one at 50 per cent. Western Australia has moved to improve the situation regarding quick succession, and I suggest that South Australia should take a similar humane action. I consider it completely unjust that a family estate valued at up to $100 000 can be reduced by up to 40 per cent through the impost of two lots of duty in such a short period. I do not think any honourable member would disagree that the quick succession rebate, from the point of view of a humane approach, should be extended to a period of 10 years. I have altered the application and followed the Western Australian idea. In that State, if death occurs within the first year of a succession, the rebate is 90 per cent; during the second year the rebate is 80 per cent, reducing to nil in the tenth year. This is a humane approach to a difficult problem. Although the Minister has said that the Government will not accept this amendment, I ask the the Government to examine the situation again. At least it should try to see whether the Government will accept an important change in our succession duties legislation.

The Hon. C. M. HILL: I support the suggested new clause so ably moved by the Hon. Mr. DeGaris. At the second reading stage, I stressed that, in the assistance given by the Bill, certain categories of people would receive no help. It appears that no help is being given to people in urban areas who have family businesses. Such business operations are treated harshly by succession duties. On the question of quick successions, such people would be assisted considerably if this suggested new clause were inserted. Because in my view this provision relates to those people, and because this is the only help the Bill can give them, I intend to support it most strongly. If the hardship caused by quick successions can be lessened to any degree at all, the Government should favourably consider such an initiative. Particularly because of my involvement with the people I have mentioned, I strongly support the suggested new clause.

The Hon. D. H. L. BANFIELD (Minister of Health): As I mentioned in winding up the second reading debate, the Government is unable to accept this provision. It is easy for people to say concessions should be given, but the Government has already improved the position—

The Hon. R. C. DeGaris: Not for the children.

The Hon. D. H. L. BANFIELD: The Government is improving the principal Act. although it is not going as far as it would like to have gone on this occasion. I must make clear that the Government believes it has gone on this occasion as far as it can go. We will take into consideration the suggestion of honourable members in the future, but at present we cannot go any further. The Hon. Mr. DeGaris travelled to Western Australia to seek similar provisions. Had he not travelled so widely, and had he

simply gone across the border to the east, he would have found that such provisions do not apply in other States. He went in the wrong direction.

The Hon. R. C. DeGaris: I gave all the figures.

The Hon. D. H. L. BANFIELD: I know, but the Leader came down on the Western Australian side because it suited his case. It would suit the Government's case, too, if it was in a position to implement such a provision. However, the Government has gone as far as possible in amending the Act. For these reasons, I suggest that the Hon. Mr. DeGaris should have looked at New South Wales and Queensland; in that case, he would have come down with a different answer.

The Hon. M. B. CAMERON: The Government is being unreasonable in this case. I do not think it is fair to reject this suggested new clause out of hand simply because certain backward Eastern States do not have the same enlightened view as Western Australia has. We should move towards a more enlightened view. The case has been well put. A certain group (children) do not get the same advantages from this Bill as do other groups. It is not fair that one group should be disadvantaged. As for the Minister's having said that the Government has gone as far as it can go—

The Hon. D. H. L. Banfield: At this stage.

The Hon. M. B. CAMERON: With certain assistance in this year we have got rid of a $40 000 000 deficit in the operation of our railways. If that is not an advantage that could lead to some small change in a Bill—

The Hon. D. H. L. Banfield: You have spent it 10 times already since we have got it.

The Hon. M. B. CAMERON: What have I suggested? I challenge the Minister to quote anything I have said. I have suggested nothing or, if I have suggested anything, it has been only minimal. It would be fair for the Minister to accept a relatively minor change. That would ensure that the people most affected by succession duties received some advantage from this legislation. I trust he will think again, and take the matter back to the Government so that it can possibly have a change of heart.

The Hon. J. C. BURDETT: I cannot understand why the Government believes it cannot go further at this stage. We have heard the pious statement by the Minister that the Government would have liked to go further but believed it could not do so at this stage. The cost to revenue of this suggested new clause would be small indeed. It is mainly a matter of justice to inheritors. The period of 10 years within which normally the husband and wife would have died seems a reasonable period for a quick succession rebate. I cannot understand why the Government cannot take such a step at this time. The suggested new clause is before the Committee, and I suggest the Government should support it.

The Hon. R. C. DeGARIS: Two valid points have been made. First, the suggested new clause deals with a group of inheritors, the majority of inheritors in South Australia, the children, who are disadvantaged by the provisions of the Bill. There is an advantage to widowers, and also to widows in respect of a certain amount of money, and then a disadvantage. However, the children comprise the disadvantaged group. It is all very well for the Minister to say the Bill does a great deal, but it does not do nearly as much as the Government thinks it does. In the passage of an estate between husband and wife (or vice versa), the average period when the Government puts its claws in again is about seven years. The Bill does not give a tremendous advantage. When the Government takes a second bite, when the eslate passes to the children, the claws go in deeper. There is little loss of revenue to the Government in the Bill. On my figures, the loss would be a maximum of 5 per cent, and probably nil, owing to the effects of inflation between now and the end of lhe next financial year.

The Government is taking away an advantage already existing for children. The proportionate rebate on duty available to children is almost halved by the Bill. The impact on Government revenue of quick successions will be minimal. In the unfortunate circumstances of a quick succession, the suggested new clause provides a somewhat humane approach to the problem. It will not adversely affect Government revenue to any great degree. I therefore ask the Committee to support it in the hope that, when the Bill returns to another place, it will be given due consideration.

The Committee divided on the suggested new clause:

Ayes (9)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, R. C. DeGaris (teller), R. A. Geddes, C. M. Hill, D. H. Laidlaw, and A. M. Whyte.

Noes (9)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. C. W. Creedon.

The CHAIRMAN: There are 9 Ayes and 9 Noes. To enable the suggested new clause to be considered by another place, I give my casting vote for the Ayes.

Suggested new clause thus inserted.

Clauses 6 to 13 passed.

Clause 14—"General statutory amount for spouse or child."

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

In new section 55h (1) to insert the following new paragraph:

(*d*) where property is derived from the deceased person by a beneficiary of the fourth category, and that property includes moneys received by the beneficiary under a policy of assurance effected on the life of the deceased person—

(i) the amount of those moneys;

or

(ii) an amount of five thousand dollars,

whichever is the lesser;

and in new section 55h (6) to insert the following new definition:

"beneficiary of the fourth category" in relation to a deceased person, means—

*(a)* a spouse of the deceased person;

or

(*b*) a descendant of the deceased person.

My suggested amendments deal with the one question, and relate to the maintaining of rights to add to the property rebate of duty for spouses and children a maximum sum of $5 000 where a policy is maintained by a deceased person and assigned to an inheritor. The first suggested amendment deals largely with the statement the Government made that a widow would receive some benefit up to $81 000. Actually, the figure is $71 000, because removed from the existing proportionate rebate of duty is an assigned policy. Since the 1970 amendment, when the concept of an assigned policy was adopted, many people throughout South Australia have accepted it as a means of helping their family to meet the impact of death duty. Now, after five years, the provision is being removed. People who have taken advantage of the existing

provision must now start again organising their estates in the case of death. This is a most unfortunate approach. The suggested amendments will bring the Bill into line with what the Government said the advantages were and will return a child to exactly the same position as obtained previously regarding proportionate rebate of duty.

The Hon. D. H. L. BANFIELD: As I have already given the reasons for opposing the Leader's amendments, I do not think it is necessary to do so again.

The Committee divided on the suggested amendments:

Ayes (9)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, R. C. DeGaris (teller), R. A. Geddes, C. M. Hill, D. H. Laidlaw, and A. M. Whyte.

Noes (9)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. C. W. Creedon.

The CHAIRMAN: There are 9 Ayes and 9 Noes. To enable the suggested amendments to be considered by another place, I give my casting vote for the Ayes.

Suggested amendments thus carried.

The CHAIRMAN: In new section 55h(5), "subsection (2)" should be "subsection (1)". This typographical error will be corrected.

Clause as amended passed.

Clause 15—"Special statutory amount in respect of rural property."

The Hon. R. C. DeGARIS: I move to strike out new section 55j(1) and insert the following new subsection:

(1) Subject to subsection (2) of this section, where property derived by a spouse, ancestor or descendant of a deceased person includes any beneficial interest in rural property, the special statutory amount is determined in accordance with the following rules:

*(a)* where the value of the beneficial interest does not exceed $80 000, the special statutory amount is sixty per centum of the value of that interest;

*(b)* where the value of the interest exceeds $80 000, but does not exceed $200 000, the special statutory amount is $48 000 plus twenty-six and two-thirds per centum of the amount by which the value of the interest exceeds $80 000; and

*(c)* where the value of the interest exceeds $200 000 the special statutory amount is forty per centum of the value of the interest.

The principal Act allows the application of a proportionate rebate of duty, depending on the size of the rural estate passing to the inheritor. At present, up to $40 000, the rebate is 50 per cent of the total duty payable; the rebate declines to 16 per cent at $200 000; and above $200 000, the rebate remains at 16 per cent. The Bill increases the rebate to 50 per cent across the board. The Government is correct in allowing an increase in the rebate, but I point out that it is strange that we see in this Bill a flat rate of rebate applying across the board, instead of the progressive principle. I do not believe the Government will lose any revenue if it accepts my suggested amendment.

The Hon. D. H. L. BANFIELD: The Government believes that there is no justification for rebates in excess of 50 per cent on successions of rural property.

The Hon. J. C. BURDETT: It has been well accepted in almost all forms of taxation that there be tax progression: the greater the value of the estate, the greater the rate that is applied. This applies in almost every country in the world, including Russia. There should be a declining rate of benefit on the higher successions. It was a mistake to draft the Bill in the way it has been drafted; it is likely that the Government did not appreciate what it had done. The Hon. Mr. DeGaris is not asking for anything that will harm revenue. He is asking for the ordinary principle in taxation measures of this kind: that there be a higher rate of duty on higher estates, and a declining rate of rebate.

The Committee divided on the suggested amendment:

Ayes (9)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, R. C. DeGaris (teller), R. A. Geddes, C. M. Hill, D. H. Laidlaw, and A. M. Whyte.

Noes (9)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—Hon. M. B. Dawkins. No—Hon. C. W. Creedon.

The CHAIRMAN: To enable the suggested amendment to be considered by the House of Assembly, I give my casting vote for the Ayes.

Suggested amendment thus carried; clause as amended passed.

Clause 16—"Administrator to apply in certain cases."

The Hon. A. M. WHYTE: The Minister said the Government would consider any later suggestions relating to further concessions regarding this most iniquitous tax. Is the Minister willing to comment on the anomaly existing in this clause? A person with a house in a town also owning a rural property could have a benefit claimed by a widow or widower in relation to the house in the town as well as the rural property, but in the case of a person who built two houses on a rural property, the widower or widow could claim only one rebate.

The Hon. D. H. L. BANFIELD: The position is that one can receive this benefit in relation to only one property: either the rural property or the house in the town. One cannot benefit from both.

The Hon. R. A. Geddes: Whether the house is in the country or in the town?

The Hon. D. H. L. BANFIELD: Yes.

The Hon. R. C. DeGARIS: The position under this provision is that, where a house, say, is in a country town and is left to a wife, the matrimonial house provision applies to that succession. If the rural property, say, is left to the children, the rural rebate applies to that property so far as the inheritors are concerned.

The Hon. D. H. L. Banfield: That's correct.

The Hon. R. C. DeGARIS: There is the anomaly of a person living in a house in a town getting two rebates, whereas, if the same person is living on the property, that does not apply. One cannot provide for a wife to continue in a house on a small area of land on the property because one will lose one of the rebates in that situation. This is the anomaly to which the Hon. Mr. Whyte has drawn the Minister's attention. In some cases, where a person is not actually living on the rural property, two rebates can be applied to that estate if the inheritors are the widow inheriting the house, and the children inheriting the property. If the family lives on the farm it is not possible to receive the two rebates.

The Hon. A. M. Whyte: That is the point I sought to make.

The Hon. D. H. L. BANFIELD: The Hon. Mr. DeGaris is correct in his interpretation. The position is that the Government will have to look at this aspect when it brings down another amendment to the Bill.

The Hon. R. C. DeGARIS: I do not trust Governments when they promise to look at Succession Duties Bills.

*Members interjecting:*

The Hon. R. C. DeGARlS: L do not detract from what I have said. I do not trust Governments when it comes to succession duties. As this anomaly has been pointed out, perhaps we should now look at an amendment to this clause, because there is an anomaly where the rebate can apply in one estate twice, yet in relation to another estate the matrimonial home provision cannot apply. It would be impossible on a rural property to separate 0.203 hectares around the house, unless the house is close to the road; and if the house block is bigger than 0.203 ha the matrimonial home provision cannot apply, either. In this situation, I ask the Government to look at the matter now instead of putting it off until a future date, as we now have the anomaly before us. I suggest that, where a rural property and a house is left with a small area to a widow during her lifetime, both of the rebates apply in the. same way as both can apply if the house is not actually on the rural property.

The Hon. D. H. L. BANFIELD: We are not fully convinced that there is an anomaly, because there are two different beneficiaries involved.

The Hon. R. C. DeGaris: Yes, but it can be in relation to the rural property, too.

The Hon. D. H. L. BANFIELD: It depends whether the dwelling is a separate part.

The Hon. R. C. DeGaris: How does one separate it when it is in the middle of a farm?

The Hon. D. H. L. BANFIELD: The Leader is a farmer; he ought to know. The position is that we are willing to look at this question in the future. We are not willing to make an alteration to this provision at the present time.

Clause passed.

Clauses 17 to 19 passed.

Clause 20—"Prohibition of dealing with shares, etc."

The CHAIRMAN: There is an amendment on file by the Hon. Mr. Burdett. My attention has been drawn to the fact that in new paragraph (*b)* after the words "deceased person" third occurring the words "and without the Commissioner's certificate or consent," should be included. I suggest that the Hon. Mr. Burdett includes those words when he moves the amendment.

The Hon. J. C. BURDETT: I move to strike out paragraphs (a) and *(b)* and insert the following new paragraphs:

(*a*) by striking out paragraph (*b*) of the proviso to subsection (3) and inserting in lieu thereof the following paragraph:

(*b*) if a Savings Bank or building society is satisfied after reasonable inquiry that it is unlikely that steps will be taken to prove the will (if any), or to obtain administration of the estate, of a deceased person and an amount not exceeding two thousand dollars is held on deposit, or invested, in the name of the deceased person in that Savings Bank or building society, the bank or society may, after the expiration of one month from the date of death of the deceased person, and without the Commissioner's certificate or consent, permit those moneys to be withdrawn by a spouse, ancestor or descendant of the deceased person who has become entitled to those moneys;

*(b)* by striking out from paragraph (c) of the proviso to subsection (3) the passage "in which moneys are held on deposit" and inserting in lieu thereof the passage "or building society in which moneys are held on deposit, or invested,"

(c) by striking out from paragraph (c) of the proviso to subsection (3) the passage "from the account" and the passage "in the account".

The present Act requires generally that no money in a bank account or shares in a company and the like can be realised until a succession duty certificate has been produced, or the consent of the Commissioner has been given. I disagree with what the Minister said in his second reading reply, that we were providing some means of revenue being defrauded in this amendment by extending the position, which applies to savings banks, to building societies. As a matter of fact, it is this requirement of a succession duties certificate that causes much of the delay in the administration of an estate, which brings this part of. the law, generally, into disrepute.

I go further and say that I seriously doubt whether the cumbersome procedure that the South Australian Succession Duties Act provides is necessary to protect the revenue. The procedure is that succession duties statements may not be lodged until probate has been granted. So, first, steps have to be taken to extract probate or letters of administration, which generally takes about four to six weeks. A person cannot lodge a succession duties statement until this has been done. The succession duties statement must be lodged, duly must be paid, and a certificate must be obtained to the effect that duty has been paid before that person can have access to the assets.

The Commonwealth Estate Duties Act does not provide for such cumbersome procedure. There is no need for a certificate to be obtained: assets can be obtained straight away without any time lapse. There is the protection that the administrator is made personally liable for the duty to be paid, without a certificate having to be obtained. I have never heard of a case where the Commonwealth authorities have been defrauded because there is not the cumbersome procedure that we have. I have tried to do it in only a limited way. It would be possible to devise a much less cumbersome and more rapid means of protecting the revenue and yet enabling an estate to be wound up much more rapidly.

Under the present section, deposits in savings bank accounts of up to only $1 200 may be withdrawn, in certain circumstances, without the production of a certificate and without the formal grant of probate. The Bill seeks to extend that to $2 000. About a fortnight or three weeks ago, I asked why the amount of $1 200 (which was fairly small now, in view of inflation) could not be increased. The answer given was that the Government would do something about it—and it has. I commend it for that: that it has increased the amount from $1 200 to $2 000. I suggested $4 000, but the $2 000 is some concession. This amendment seeks to extend this benefit that is given to money held in savings bank accounts to money held by building societies.

No doubt, the reason why the concession is given in the case of money held in savings bank accounts is that often people of modest means have money in such accounts and it is not necessary to obtain formal letters of administration for any other reason. In our society, exactly the same considerations apply to money held on deposit by building societies, which have become reputable and recognised. They are a standard way for many people these days to save. Generally speaking, they pay a higher rate of interest than do the savings banks; they are no longer speculative but are recognised as responsible organisations. Many people save in building societies by way of deposits.

The Minister suggested that, if I went this far, I might as well go to credit unions, and so on. That is not a

justifiable criticism. Credit unions have not yet become recognised as building societies have. If they had, extensions to them could be made, also. My amendment seeks only to give the same privilege to building society deposits as to savings bank deposits. It is not robbing the revenue of any money; it is merely stating that, in such cases where the deposits do not exceed $2 000, the money can be withdrawn without the production of a succession duties certificate and without formal grant of probate. There is no more likelihood of defrauding the revenue in this case than there is in the case of savings bank deposits.

The second part of my amendment relates to the provision in the present Act in regard to joint savings bank accounts. Where the depositors are spouses, another similar concession is granted, namely that the survivor may continue to operate the account for up to half the value of the account without a succession duties certificate being produced. This amendment seeks simply to extend that privilege, too, to moneys held on deposit by building societies. In this case, there is absolutely no reason to fear for the revenue, because it is only up to one-half of the account that can be withdrawn in this way, and that half is the survivor's own property, anyway. There is no real dealing with the assets of the deceased. This amendment is reasonable, particularly since with small estates it will help people to get the deceased person's savings out quickly to live on. It will not deprive or defraud the revenue. This benefit, which already exists in regard to savings bank deposits, should, in justice, apply, to the recognised and reputable building societies.

The Hon. D. H. L. BANFIELD: I appreciate that building societies are reputable bodies, but so are credit unions and finance companies. The Government believes that the widening of this provision to include these bodies would not be feasible because people can scatter their money all around. They can scatter their money around in savings banks accounts. Why should a person not have 20 savings bank accounts, three or four building society accounts, five or six credit union accounts—

The Hon. J. C. Burdett: Do you think anyone really does that?

The Hon. D. H. L. BANFIELD: Do you think anyone does not attempt to evade duty? If you do, you are very naive. I believe that people are continually trying to evade duty.

The Hon. J. C. Burdett: I agree with that, but they will not do it in this way.

The Hon. D. H. L. BANFIELD: People with their thousands and millions of dollars are no different from people with their hundreds of dollars and cents. If there is any way to get out of paying duty to the Government, they will take it. It is part of the game; it is human nature to try to beat the Government. If you spread your money about, you are less likely to be caught. It is a gamble, in which you hope you will not get caught.

The Hon. R. C. DeGaris: How would this avoid duty?

The Hon. D. H. L. BANFIELD: It can, because you can take your savings bank account into the succession duties office and say, "This is it." You can get a certificate for withdrawal. You then round up the other dozen or so bank accounts; it is as simple as that. The office does not know about the others, because they are out of the way. The Government is not willing to widen the provisions in this way. It is pointed out that no-one is disadvantaged because, if only that amount of money is involved, and it does not matter where it is deposited (whether in building societies or savings banks), they only have to satisfy the Succession Duties Office that that is all the money involved. A succession duties certificate is then issued to them over the counter. It is not necessary to have this amendment. Ail that is necessary is for the people concerned to convince the office that this is all the money that they have.

The Hon. J. C. Burdett: Why do you have it in regard to savings bank accounts?

The Hon. D. H. L. BANFIELD: It does not matter whether it is a credit union or a building society. They would still get this succession duty certificate, provided they were convincing enough in their submissions.

The Hon. M. B. CAMERON: I must say I am a little puzzled by the Minister's reply. I cannot quite fathom why he is objecting, because even now people can put their money in building societies. It will not make any difference whether they are able to get half the money out except that it becomes accessible. They are still going .to spread their money around; it is not going to stop that.

The Hon. D. H. L. Banfield: We will not widen the provision.

The Hon. M. B. CAMERON: The Minister has a suspicious nature.

The Hon. D. H. L. Banfield: We are dealing with suspicious people too.

The Hon. M. B. CAMERON: I do not see what difference it makes except that building societies are a recognised group of people. They are totally different from the credit unions. I think funds invested in building societies should be just as accessible as money deposited in savings banks. I do not see this making any difference to the spread of funds. I do not see it stopping people doing what the Minister is talking about.

The Hon. J. C. BURDETT: I cannot think the Government is fair dinkum in raising this particular objection. The Minister complains that people may have 20 different savings bank accounts and therefore they may get away with it. If this is so and if people are likely to do that (which I very much doubt)—

The Hon. R. C. DeGaris: They could do it now.

The Hon. J. C. BURDETT: Yes.

The Hon. D. H. L. Banfield: They can do it. Your Leader says they can do it.

Th Hon. J. C. BURDETT: If people are likely to do that, and I very much doubt they can do it with savings banks anyway, it is not extending it very much. I mention Federal estate duty. I very much doubt that Federal authorities are defrauded simply because they have no certificate requirements. I doubt whether State authorities are defrauded at all because there are no certificate requirements regarding savings bank accounts. I do not think that applies. I might add that I believe very few people with deposits in savings banks, building societies, etc., even know about this provision.

I do not think it likely that they are trying to defraud in this way. Generally speaking, they do not know about it. Often they are amazed when they find, after there has been a death, that the amount of the deposit has been over the limit. Very few people are aware of this. I do not think the Government is fair dinkum in proposing that if this amendment is passed the revenue is likely to be defrauded. It seems to me that what has happened regarding the amendments (with one exception, I am thankful to say, that exception being one I moved) is that the Government decided to oppose all the Opposition

amendments. That seems to be the basic reason why the Government is opposing this amendment.

The Hon. D. H. L. BANFIELD: I gave the correct reasons earlier. It was not because it was moved by the Hon. Mr. Burdett but because of what the Government believes. As the Hon. Mr. Burdett said, we have already accepted one of the Opposition's amendments.

The Committee divided on the amendment:

Ayes (9)—The Hons. J. C. Burdett (teller), M. B. Cameron, J. A. Carnie, Jessie Cooper, R. C. DeGaris, R. A. Geddes, C. M. Hill, D. H. Laidlaw, and A. M. Whyte.

Noes (9)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. C. W. Creedon.

The CHAIRMAN: There are 9 Ayes and 9 Noes. To enable the suggested amendment to be considered by another place, I give my casting vote to the Ayes.

Amendment thus carried; clause as amended passed.

Clause 21 and title passed.

Bill read a third time and passed.

**PUBLIC FINANCE (SPECIAL PROVISIONS) BILL**

(Second reading debate adjourned on November 6. Page 1725.)

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—"Issue from Treasurer's Advance."

The Hon. R. C. DeGARIS (Leader of the Opposition): During the second reading debate, I indicated to the Minister that I would like to have a longer look at this matter, and in Committee I intend dealing with the matters in the Bill that concern me. One may well query, now that the news from Canberra is changing almost every minute or so, whether the Bill is of any use at all. I wish to make a submission on clause 4 which, together with clause 5, forms the operative part of the Bill. The question at issue is whether clause 4 is unsatisfactory in that it authorises the South Australian Government to borrow money without the capacity to repay the advance. I took a long look at Hogg's *Liability of the Crown,* pages 118-25. I do not intend reading passages to the Committee, but I commend it to honourable members who are interested. I also looked at the Bardolph case of 1934, Bardolph being a person well known in this Parliament. I get back to the question raised recently in this Chamber, the case in 1962 of the *South Australian Government* v. *The Commonwealth of Australia* on the rail standardisation agreement. The problem is as to the extent to which the South Australian Government can legally enforce its arrangements with the Commonwealth. In Bardolph's case, the succeeding Government was contractually liable to pay for advertising of a political nature authorised by an earlier Government, even though the contract was not supported by statutory authorities or a proper appropriation of funds; damages were awarded in that case.

In the case of the *South Australian Government* v. *The Commonwealth of Australia,* involving the rail standardisation agreement, it was held to be an agreement depending entirely on political sanctions and not to be legally enforceable through the courts. That was debated at length on a previous occasion in this Chamber. I do not intend to quote the judgment in Bardolph's case, but I would like to quote the judgment of Dixon, C. J., in the rail standardisation case. I am quoting from 108 *Commonwealth Law Reports* of 1962-63, page 114, as follows:

The High Court of Australia has more than once affirmed the rights and obligations subsisting between individuals as the guide to the ascertainment of the legal rights of which the court has cognizance. That principle includes agreement as a category of right, but it would exclude agreements of which the subject of the mutual undertakings is the exercise of political power: the agreements are not such as are capable of existing between individuals, their subject matter is the peculiar and exclusive characteristic of governments. Even an agreement of the Crown with an individual respecting the future exercise of discretionary powers—that they will or will not be exercised in a certain way—probably cannot be a valid contract. The learned author then gives examples of subjects inappropriate for agreements that could be judicially enforced and proceeds: "The task of distinguishing the classes of agreement may not in all cases be easy, particularly in 'mixed' agreements some of whose terms present one feature and some another. It is even possible that it may extend to exclude agreements in which every item could be conceived of as an agreement between individuals but which were so comprehensive and far-reaching that on the whole they must be treated as removed from the category of individual or corporate agreements."

In the present case we are concerned with an agreement which on both sides has the sanction of statute. Behind it there is a history of Government agreements and attempted agreements affecting the same general subject with which this one deals. Some have been fulfilled. The agreement now in question certainly contains provisions which no court could undertake specifically to enforce, that is by detailed specific relief yet in general terms what each government undertakes to do is defined or described with sufficient clearness, and, in the case of some provisions, on fulfilment of the work undertaken on one side there can be little doubt that the financial responsibilities on the other side would be considered legal obligations capable of enforcement by any judicial remedy available in the case of a government liability. Enough has been said to show that in the first place, to generalise about the operation of the agreement in question must be unsafe and misleading and that, in the second place, it could only be in respect of some definite obligation the breach of which is unmistakably identified that a court can pronounce a judicial decree in a case such as this. It is only in this way that the necessary distinction can be maintained between, on the one hand, the exercise of the jurisdiction reposed in the court and, on the other hand, an extension of the court's true function into a domain that does not belong to it, namely, the consideration of undertakings and obligations depending entirely on political sanctions.

Clause 4, in part, provides:

(1) At any time during the period concluding on the prescribed day, where the Treasurer certifies in writing—

(*a*) that moneys in an amount specified are payable to the State for expenditure by the State in accordance with specified arrangements that have been agreed upon between the State and the Commonwealth; and

(*b*) that those moneys have not been received by the State . . .

The point is that moneys have been made available to the State under special arrangements; this Government is seeking the authority to borrow if that money does not come to us, but the collection from the Commonwealth is not enforceable at law. I do not know what proportion of the money coming from the Commonwealth is in this category, but I suspect that a substantial part of the funds South Australia expects to receive from the Commonwealth would depend entirely upon the goodwill of the Commonwealth. Therefore, there would be a danger in spending this money before it was received if there was any likelihood of a change in that policy. I refer particularly to the Budget of 12 months ago, in which the Treasurer included a promise made to the State by the Prime Minister of the sum of $6 000 000. Only a week or two after the promise had been made, that was withdrawn on

the basis that the Treasurer included that sum in the Budget.

Under this Bill, a specified arrangement such as that would entitle the Treasurer to borrow money in this State on the grounds that this money, which would eventually come to South Australia, was being held up temporarily. It is a serious position in which the Treasurer is given the authority to borrow money on a specified arrangement which is not enforceable by an existing Statute or, indeed, in law at all. Perhaps there is no need for this Bill to proceed any further at this stage. I suggest to the Chief Secretary that progress be reported to enable the Government to examine what I have said and to see what transpires in Canberra.

I stress the point that, as I see the Bill, it will give the Treasurer the right to borrow money on a specified arrangement in relation to the Commonwealth Government and, if that Government wants to change its mind, there will be no way in which this State will be able to get that money from it. I remind honourable members of the words of Dixon, C. J., in the judgment regarding the rail standardisation agreement case between the State and Commonwealth Governments, as follows:

> It is only in this way that the necessary distinction can be maintained between, on the one hand, the exercise of the jurisdiction reposed in the court and, on the other hand, an extension of the court's true function into a domain that does not belong to it, namely, the consideration of undertakings and obligations depending entirely on political sanctions.

That point must be stressed. We should not be giving the Treasurer the right to borrow money where there is a political arrangement and no statutory provision for the payment of that money to the States if he borrows against that issue. Perhaps at this stage the Minister will be willing to report progress to enable the Government to examine what I have said. Also, the position in Canberra may perhaps be clarified in the next couple of days.

The Hon. D. H. L. BANFIELD (Minister of Health): As the Leader has convinced me that it would be desirable to ask that progress be reported, I now do so.

Progress reported; Committee to sit again.

## STATUTE LAW REVISION BILL (GENERAL)

Adjourned debate on second reading.

(Continued from November 6. Page 1719.)

The Hon. J. C. BURDETT: I support the second reading. It was pleasing to hear from the Minister's second reading explanation that we can look forward soon to the publication of the consolidated public general Acts from 1937 to 1975. It can indeed be a chore for members of Parliament, lawyers, the general public, and people particularly concerned with legislation to relate the sometimes multitudinous amendments to parent Acts. I hope that the process of consolidation will be completed soon.

I take the opportunity of complimenting Mr. Edward Ludovici for his painstaking work in bringing this State's Statutes into a form in which they will be suitable for a consolidated edition. A perusal of the second reading explanation and a reference to the 35 Acts that the Bill amends will be a practical compliment to the thoroughness of the draftsman.

An honourable member speaking to this Bill in the Council may not say much but will, if he is sincere, have done much research in ensuring that the Bill does only what it purports to do, namely, enact consequential and minor amendments to and remove certain anomalies in the Statute law, and to repeal certain obsolete enactments. Existing rights are not affected, there are no changes in policy or principle, and no comments are called for on the individual Acts being amended or repealed. I have much pleasure in supporting the second reading.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

## SOUTH AUSTRALIAN FILM CORPORATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 6. Page 1722.)

The Hon. C. M. HILL: Those honourable members who have seen *Sunday Too Far Away* and some of the other films produced by the South Australian Film Corporation would, I am sure, congratulate the corporation on the high standard of its work. This Bill amends the Act under which the corporation operates. The two principal amendments increase the size of the corporation from three members to six members, and the advisory board from seven to 10 members. By far the most important provision in the Bill is the increase in size of the corporation board.

I support the Bill and refer to the corporation's annual report, which was laid on the table of the Council only a few days ago. I commend the Director's statement in the report as well as the report of the board itself. Both statements stress the need to aim towards and to maintain high standards in film making and marketing by the corporation.

Under the Bill, there will be an opportunity for some of the personnel of the new board to have accounting and business expertise. Judging from the report tabled in this Council, that expertise will be necessary; otherwise, the corporation's financial future would be somewhat shaky. For example, debenture borrowing of the corporation increased in the year to June 30, 1975, from $800 000 to $1 300 000, and the interest commitment on that borrowing last year was $77 930.

The corporation's operating deficit for last year was $398 000, compared to a deficit in 1974 of $61 000. The State Government grant for film library prints and other capital purposes was $480 000 in 1975, compared to $216 000 in 1974. Those figures indicate that capital is being poured into the corporation and that a serious operating deficit is present and increasing in size. The increase in the size of the board will provide a welcome opportunity for a more businesslike approach; the board should then be capable of exercising proper care and supervision over all the business aspects of the corporation.

The corporation's activities in this State are a long-term venture. One cannot expect immediate financial success, nor can one expect immediate success in reaching the standards at which the corporation is aiming. However, we should emphasise that there may be a need for the corporation to concentrate on some facets of the industry, instead of endeavouring to succeed in all facets in the short term. It may be necessary for the corporation to concentrate on film-making alone in the first instance. Perhaps it should concentrate on film-making for cinema and television and on making short films, which have been very successful up to the present.

The Hon. R. A. Geddes: What is the alternative?

The Hon. C. M. HILL: The whole scope of the industry encompasses distribution and marketing, a highly specialised and competitive field. At this stage, it is questionable whether a Government instrumentality can ever compete with highly competitive private enterprise in those areas.

Rather than endeavouring to reach the end of the rainbow in one giant stride, perhaps the corporation should concentrate on achieving greater success in some areas of the industry and later, with that record behind it, it could widen its activities.

I have been concerned that the corporation, in endeavouring to reach world standards, is treading on the toes of many local interests, especially local private interests involved in film-making. This aspect of the corporation's activities has created ill will locally. Representations have recently been made to me, and I have read correspondence from film-makers who have been established in South Australia for many years and who believe that they are not being treated fairly by the corporation.

I hope that the enlarged board will open its doors to local film-makers, hear complaints, make fair and reasonable judgments, and, if necessary, lay down firm policies that will have to be carried out by the corporation's staff. Of the 24 sponsored films completed in the last 12 months, 15 were produced by the South Australian Film Corporation, and nine were produced by private firms. I am not absolutely certain of my facts in this connection, but it may be that some of the corporation's productions involved local personnel; that point has not been explained in the report.

Of the 34 sponsored films in production at June 30, 1975, 11 are being produced by private firms, 10 by the South Australian Film Corporation, and 13 are under feasibility or scripting. The report does not say whether that work is being done privately or by the corporation. When representations are made to me that local firms are not being given adequate opportunity by the corporation, I cannot help referring to these figures, which tend to indicate that some of the complaints are justified.

Wherever possible, the corporation should supervise these local film enterprises to the optimum extent. There will be some areas in which the standards of local film-makers will have to be improved, but it is regrettable that there are complaints from people who are excellent in their profession but who are being discarded for the sake of interstate personnel. Some people have come from other States and set up in business for the purpose of obtaining contracts from the corporation.

The Hon. B. A. Chatterton: Do you agree that standards should be maintained?

The Hon. C. M. HILL: I accept the Minister's point that standards have to be maintained. It comes down to a matter of opinion whether or not local people, who are wanting to tender and who are wanting to contribute, meet the standards.

The Hon. B. A. Chatterton: That becomes a matter of professional judgment.

The Hon. C. M. HILL: Yes. We are all human, and in our own areas of activity and vocations we sometimes think that we are better than the next man. Nevertheless, I am impressed with the sincerity, the record and the qualifications of the people who have made representations to me. I believe that the whole position will change with an increase in the number of members of the corporation. I come back to that point again because, in future, people seeking to make such representations should be able to put their case directly to the corporation, which being of this size (comprising six members) will be in a better position to make a judgment than was the case with one person, as previously has occurred, or with a body comprising only three members.

I stress that when I am talking about local people I am talking of the people who have been established here for many years: not those people who have established here simply to qualify on the basis that they are established in business in South Australia and have set up here, if not for the sole purpose, then for the principal purpose of obtaining work from the corporation. I stress that I believe that concentration on the supervising of work and the correlating of activities of the local film-makers and involving them in tendering for work should be the favoured and proper practice of the corporation, rather than the corporation itself acting as a principal and producer.

I believe that such a policy, under which the corporation does not itself do so much work as a principal but treats with people in private practice, will ultimately be a far better policy than the present one, under which much production is being undertaken directly by the corporation. In making these points, I do not in any way seek to detract from the excellent work that is being done, and I stress that point. The foundations for great achievement have already been laid, and the people who have been involved in that deserve considerable commendation. The plans and policies for the arts laid down and established by the Liberal Government in office in 1968-70 and the Labor Governments over the past five years in this State have achieved an enviable record for this Stale within Australia and throughout the world.

The natural environment of South Australia, the talents of enthusiastic South Australians and the expertise attracted here from elsewhere should, when combined in the future, provide us with a film industry that can hold a worthy place in the cultural lives of Australians and people in overseas countries. Expert planning, administration and management are essential, and I hope that the new board that will come into existence through this Bill will achieve this. The artistic and technical skills of the senior staff and the South Australians who should be involved in this development will achieve the high standards of success that should be achieved by the corporation in the future. I support the Bill.

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

## PAY-ROLL TAX ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 6. Page 1724.)

The Hon. C. M. HILL: This Bill, like so many other Government measures, looks good on first reading, but it has a sting in its tail. People engaged in small businesses will welcome the increase in the pay-roll tax exemption provided but, in the system foreseen by the Bill, the relief one would expect in such a measure gradually disappears, and I wonder how many businesses will really obtain benefit from the Bill's provisions. I refer to the amount of salaries and wages paid by employers today. One need not have many employees or even have a large staff to reach the $41 600, which, is the peak figure for the exemption. Above $41 600, the exemption gradually disappears until the exemption cuts out altogether.

When taxation measures are considered by this Council, and when other Bills are dealt with, we hear that this tax and other taxes are iniquitous taxes, and I hear that same term used when employers talk about this form of taxation. It has been genuinely complained about, because it results in an outgoing which, in general cost of production and general business costs, is a serious commitment. It has been a form of taxation that has worried the whole

business community. One must certainly welcome the small relief given in the Bill in the lower pay-roll range, but the actual figures must be looked at closely because of the reducing benefit written into the measure after the $41 000-odd is paid. I am prepared to support the second reading but will look with great interest at any amendments that may be placed on file and debated in the Committee stage.

The Hon. R. C. DeGARIS (Leader of the Opposition): The Bill does two things. First, it lifts the general level of exemption from $20 800 to $41 600. Secondly, it prevents the multiplication of the exemption by breaking up the employer's business structure into several water-tight compartments. Dealing with the first matter, one should look at the general application of exemption levels and the rate of the tax since the introduction of pay-roll tax almost 35 years ago. When pay-roll tax was first introduced in 1941, the annual exemption amount was $2 080. At that time, weekly earnings were about $11 or the exemption was equal to the employment of about four employees. By that I mean a business employing four employees was usually exempt from payment of pay-roll tax.

Over the years since the introduction of the tax in 1941, there has been a gradual easing of the exemption position, and this can be seen in the amendments to the Act that were made in 1953, 1954, and 1957. In 1941, the exemption was $2 080 or involved, as the basic wage stood at that time, a business employing 3.6 employees (how one employs 3.6 employees I do not know). In 1953 the exemption was $8 320, or 5.1 employees; in 1954 the exemption was lifted to $12 840, which represented 7.5 employees; and in 1957 the exemption was lifted to where it has stood ever since—$20 800—which represented at that stage about 10 employees.

In the meantime, the rate of tax was increased from 2½ per cent to 5 per cent. At an exemption of $20 800, the number of employees would have dropped to the lowest since the introduction of the tax in 1941. In other words, the number of employees one would have on a pay-roll of $20 800 would be the lowest since the tax was introduced.

The Bill tends to correct this and lifts the exemption to $41 600, which represents about five to six employees. All States have adopted some uniformity in their approach to pay-roll tax since it was handed to the States in 1971. The States can regularly, if they so wish, change the rate of tax. In this matter, the States are not in total agreement. Queensland and Victoria are adopting a different course in the application of this exemption, but $41 600 is the exemption figure. New South Wales, Tasmania, and Western Australia are doing the same as South Australia, so we have a situation where there is no longer uniformity in the general approach to pay-roll tax at the State level.

What Queensland and Victoria are doing is having their exemption level at $41 600 and then, after $72 000, the exemptions decline to $20 800, where it remains an exemption. The South Australian Bill allows an exemption up to $41 600 to phase out at $104 000, and there is no suggestion at all that the employer pays on the full amount of his actual pay-roll. This means that the relatively small employer (say, of 10 to 12 employees) is up for about $1 040 more, under the State Government proposals, whereas the proposal in Queensland and Victoria of the same benefit is maintained for the relatively small employer, or the employer employing about 10 to 12 employees. I strongly support the approach of the Victorian and Queensland Governments in this matter, because it is in that very area of the small business man, employing eight, nine, 10, 11, or 12 people, that the real impact on the viability of that business is occurring at present. It is in this area that we should be looking more than anywhere else to assist in relation to this taxation.

The South Australian approach to this matter, phasing out exemption at $104 000 with a flat rate over that amount, does not make much difference to the large employer. To the employer employing some thousands of employees, it does not matter very much, but it places a great burden on the person employing eight to 12 employees, who will be taxed an extra $1 000 a year in pay-roll tax because of the change in the system.

Surely, this section of the community (the small businessman, the small manufacturer, the small retailer) is the one that deserves consideration now. Even at this late stage, I urge the Government to re-examine its approach to this matter and to adopt the approach of Queensland and Victoria. At least, let us make it three States all. I make that plea on behalf of the small employer in South Australia.

My second point still relates to pay-roll tax; it is the refusal of the Government so far to engage in any plan to alleviate the burden of pay-roll tax to assist, by exemptions, in the decentralisation of industry. Victoria has done very well in this field. Exemptions apply to industries in country areas in Victoria in respect of pay-roll tax. We have heard much said in this State about assisting decentralisation and giving any benefits from pay-roll tax to country industry, but not one thing has been done in this regard.

The Hon. B. A. Chatterton: Oh!

The Hon. R. C. DeGARIS: That is true—in regard to pay-roll tax.

The Hon. B. A. Chatterton: What about Fletcher Jones and Company?

The Hon. R. C. DeGARIS: What I am saying is that, under pay-roll tax, the Government has done nothing. Under the Industries Development Committee something was done for many years to assist industry to establish in country areas.

The Hon. B. A. Chatterton: They've got equivalent measures. It's a much more flexible approach.

The Hon. R. C. DeGARIS: I do not know about that but I do know there has been much talk about giving benefits, through pay-roll tax, to country industries, both to those established in the country and to those needing assistance to establish there. As far as I know, nothing has been done in relation to pay-roll tax. If I am wrong, I would like to be corrected, but that is what I believe to be the position.

The Hon. B. A. Chatterton: More assistance has been given to industry in South Australia than has been given in Victoria, but it has been done in a different way.

The Hon. R. C. DeGARIS: That may be so. Assistance has always been given in South Australia, when required, to establish new industries in country areas, irrespective of whether it is assistance in relation to rating, land tax, or anything else. That assistance always has been available, but I am saying that no assistance has been given in South Australia, as has been given in Victoria, in relief from pay-roll tax to assist industries in decentralised situations. The Minister has said it is being done in a different way and, while that may be so, assistance has been given in South Australia over a long period. It is time the Government took action along the lines taken

in Victoria in assisting smaller industries in country areas in relation to pay-roll tax. The second part of the Bill deals with the closing of a loophole. Every time I hear the Government talking of closing a loophole I have to look a second time.

The Hon. N. K. Foster: No wonder! You came through one yourself.

The Hon. R. C. DeGARIS: I do not know what the honourable member means. At present, there is a way in which people can avoid the payment of pay-roll tax through a series of subsidiary companies involved in similar work. I do not oppose the concept in the Bill to close that loophole. I believe the approach of Queensland and Victoria is a better approach in the matter of increasing exemptions at the State level on pay-roll tax, because it does not hit at the small employer of, say, eight to 12 employees. The legislation contains benefits for those people in relation to pay-roll tax. I am pleased to see the exemption being lifted from $20 800, where it has remained since 1957. That exemption previously represented 10 employees; at the present time, the exemption is at the lowest point in relation to employees since the tax was first introduced in 1941. I support the Bill.

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

## BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 6. Page 1735.)

The Hon J. C. BURDETT: This was one of a series of 10 Bills consecutively numbered in another place, although I am not sure of the numbering of them in this place. It would seem convenient if I spoke in relation to all 10 Bills at the same time. They relate to a similar subject matter and are all concerned primarily with abolishing the legal consequences of illegitimacy and recognising the position of putative spouses.

The PRESIDENT: The question is, "That the honourable member have leave to speak to the 10 Bills dealing with this aspect at the one time".

Leave granted.

The Hon. J. C. BURDETT: I hope that any other speakers on these Bills will perhaps adopt a similar attitude. The principal Bill is the Family Relationships Bill; that is really the master Bill. I support the second reading of all these Bills. However, before dealing with the Bills in detail I should like to make one comment. One sentence in the second reading explanation of the Family Relationships Bill was most unfortunately worded. It states:

> Many modern Statutes have placed illegitimate children in the same position as those born legitimate. The law has come a long way since an illegitimate child was regarded as a mere thing, whose existence was unrecognised until it became a pauper, and whose only legitimate home was the poorhouse.

I thought that was somewhat unfortunately worded in the use of the phrase "whose only legitimate home". The main things these Bills have in common are, first, the abolition of all legal consequences of illegitimacy and, secondly, the concept of putative marriage. Almost everyone in the community will agree that all adverse legal consequences of illegitimacy, and indeed all adverse consequences of any kind of illegitimacy, ought to be abolished. Quite apart from any other consideration, the fact that the child is illegitimate is no fault of the child.

It is only the legal consequences of illegitimacy which the Legislature is capable of removing. I also support recognition of the consequences of a man and woman living together in a *de facto* relationship where that relationship has some degree of permanence. I would oppose any legislation which I though undermined the family or the institution of marriage, or which tended to water down the concept of marriage as the union of one man and one woman for life, which concept arises by virtue of the Commonwealth Marriage Act and is specifically recognised in the Commonwealth Family Law Act. I do not believe that these Bills undermine or water down these concepts or principles. If I were not satisfied on that point, I would not support the Bills.

The Bills do not in any sense condone *de facto* marriages. They relate to putative spouses, not to putative marriages. They do not in any sense provide for polygamy, as has been suggested by some, nor do they provide for a sort of second-grade marriage. They simply acknowledge that, where a man and women cohabit with some degree of permanence, certain financial obligations arise which are, by and large, the same financial obligations as those arising between husband and wife. This is not the first time the law has recognised that some legal consequences arise from permanent cohabitation, although this is a much more comprehensive recognition than ever has been accorded previously. Nor do I believe that these Bills are any sort of a thin end of a wedge to undermine or downgrade the institution of marriage. If any legislation is ever introduced to attempt to do that, I shall oppose it as strongly as I can.

I turn now to the Family Relationships Bill, the master Bill. Its title refers to the abolition of the legal consequences of illegitimacy, and then refers simply to the power to make judgments declaratory of certain relationships. I think that putative spouses should get a mention in the full title. There are, after all, only four Parts of the Bill: there is the usual preliminary Part I, Part II deals with children, Part III with putative spouses, and Part IV deals with miscellaneous matters. We have only two substantive Parts, one relating to children and the specific point of illegitimate children, and the other to putative spouses. It seems to me that the title of the Bill should recognise the two main things that the Bill does. It should include, I suggest, wording such as "to make provision for the status of 'putative spouse' ".

Clause 11 sets out the circumstances in which the relationship of putative spouse can arise. One is where the parties have cohabited for a period of five years immediately preceding the date in question, or for five out of six years preceding that date. This seems to be reasonable. The other situation in which the relationship can arise seems to me to be somewhat tenuous.

It arises when the other person, on the date in question, is living with the person to be deemed the putative spouse, and has had sexual relations with that person resulting in the birth of a child. Putting together the relevant parts of the provision, it reads as follows:

> A person is, on a certain date, the putative spouse of another if he is, on that date, cohabitating with that person as the husband or wife *de facto* of that other person and. . . he has had sexual relations with that other person resulting in the birth of a child.

The situation could arise that a man had sexual relations with a woman, as a result of which a child was born; that he had not lived with her for years; and that in the beginning he did not live with her at all before the birth of the child. Some years after the act of intercourse, and after the birth of the child, if the man takes up cohabitation with the woman, provided it can be described as cohabitation, even for a few days, at any point, he would be held, pursuant to this Part, to be a putative spouse.

Perhaps that is a far-fetched example. However, in this situation, in which a man or woman has had intercourse resulting in the birth of a child, the only other requirement is that, at the date in question, they are cohabiting *de facto* as man and wife. That is a tenuous relationship, and I comment on it in passing.

Clause 11 (6) is one of the main safeguards in the Bill. Some people have thought that a Bill such as this could undermine the institution of marriage and give rise to a concept of second-grade marriage, and so on. Clause 11 (6) provides:

> It shall not be inferred from the fact that the court has declared that two persons were putative spouses, one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date.

It relates only to the date in question. There is no suggestion that they are putative spouses at any other time. To understand the Bill, it is necessary to bear that in mind. I refer also to clause 13, subclause (1) of which provides as follows:

> Proceedings under this Act shall be held in private.

The proceedings are those to have a legitimate child or a putative spouse declared as such. This seems to be a proper kind of proceeding to be held in private.

However, I think the Legislature should always look carefully at any legislation that provides for the holding of any court proceedings in camera. There are already some. I refer, for instance, to adoptions, certain sexual cases, and so on. It is my view, and that of most people, that court proceedings ought, as much as possible, to be public, as are the proceedings of Parliament. However, this is a legitimate case for proceedings to be held in private. Clause 13 (2) provides:

> Any person who publishes by newspaper, radio or television the name of any person by, or in relation to, whom proceedings are taken under this Act unless authorised to do so by the court shall be guilty of an offence and liable to a penalty not exceeding $1 000.

I wonder why this protection is confined to publication by newspaper, radio or television. No other kind of statement or publication is prohibited by the Bill; it refers only to publications by newspaper, radio or television and to "the name of any person by, or in relation to, whom proceedings are taken under this Act, unless authorised to do so by the court". It seems to me that that provision should be wider.

I do not know about spoken statements, although I can conceive of this possibility: perhaps a public figure, say, a politician, could be named in such proceedings. It could be that one of his enemies could make his name public by way of hand bills, or something of that kind, thereby doing him much damage. That is not prohibited by the Bill, which relates to newspaper, radio or television publications only. It seems to me that any written means could be comprehended in the Bill.

I deal now with the Wills Act Amendment Bill. One of its clauses has nothing to do with the legitimacy or putative spouse position. I refer to clause 9, which enacts new section 12, subsection (2) of which provides as follows:

> A document purporting to embody the testamentary intentions of a deceased person shall, notwithstanding that it has not been executed with the formalities required by this Act, be deemed to be a will of the deceased person if the Supreme Court, upon application for admission of the document to probate as the last will of the deceased, is satisfied that there can no reasonable doubt that the deceased intended the document to constitute his will.

I support that provision, which is a fairly important change from the existing law. At present, a document can be admitted to probate and deemed to be a will only if it complies with certain formalities. In the circumstances set out, it allows a document not complying with those formalities to be deemed a will.

There is adequate safeguard, because this can be done only if a court is satisfied that there can be no reasonable doubt that the deceased intended the document to constitute his will. I refer now to the Wrongs Act Amendment Bill, the bulk of which provides for the rights of legitimate children and putative spouses, and the rights given to children under the parent Act. The only comment I want to make on this Bill relates to clause 4, which enacts new section 3a, part of which provides as follows:

> In this Act, unless the contrary intention appears— "brother" includes half-brother and step-brother . . .

I have been a little dubious about step-brothers and step-children always being treated as brothers and children, which is the general gist of this provision. However, in this instance I do not think there are any adverse consequences.

The Guardianship of Infants Act Amendment Bill in addition to the general things done in all the Bills with which the Council is now dealing and which provide for illegitimate children and putative spouses, considerably widens what the court can do. Clause 5 provides:

> Section 6 of the principal Act is repealed and the following section is enacted and inserted in its place:—
>
> 6. (1) The court may, upon the application of a person who has a proper interest in the welfare of an infant, make such orders for the custody of, and access to, the infant as it thinks fit . . .
>
> (7) For the purposes of this section a person has a proper interest in the welfare of an infant if that person—
>
> (a) is the mother or father of the infant;
>
> (b) is a guardian of the infant;
>
> or
>
> (c) is a person who, in the opinion of the court, has in the circumstances of the case a proper interest in the welfare of the infant.

The existing section 6 in the principal Act provides that only the parents may apply for custody. So, the clause considerably widens the range of people who may apply to the court for the guardianship of the child. In some circumstances, grandparents or any other people at all could apply, provided the court was satisfied that they had a proper interest in the welfare of the infant. The safeguard is that such a person must, in the opinion of the court, have a proper interest. I certainly trust the courts to apply the provision correctly.

The Administration and Probate Act Amendment Bill has a most important provision in addition to the provisions relating to illegitimate children and to putative spouses, in that it provides for a complete code in regard to intestacy; this is a good thing. The Bill provides that the surviving spouse may take an interest in the dwelling-house; this is an advantage over the present position where, if the surviving spouse wants to retain the dwellinghouse, an application to the court to postpone conversion must be made. This provision is good. Also, the surviving spouse is empowered to take the personal chattels of the deceased without bringing them into account. New section 72k provides that, unless there is evidence to the contrary and subject to some limitations, where there has been any gift during the five years prior to the death of the deceased in an intestacy, the gift shall be brought into hotchpot. This could be important, because the Bill provides not only for cases of intestacy but also for cases of partial intestacy. While cases of intestacy do not often occur, cases of partial intestacy are not uncommon, because of circumstances arising after the will has been made. It may therefore be wise, if gifts are made, to see that evidence in writing is kept in regard to the deceased's intentions,

as to whether the gift is to be brought into hotchpot. New section 72h (2) provides:

Where an intestate is survived by a lawful spouse and a putative spouse, they shall be entitled in equal shares to the property (including personal chattels of the intestate) that would have devolved upon the spouse if the intestate had been survived only by a single spouse.

This is a new concept. Where a man dies, having both a lawful spouse and a putative spouse, they share equally. If, for example, an unworthy husband wilfully and wrongly deserts his lawful spouse and takes up with another woman who becomes his putative spouse and if a declaration is subsequently made, he thereby deprives the innocent party of some of what she otherwise would have received.

Some Government social workers and other social workers have expressed their disapproval of the Community Welfare Act Amendment Bill because they believe that it makes it much easier for an unmarried mother to keep her child. To me, this is not a disadvantage, because I believe that an unmarried mother has that right, if she wishes to exercise it. I suppose that some decisions that lawful parents make are not always the wisest decisions, but it should be the right of the unmarried mother to keep her child if she wishes to do so. Clause 5 extends the definition of "near relative" for the purpose of maintenance proceedings.

The principal Act provides for the people who are obliged to maintain the child, and it sets out the order in which they are obliged to maintain the child. Clause 5 inserts the following paragraphs: *(a)* father; (*b*) mother; (*c*) step-father; (*d*) step-mother. I suppose it would be possible for a man to marry a woman who had children whom he did not know about at the time of marriage. Pursuant to the new provision, he could become responsible for their maintenance. It seems that, when a person marries, he should make sure what children his spouse already has.

The Hon. R. C. DeGaris: We had a long debate about this matter.

The Hon. J. C. BURDETT: That debate related to the family inheritance provisions. As I say, some of the provisions do other specific things, which I have mentioned and which are set out in the respective second reading explanations. The main common thing the Bills do is to remove the legal disabilities appertaining to illegitimate children, to provide for the concept of putative spouses, and to acknowledge that, when a man and a woman get together in a *de facto* relationship, certain obligations do follow. I support the second reading of the Bill. I have spoken on the Births, Deaths and Marriages Act Amendment Bill, but I support the second reading of that Bill as well as all the other related Bills.

The Hon. D. H. L. BANFIELD (Minister of Health): I thank the Hon. Mr. Burdett for the attention he has given to this matter. I thank him for arriving at the position whereby we were able to discuss the 10 Bills as one matter. This represents much progress, and I believe that it is the correct way of handling this legislation.

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

## INHERITANCE (FAMILY PROVISION) ACT AMENDMENT BILL

(Second reading debate adjourned on November 6. Page 1736.)

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

## LAW OF PROPERTY ACT AMENDMENT BILL

(Second reading debate adjourned on November 6. Page 1736.)

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

## WILLS ACT AMENDMENT BILL

(Second reading debate adjourned on November 6. Page 1736.)

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

## WRONGS ACT AMENDMENT BILL

(Second reading debate adjourned on November 6. Page 1737.)

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

## COOPER BASIN (RATIFICATION) BILL

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

The Hon. B. A. CHATTERTON (Minister of Agriculture): I move:

*That this Bill be now read a second time.*

It ratifies and approves an indenture between the producers of natural gas, in the Cooper Basin natural gas field, and the Government of this State. The approval of the indenture by this Council and the entry by the parties into certain other agreements, notably the Unit Agreement and the Pipelines Authority of South Australia Future Requirements Agreement, will go a long way to ensuring the future supplies of natural gas for this State as well as enabling those supplies to be extracted from the field in a rational and orderly manner.

Clauses 1 and 2 are formal. Clause 3, in effect, picks up the definitions used in clause 1 of the indenture, a copy of which appears as the schedule to this Bill, and applies those definitions to matters contained in the Bill. A study of the indenture will disclose that the matters covered therein fall into two classes—those matters that represent contractual obligations between the parties and those that require modification of the statute law of the Slate. In broad terms, the Bill is concerned only with matters of the latter class, although this concern by no means diminishes the importance of the matters of the former class.

Clause 4 is a legislative recognition of the fact that the Government of the Commonwealth intends to become directly or indirectly a party to the indenture, This clause provides al subclause (1) for a general statement of legislative policy and at subclauses (2), (3) and (4) for an appropriate modification of the Petroleum Act of this State. Clause 5 provides the machinery for Parliamentary approval of subsequent amendments, if any, to the indenture. Subclause (2) provides for such amendments to be approved in retrospect, as it were. Clause 6 provides for the formal approval and ratification of the indenture. Clause 7 gives statutory effect to portion of clause 4 of the indenture.

Clause 8 proposes the modification of the law of the Slate relating to real and personal property to the extent necessary to give effect to the agreement set out in subclause (2) of clause 4 of the indenture. In substance, if clause 8 is agreed to, certain real property described in clause 4 (2) of the indenture will be able to be dealt with as if it were personal property to the extent necessary to give effect to that subclause. Clause 9 effects considerable modification to the Petroleum Act by substituting for petroleum production licences available under that Act licences in the form set out in appendix B of the indenture. In this regard, the attention of honourable members is drawn particularly to clause 6 (I) of the indenture.

Clause 10 makes two referential amendments to the Petroleum Act to give effect to clause 6 (5) of the indenture. Clause 11 gives effect to matters contained in the specified paragraphs of subclause (1) of clause 6 of the

indenture. Clause 12 somewhat extends the "relevant right" granted to licensees under the Petroleum Act and defined in subclause (2) of this clause. The area of extension is set out in this clause. Clause 13 is intended to afford the producers certain protection from rates and taxes levied on other than the unimproved value of property and also from imposts of a discriminating nature. The agreement giving rise to this clause is set out in clause 7 of the indenture. Clause 14 provides for an appropriate exemption from stamp duty as agreed between the parties and expressed in clause 9 of the indenture. Clause 15 deals with the right of the producers to operate certain remote control supervisory systems referred to in clause 8 of the indenture.

Clause 16 approves, for the purposes of the Trade Practices Act, 1974-1975, of the Commonwealth, certain matters and is related to clause 10 of the indenture. Clause 17 modifies the statute and other law of the State so as to enable clause 11 of the indenture to take effect. Clause 18 gives legal and statutory effect to clause 12 of the indenture by providing an alternative method of royalty payment. Clause 19 prevents section 24a of the Arbitration Act, which voids certain agreements to submit matters to arbitration, from applying to submissions contained in the indenture and other documents. Clause 20 is a formal provision. Clause 21 is intended to make clear, except where it is expressly excluded or modified, that the general law of the State applies to matters arising under the indenture. Clause 22 (1) provides for a regulating power in the usual form. At subclause (2), however, a wide dispensing power is included. It is suggested that a power in this form is necessary to ensure that in appropriate circumstances the general law of the State can be adapted to ensure that the carrying out of the indenture is not impeded. Regulations made under this provision are, of course, subject to the scrutiny of this Council and will result in the modifications made being quite explicit. The schedule sets out the indenture as executed. This Bill has been considered and approved by a Select Committee in another place.

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

## STATE TRANSPORT AUTHORITY ACT AMENDMENT BILL

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

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

*That this Bill he now read a second time.*

It should be read together with two other Bills before Parliament, the Municipal Tramways Trust Act Amendment Bill, 1975, and the South Australian Railways Commissioner's Act Amendment Bill, 1975. Under those Bills the State Transport Authority is to carry on the activities of the Municipal Tramways Trust and the South Australian Railways Commissioner in the place of those bodies, which are to be dissolved. Under this Bill, the Transport Control Board established under Road and Railway Transport Act, 1930-1971, is dissolved and its passenger transport licensing functions are conferred upon the State Transport Authority. The functions of the authority under the principal Act, the State Transport Authority Act, 1974, at present are to co-ordinate the public transport systems of the State to determine the manner and means by which it may assume the direct exercise of the powers and functions of the Municipal Tramways Trust, the Transport Control Board and the South Australian Railways Commissioner and, in the meantime, to control and direct the activities of those bodies.

This Bill and the other two Bills referred to, therefore, may be regarded as the intermediate stage in the Governments' legislative programme relating to public transport, the final stage being the consolidation of all legislation relating to public transport under the administration of the State Transport Authority. Accordingly, this Bill provides for amendment of the principal Act so that the functions of the authority are those conferred directly upon it by the Municipal Tramways Trust Act Amendment Bill, 1975, the South Australian Railways Commissioner's Act Amendment Bill, 1975, and the enactment of a new Part of the principal Act setting out the passenger transport licensing functions performed by the Transport Control Board. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Clause 1 is formal. Clause 2 provides that the measure comes into operation on a day to be fixed by proclamation. Clause 3 provides for the amendment of section 3 of the principal Act, which sets out the arrangement of the principal Act by inserting a reference to proposed new Part IIA dealing with licensing. Clause 4 provides for the amendment of the interpretation section, section 4, by inserting definitions for the purposes of the licensing provisions and by deleting the definition of "prescribed body".

Clause 5 provides for the amendment of section 5 of the principal Act by providing that the powers, duties, functions and authorities of the authority include those conferred, imposed or prescribed under any other Act. Clause 6 provides for the amendment of section 9 of the principal Act by providing that the deputy of the Chairman of the authority is to preside at any meeting in the absence of the Chairman. Clause 7 provides for the amendment of section 12 of the principal Act, which sets out the functions of the authority. Clause 8 provides for the amendment of section 14 of the principal Act by providing that the power of delegation of the authority applies in relation to its powers and functions under any other Act.

Clause 9 provides for the substitution of section 15 relating to employment by the authority. The proposed new section provides a full power of employment, subject to any directions of the Minister relating to terms and conditions of employment, and empowers the authority to make use of the services of public servants. The present provisions relating to the Public Service are not included as it has been decided that these provisions will not in fact be used. Clause 10 provides for the enactment of a new Part 11A of the principal Act. The proposed new Part provides for a licensing system for the operation of vehicles for the purpose of transporting passengers for hire that is substantially the same as that administered at present by the Transport Control Board under the Road and Railway Transport Act, 1930-1971.

Proposed new section 15a provides for the repeal of the Road and Railway Transport Act, 1930-1971. Proposed new section 15b provides for the dissolution of the Transport Control Board and the subrogation of the authority. Proposed new section 15c prohibits the operation of vehicles for the purpose of transporting passengers for hire except by a Licensee or his employee or otherwise than in accordance with the conditions of his licence. Provision is included for the exemption of persons or vehicles from the operation of this section. Proposed

new section 15d continues existing licences granted under the Road and Railway Transport Act, 1931-1971, or under the Municipal Tramways Trust Act, 1935-1973.

Proposed new section 15e provides for applications for licences. Proposed new section 15f provides for the giant of licences by the authority, which is to have regard to such of the criteria set out in the provisions as are relevant. Proposed new section 15g empowers the authority to attach conditions to a licence that are appropriate to the kind of operation to be authorised by the licence. Proposed new section 15h provides for the variation by the authority of any conditions of a licence. Proposed new section 15i provides for the surrender, suspension and cancellation of licences. Proposed new section 15j provides for the transfer of licences with the approval of the authority. Proposed new section 15k provides for the issue of duplicate licences.

Proposed new section 15l provides for the appointment of inspectors, and proposed new section 15m sets out the powers of inspectors. Proposed new section 15n provides for the protection of inspectors. Proposed new section 15o provides a penalty for the supply of false information. Proposed new section 15p provides that documents may be served by post. Proposed new section 15q provides that the provisions of the Part are in addition to and not in derogation of the provisions of any other Act. Clause 11 provides for the amendment of section 16 of the principal Act relating to moneys for the purposes of the Act. Clause 12 provides for the amendment of section 17 of the principal Act so that the audit required by the section is of the accounts of the authority under the principal Act. Clause 13 provides for the amendment of section 18 of the principal Act by limiting the annual report required by that section to the activities of the authority under the principal Act.

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

## SOUTH AUSTRALIAN RAILWAYS COMMISSIONER'S ACT AMENDMENT BILL

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

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

*That this Bill be now read a second time.*

It provides for the dissolution of the South Australian Railways Commissioner as a body corporate under the principal Act, the South Australian Railways Commissioner's Act, 1936-1974, and the transfer of his property, rights, powers, duties and liabilities to the State Transport Authority established under the State Transport Authority Act, 1974. The Bill forms part of the transfer of direct control of the various aspects of public transport to the State Transport Authority, and should be read together with the Municipal Tramways Trust Act Amendment Bill, 1975, and the State Transport Authority Act Amendment Bill, 1975. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Clause 1 provides for a new short title, the "Railways Act, 1936-1975". Clause 2 provides that the measure is to come into operation on the same day as the Slate Transport Authority Act Amendment Act, 1975, comes into operation. Clause 3 amends section 3 of the principal Act which sets out the arrangement of the principal Act. Clause 4 amends the interpretation section, section 5 of the principal Act, generally by substituting "Authority" for "Commissioner". Clause 5 substitutes a new heading, "State Transport Authority", in Part II of the principal Act.

Clause 6 provides for the repeal of sections 6 to 11 of the principal Act relating to the incorporation of the South Australian Railways Commissioner, and the enactment of a section dissolving the South Australian Railways Commissioner as a body corporate and transferring his property, rights, powers, duties, and liabilities to the State Transport Authority. Clause 7 provides for the repeal of sections 13 to 16 of the principal Act relating to the making of contracts by the Commissioner. These matters are to be dealt with by the State Transport Authority Act, 1974, as amended. Clause 8 amends section 19 of the principal Act relating to audits so that it applies to audits of the accounts kept under the principal Act by the authority.

Clause 9 amends section 22 of the principal Act relating to annual reports so that the section requires the authority to make annual reports of its activities under the principal Act only. Clause 10 provides for the repeal of the elaborate employment provisions contained in Part III of the principal Act on the declared date under the Railways (Transfer Agreement) Act, 1975, that is, after completion of the transfer of the non-metropolitan railways to the Australian Government railways authority. On this date all persons employed under Part III are to vacate their offices and be offered employment by the Australian Government railways authority.

Clause 11 provides for the enactment of a new section 86a of the principal Act, empowering the authority to close a line of railway, with the consent of the Minister, if the authority is satisfied that the line is not economic and there is an adequate alternative transport service. This matter is at present regulated by the Road and Railway Transport Act, 1930-1971, which is to be repealed. Clause 12 provides for the repeal of section 94 of the principal Act, which is obsolete.

Clause 13 amends section 101 of the principal Act by substituting "Authority" for "Commissioner", and removing a reference to the Road and Railway Transport Act, 1930, as amended, which is to be repealed. Clause 14 provides for the repeal of section 135 of the principal Act which is obsolete. Clause 15 provides for the repeal of section 137 of the principal Act, which is also an obsolete provision. Clause 16 provides that the provisions of the principal Act described in the first column of the schedule to the Bill are amended in the manner indicated in the second column, generally by substituting "Authority" for "Commissioner".

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

## MUNICIPAL TRAMWAYS TRUST ACT AMENDMENT BILL

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

## ABORIGINAL LANDS TRUST ACT AMENDMENT BILL

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

## ACTS INTERPRETATION ACT AMENDMENT BILL

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

## STATUTE LAW REVISION BILL (HOSPITALS)

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

## ADJOURNMENT

At 5.53 p.m. the Council adjourned until Wednesday, November 12, at 2.15 p.m.