LEGISLATIVE COUNCIL.

Thursday, October 18, 1956.

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

ASSENT TO ACTS.

His Excellency the Governor intimated by message his assent to the Housing Agreement and Waterworks Act Amendment Acts.

QUESTION.

HIRE-PURCHASE BUSINESS.

The Hon. K. E. J. BARDOLPH—I ask leave to make a statement with a view to asking a question.

Leave granted.

The Hon. K. E. J. BARDOLPH—I do not know whether I am in order in asking this question, because it refers to the Prices Act, and a Bill to amend this Act is now before this Council. The section to which I wish to refer, after dealing with manufactured goods, mentions services, and indicates that the Prices Commissioner, with the power conferred on him by the Minister, can fix a rate. "Rate" is defined under the Act as follows:—

"Rate" includes every valuable consideration whatsoever, whether direct or indirect.

Then it goes on to define more clearly "service" as follows:—

"Service" means the supply for reward of water, electricity, gas, transport or other rights, privileges or services (not being services rendered by a servant to a master) by any person (including the Crown and any statutory authority) engaged in an industrial, commercial, business, profit-making or remunerative undertaking, or enterprise.

Can the Attorney-General say whether those provisions could be utilized to regulate interest charges on hire-purchase agreements and the hire-purchase agreement business?

The Hon. C. D. ROWE—I have not had an opportunity to look carefully at the sections of the Act referred to, but am prepared to do so and let the honourable member know in due course what the exact position is. However, as an offhand opinion I should say that those sections do not relate to the payment of rates of interest on hire-purchase transactions.

JUSTICES ACT AMENDMENT BILL.

Second reading.

The Hon. C. D. ROWE (Attorney-General)—I move—

That this Bill be now read a second time.

The object of this Bill is to make some amendments to the Justices Act. They are mainly based on recommendations made to the Government by magistrates and law officers, and deal with a variety of topics. For convenience I will deal with the amendments in the order in which they appear in the Bill.

Clause 3 gives an articled clerk appearing on the instructions of the solicitor to whom he is articled the right to appear before justices. At present an articled clerk can only appear with the permission of the court. Permission is given only in the simplest matters. The Law Society has asked the Government that articled clerks should be given the right to be heard. The society is anxious that articled clerks should be enabled to get experience in small matters. The Government believes that there are good reasons why articled clerks should have the right to be heard and has agreed to the request. It should be mentioned that an articled clerk acting on the instructions of his principal has a right to be heard in a local court.

Clause 4 enables a court of summary jurisdiction when it has found the matter of a complaint proved to order that the defendant be examined by a physician, psychiatrist or psychologist. At present the only way in which a defendant can be so examined is if he or his counsel arranges for an examination by a private doctor or other person. It sometimes happens that the court feels that an examination is desirable, but the defendant is not able to afford the examination, so that the examination cannot be carried out. Two of the magistrates have recommended that courts of summary jurisdiction should be enabled to order such examinations and the Government has accepted this recommendation.

Clause 5 deals with problems concerning the detention of children. Under the Maintenance Act the court may order that a child who has failed to comply with an order of the court shall be detained in an institution until he attains the age of 18 years or for a shorter period. If, however, a warrant for the arrest of such a child is issued and the child attains the age of 18 years before the warrant is executed, the child escapes punishment. He cannot be detained in an institution because the warrant cannot under any circumstances authorize his detention there after he has attained the age of 18 years. Nor can he be imprisoned in a gaol because there is no machinery for the withdrawal of the original warrant and its conversion into a warrant authorizing detention in gaol. It is obviously desirable that there should be a procedure to deal with these cases and accordingly clause

5 enables a justice, on application, to withdraw the first warrant and to issue another ordering detention in gaol.

Where a child who has failed to comply with an order of a court is ordered to be detained for a specified period and is apprehended just before he turns 18, he must, if his eighteenth birthday occurs before the end of the period, be released before he has served the whole of the period. Clause 5 enables the child to be detained in an institution for the whole of the period notwithstanding that he has attained the age of 18 years. It will be appreciated that these provisions do not affect the detention of a juvenile as punishment for a crime. They apply only where a child has failed to comply with an order of a court of summary jurisdiction, for example, for payment of a fine.

Clause 6 makes a drafting amendment only to the principal Act. Clauses 7 and 8 provide that the deposition of witnesses and the statement or evidence of the defendant taken at a preliminary examination may, if the justice taking the examination so directs, be read over to the witnesses or defendant elsewhere than in the room where the examination is taken. At present it is generally accepted that the principal Act requires the depositions to be read over in court ,and this is the usual practice. Last year attention was drawn in another place to the fact that the practice wasted a great deal of time. The Government has considered the question and has decided that it would be responsible to enable the depositions to be read over outside the courtroom.

Clause 9 makes three kinds of felonies in the nature of stealing triable summarily as minor indictable offences. These offences are stealing gates or parts of a fence, stealing ore from mines and oysters from oyster beds. These offences carry a smaller penalty than a number of other indictable offences which are triable summarily. It is anomalous that they are not also triable summarily. Clauses 10 and 11 are of a drafting nature only.

Clause 12 increases the amount which a child—that is a person under 18 years of age—may be fined by a court of summary jurisdiction for an indictable offence. Under the principal Act a child may be tried summarily for any indictable offence other than homicide. On conviction the court may deal with the child under the Maintenance Act or fine him. The amount of the fine is at present limited by the principal Act to £5. This amount which was fixed many years ago is far too small. Many children are earning substantial wages and are inadequately punished for an indictable offence by a £5 fine.

In addition, it is anomalous to limit the fine for an indictable offence to £5 when a child may be fined far more than £5 for many summary offences. Under the Road Traffic Act, for example, a child may, for most offences, be fined up to £20. The Government proposes by this Bill to raise the maximum fine to £50. Most indictable offences are of a serious nature and it is necessary that the court should have a wide discretion which would enable it to impose substantial fines where desirable.

Clause 12 also makes an amendment of a drafting nature to the principal Act to bring the principal Act into line with the Juvenile Courts Act. Clause 13 provides that a child charged before a magistrate or justices with an indictable offence may plead guilty to the charge at any stage in the proceedings. Before 1943 it was always necessary at a preliminary examination that all the evidence for the prosecution should be taken before a plea of guilty could be accepted from the defendant, whether or not the offence was one which could be dealt with summarily.

In 1943, it was made possible for an adult charged with a minor indictable offence to plead guilty at any stage in the proceedings, and in 1952 provision was made for a plea of guilty to be taken at the commencement of proceedings on certain sexual charges. As this latter provision hardly affects proceedings against children, the position at present is in practice that on all charges of indictable offences against children, all the evidence for the prosecution must still be heard before a plea of guilty can be taken, even though such charges, except homicide, can be dealt with summarily.

A plea of guilty can be taken at any stage of the hearing of a summary offence, and many of such offences are more serious than many indictable offences. It is generally considered unnecessary for the evidence on a charge of an indictable offence to be heard where a child desires to plead guilty, and it is understood that magistrates sometimes at present in the interests of all parties take a plea of guilty at the commencement of the proceedings. Clause 13 will give statutory authority for this practice. It is based on the provisions of the principal Act enabling an adult to plead guilty to a minor indictable offence at any stage. It will be noticed that

the clause enables the court, after taking a plea before the evidence is heard, to permit it to be withdrawn if any facts placed before the court justify this course.

Clauses 14 to 23 and clause 25 deal with appeals under the principal Act to the Supreme Court. At present an appeal to the Supreme Court from an order of a court of summary jurisdiction is instituted by serving notice of appeal on the respondent and the court of summary jurisdiction, and by entering into a recognizance to prosecute the appeal. If the appellant is in custody by virtue of the order, he is entitled to be released on his recognizance being further conditioned to appear before justices after the appeal is disposed of.

An appeal does not come on for hearing automatically when it is instituted. It is still necessary for the appellant to set the appeal down for hearing in the Supreme Court. There is no way of compelling an appellant to set down the appeal for hearing, and it quite often happens that an appellant takes no steps to have the appeal disposed of. It is possible for the respondent to set down the appeal, but the procedure is slow, expensive and cumbersome. The failure of appellants to set down appeals for hearing has been causing concern to the Government's law officers for some time, and the Government has decided to alter the procedure so that an appeal will automatically come on for hearing after notice of appeal is served on the court of summary jurisdiction. The Government's proposals will also simplify the existing procedure.

Briefly the Government's proposals are that the appeal will, unless adjourned, come on for hearing on a day specified in the notice of appeal. It will no longer be necessary for the appellant to set down the appeal in the Supreme Court, nor will it be necessary for the appellant to enter into a recognizance to prosecute the appeal. It is considered that if setting down is not required, this recognizance is no longer necessary.

The Government has also given careful consideration to another aspect of the appeal procedure, namely, that an appellant who is in custody is, on entering into a recognizance, entitled to bail. The Crown Solicitor has recently recommended that bail should be discretionary and this recommendation is supported by the Police Magistrate at Adelaide (Mr. Clarke) and the Magistrate who presides over the Port Adelaide Police Court (Mr. Johnston). The Crown Solicitor has pointed out that appellants of bad character frequently commit further offences when released, their purpose often being to raise money for their appeals. They frequently also abscond to another State and commit further offences there.

Courts of summary jurisdiction now-a-days deal with many offences of a serious nature and have many hardened criminals appearing before them. In many cases an appellant has a right to bail after summary conviction of an offence, although, if he had been committed for trial in the Supreme Court for the same offence, he could, under the present law, have been refused bail.

It should be mentioned also that the Supreme Court does not as a rule allow bail on an appeal from a conviction in criminal sessions to the Full Court. The Government takes the view that bail for appellants in cases of summary offences should be discretionary. The present position causes trouble and expense to the State and, since appellants on bail often commit further offences, injury to the public. This matter is dealt with in clause 16. This clause provides that an application for bail shall be dealt with by a special magistrate or two justices, and that bail shall be discretionary. It is provided that, if an appellant is not released, he shall be treated in the same manner as a person committed for trial. The time during which he is in custody and so specially treated will, unless the Supreme Court otherwise directs, count towards any terms of imprisonment which he is required to serve as a result of the appeal.

The Bill also deals with a third matter relating to appeals. Paragraph (*c*) of clause 14 makes it clear that there is no appeal against the dismissal of a minor indictable offence. This has always been assumed to be the law in this State, but doubts have been raised about the matter by the High Court. Clause 24 makes a drafting amendment to the principal Act.

The Hon. K. E. J. BARDOLPH secured the adjournment of the debate.

APPROPRIATION BILL (No. 2).

Adjourned debate on second reading.

(Continued from October 17. Page 1056.)

The Hon. C. R. STORY (Midland)—This Bill affords members an opportunity to study the way in which the Treasurer has allotted the moneys available to him to various Government departments and outside bodies, and we have an opportunity as a Parliament, as perhaps

specialists in something, to take a portion of the Bill and dissect it to see whether in our opinion the money is being spent in the best interests of the State. It is therefore important that every member who has an opportunity to speak on the measure should do so, so that Parliament can work in the way I believe it should. It is with this idea in mind that I wish to address myself in the first instance to a line providing for £500,000 for the prevention, reduction, control and alleviation of damage, hardship and loss from floodwaters of the River Murray. This amount, together with a previous amount of £300,000 made available under a special Act, brings the total that the Government has provided for these purposes to £800,000.

At the outset I would like to compliment and congratulate the Government on the action it took when the first signs of this flood became apparent. In the first instance Cabinet appointed the Minister of Irrigation as the authority for conducting flood works, and the time that he and his department spent on this work probably made the difference between saving and losing large areas of productive country. Heads of all departments have contributed a terrific amount to make it possible for local people and flood fighters to carry out their part in the fight. By providing technical knowledge, manpower and equipment these departments have saved the people of this State many thousands of pounds. The Commonwealth Department of Works and Housing and the Army are also to be congratulated on the way they came in to assist. It was their duty to a certain extent, but there are two ways of doing a duty; it is either done pleasantly without a grudge, or because it has to be done. I would like to mention one public servant in particular, who was appointed by Cabinet to act as liaison officer between those fighting the floods, the Government, and the volunteers. I refer to Mr. A. C. Gordon, the Assistant Director of Lands, who has done a wonderful job, and whose name should go on record.

The Hon. K. E. J. Bardolph—What about the other officers?

The Hon. C. R. STORY—I have mentioned them. The establishment of the Flood Protection Committee, set up to administer the finance that the Government made available to provide equipment and technical advice, was to a large degree the culminating point in the whole of the flood fight. The volunteers who went from their jobs in the city and from local government areas throughout the State, and who provided equipment on a voluntary basis, have done a great service to the State. Those who have contributed money should also be thanked. However, the flood fight goes on, and although certain areas have been saved by the erection of levee banks, large areas are inundated, and we must look for something more tangible than putting money into the Lord Mayor's Relief Fund and the amounts provided by this Parliament.

The loss of homes, assets, and income will run into many hundreds of thousands of pounds. Much damage is not yet apparent, because the effect of the insidious creeping seepage taking place throughout the areas where levees have been erected will not become apparent for some months. The damage to homes and land will not be known until the hot summer has killed hundreds of acres of what were once good orchards. It is to these that we must look. The losses in the inundated areas are becoming apparent now. Houses have been battered, and trees are dying, and generally speaking some indication can be given of what the losses will be. Land behind the levee banks is suffering from seepage. When land is impregnated with salt it becomes very like low lying ground adjacent to the coastline. When pastures and orchards are lost because of such floods, a long time elapses before they can be re-established. Even if they start to replant some varieties of fruit trees next year, it will be at least 10 years before they get profitable returns.

The Hon. K. E. J. Bardolph—What amount did the Commonwealth Government give the New South Wales Government following the serious flood in that State?

The Hon. C. R. STORY—I understand it was about £3,000,000. It was not a hand-out, but was provided so that some relief could be given to those areas.

The Hon. S. C. Bevan—Is it not time the Commonwealth Government did something similar here?

The Hon. C. R. STORY—I think it is being done. I feel confident that the Commonwealth Government will give due consideration to the approaches made by the State Government if a case is substantiated.

The Hon. K. E. J. Bardolph—Don't you think that £50,000 was a very parsimonious gift in view of the urgency?

The Hon. C. R. STORY—I understand that the Commonwealth Government intended to subsidize pound for pound the amount provided by the State Government, which has

made a very generous contribution. If we place our trust in this Government, we will not be far wrong.

The Hon. K. E. J. Bardolph—Have not the public given most of the money?

The Hon. C. R. STORY—The Lord Mayor's Relief Fund has reached about £300,000, largely as a result of public subscriptions. The Commonwealth Government has been approached to provide funds for rehabilitation, and I am confident it will contribute liberally, although it is probably beyond the means of any Government to lavish huge amounts on one section of the community, because in a few years there may be a similar catastrophe and there would be nothing but a repetition of hand-outs. There should be planning whereby long-term loans can be provided to enable people to get back on their feet. I do not think anyone, except those in precarious circumstances, wants a hand-out.

Since the peak of the flood the water has receded only a foot in the Upper Murray areas, and that is a very small drop when one remembers the huge quantity of water which is resting against the levee banks. In normal times the pool level at Renmark is 19ft. 2in., but at present it is 29ft. 6in.—more than 10ft. above normal. In other places such as Waikerie, Cobdogla and Cadell the river is about 25ft. above normal. People cannot be blamed in the affected localities for having taken undue risk, because it has taken some 70 years for the flood position to catch up with us. Those who designed our soldier settlement areas were quite content that they would be safe.

The question is often asked "Why do those people complain of the flood now when they must have known what the position was?" I refute any such suggestion, because this is the worst flood in our history. The water has collected from the Queensland border throughout the watershed of New South Wales and from the main tributaries of Victoria. Many of these streams which normally would be only creeks are now 30 to 40 miles wide and we have to take all that water through a narrow channel bordered by cliffs at Cadell, Swan Reach and other places in that locality where it is only 1½ miles wide. Therefore, is it any wonder we have a build-up of water which is far beyond any human effort to control? Because of the magnitude of the flood, no-one will ever fully appreciate the efforts of those who saved certain areas.

The flood reminds me very much of a war. In the heat of war everyone is prepared to give and to do, but as soon as it is over there is a tendency for a general easing off in every way, including work for the rehabilitation and repatriation of those in the services. Therefore, I sound a warning that we must continue to fight in this flood. I hope we will not be lulled into a sense of false security. Much water is still coming down from the Snowy River and the Alps. Although it may not result in any worsening of the flood position, the seepage problem will remain with us for a long time. Much has been written and spoken on the subject, and many schemes propounded to control and prevent floods. I do not suggest that I have any solution of the problem.

The Hon. K. E. J. Bardolph—What about the position in Holland?

The Hon. C. R. STORY—The problem there is somewhat different from ours. In Holland they build dykes and pump the water out and gradually bring the land into production. It is only on rare occasions that they have a break in the dykes and have to start the work all over again. Provision is made for a 25-year project in reclaiming the soil. They have tile drains and build huge channels inside their banks to collect the water, and then it is pumped away. Reliance is placed on rain to wash salt from the soil. However, our problem is not as easy as that. In China they have rivers which continually overflow their banks, and there they have overcome their problem to a certain degree. The banks are terrifically high and when one breaks it can result in wiping off half a million people. We do not work under the same system as that, because life is not so cheap here and we are working on something which is on a much smaller scale. We do not have to put our people in that position because we have land above flood levels which we can use.

The Hon. K. E. J. Bardolph—Is it not a fact that we had advice from a Dutch expert on stemming water?

The Hon. C. S. STORY—I thought that was King Canute; he is the only one I knew who tried to stem water, and he did not get on very well. We have taken advice from experts on the subject. We have to get down to some basis of planning, and must not say that the lower Murray should do something and some town in the upper Murray something else. We must have a State plan and some experts to investigate the position and see where we are going. The part played by the other States to a very large degree determines

the policy which we in South Australia should adopt. The River Murray Commission is a three-State body which has certain powers, but it does not entirely attend to flood protection. If in some areas it is decided to hold water back, by means of dams such as Eildon and Burrinjuck, until a certain level is reached, and then allow it to come down the main stream, South Australia can get into more trouble in future because with a continuation of wet seasons and with the watershed wet, washed and scoured we will have floods, although perhaps not of the same magnitude as the last one, consistently over the next few years. In the bold plan I spoke of, local government in the flooded areas should draft some plan for the different location of shops, buildings and homes, and the Government should set up a small committee of experts from the various departments involved. I do not mean that each department should supply an expert, but that there should be an expert committee providing the technical knowledge, with power to co-opt technicians from other departments who are specialists in their own particular field. These people could advise the local government bodies on the best method and the practicability of shifting certain areas and removing certain hazards in order to avoid a repetition of what we have experienced.

We should start to accumulate evidence, perhaps by means of a Royal Commission or committee with similar powers, on whether it is practicable to continue protecting these inundated areas against future floods, and on the practicability of moving certain settlements and towns to higher ground. That Commission could make recommendations as to the methods of financing such projects, and could recommend legislation, if necessary, to implement its findings. The local governments and other interested bodies should prepare plans for the rehabilitation of their areas in conjunction with the expert committee I spoke of, and ensure that we have some plan and are not going blindly along.

If a fisherman has a property on the edge of the water which he knows will be inundated, I cannot imagine that he should be entitled to receive a considerable amount from either the Lord Mayor's Relief Fund or any other fund we might set up. His house will naturally be washed with every flood we get. Nor do I think it would be right for a man who locates his house on the lowest portion of his property and so exposes himself to inundation to expect relief in future. If he can make provision for the movement of his house on to higher ground I think he should do so. I am interested more in quite large areas now inundated, and my own view is that this proposed committee should investigate the practicability of continuing with the irrigation and the protection of that country. We have very large tracts of land adjacent to every irrigation area in South Australia where we can put people in safety where they will not be subject to the seepage problems that exist on the lower country.

The lift has been a problem in the past and that is why we find so many of our irrigated areas on low level country. Chaffey Brothers never intended that Renmark should be where it is, but the people were forced by economics to build it there. If we are going to repeat the folly of the past and not make any effort at all we will run the settlers into bankruptcy and the Government with them. Surely we have learned a lesson from the recent disastrous flood! We must spend more money to get these people on to high ground. I do not think the cost of pumping water to the higher ground will be any greater, because the type of pumps we have today have almost exploded the theory that people must go to the lower country. There are so many other contributing factors which will more than compensate us for getting the light sandy soils, such as the establishment of a fruit canning industry in South Australia with a decent co-operative company to handle it.

The Hon. S. C. Bevan—If we can lift water over the Adelaide ranges people on the river should be able to lift it to higher ground.

The Hon. C. R. STORY—We should not settle people again on much of this country on the 10 acres and a cow basis. We should not go in for luxurious ideas of providing everything for them, but merely the head works, the land and the water, and make the opportunities for them to get money at a reasonable interest rate so that they can re-establish themselves. A lot of those men are over the hill; they are World War I soldiers who have built up a very nice asset, but with the seepage problem that is attacking them now they will be too old to start again. We must give those who desire it the opportunity to get out and go on to higher ground. The only way we can do that is with a bold plan which has to be prepared by local people who know their conditions, and by advice of experts who have the technical know-how to do it.

The Hon. J. L. S. Bice—With your experience, can you suggest what is an economic pumping lift?

The Hon. C. R. STORY—An economic lift could not be worked out in pounds, shillings and pence. We do not know what the future will be, so we must not go back and repeat our mistakes. It is cheaper to put a road on flat ground but if it is going to be washed out by floods it is much cheaper in the long run to put it on higher ground. Government departments will have their problems, and he Highways Department is probably the one that will be faced with the greatest problem because of the flood.

The lack of adequate crossings over the River Murray has never been more amply demonstrated than during this flood. The only road crossing over the river in this State is at Murray Bridge. The other bridge at Paringa cannot be used because 1½ miles of road leading to it is under water, and no attempts have ever been made to raise its height. Ever since 1915 there has been constant agitation for the road to be raised, and just when we expected the work would be commenced the road is several feet under water, thus cutting the only link between this part of the State and Victoria.

The Hon. J. L. Cowan—Would not the flow of water be impeded if the road were built up?

The Hon. C. R. STORY—As the honourable member knows, all obstructions such as roads, railway embankments and other things of that nature are governed by the River Murray Agreement, which provides that there shall be sufficient passageway through them that the flow of water will not be impeded. That brings me to an interesting point, which is that the railway embankment between the Paringa bridge and Renmark has made a difference of six or seven inches in the height of the river at Renmark simply because the apertures are not sufficiently wide to cope with the flood. When the road is raised, it will have sufficient decking bridges to enable the water to go through without being impeded. The only road bridge across the Murray is at Murray Bridge, and surely it is time to consider the construction of another crossing on the Upper Murray. I will not suggest where I think it should be, but evidence will be submitted to the Public Works Standing Committee in due course, and no doubt that committee will give the answer.

The only communication between the north and south sides of the river is by means of a shuttle service provided by the South Australian Railways and, to say the very least, this is slow, expensive and inadequate. It consists of one very obsolete rail car and one truck, which are expected to take the place of the Sturt Highway. This, of course, is quite impossible. I am pleased to say that the Railways Commissioner, after a lot of pressure from members of the district, sent an officer to the river to investigate the position, and I hope that something will come of his deliberations. If nothing happens, I will address myself to the subject again when we are dealing with the lines.

The Highways Department can do a great deal to assist councils of areas where roads are under six, seven, and even 10ft. of water. These roads could be taken to higher ground so that people would be encouraged to take their businesses and homes there, where they would not be affected by future floods. The hub of any country town is the road. If the roads at Kingston and Moorook were shifted to higher ground, I am sure the people would establish themselves on adjacent land, where they would be safe from floods in the future.

The Chief Secretary, who recently visited the river, knows the position in relation to hospitals very well, because hospitals on the river have been severely affected. I compliment his department on the temporary hospital accommodation it has provided, and the Education Department for the terrific amount of work it has done to provide educational facilities for people who have had no chance to get their children to school.

To summarize, I feel that a small expert committee should be set up to investigate, together with local governing bodies, the problems along the river and to give advice on them. I also consider that a Royal Commission should be set up to collect evidence to see whether it is practical to continue with certain areas, or whether they should be shifted, to report on how any shifting could be financed and whether any legislation would be necessary to give effect to any suggestions. I support the Bill.

The Hon. J. L. S. BICE secured the adjournment of the debate.

ENFIELD GENERAL CEMETERY ACT AMENDMENT BILL.

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

The Hon. Sir Lyell McEWIN (Chief Secretary)—I move—

That this Bill be now read a second time.

The Enfield General Cemetery Act, 1944, set up a Trust to purchase and manage an extensive area of land at Enfield which is now

known as the Enfield General Cemetery. The funds necessary for the purchase of the land comprising the cemetery, namely, approximately £7,000, were provided by the Government, and the Act also provides that further advances may be made from time to time to assist in the establishment of the cemetery. The maximum amount which can be advanced for this latter purpose is £20,000, and the Act provides that such advances may be made up to June 30, 1958. Provision for the repayment of advances by the trust are contained in the fourth schedule to the Act. Up to June 30 last £20,556, including the advance of approximately £7,000 for the purchase of the land, had been advanced to the trust, so that about £7,000 can still be advanced.

Section 23 of the Act provides that the trust is to pay interest on these advances at the rate of 4 per cent.

When this rate of interest was enacted, the long term bond rate was 3¼ per cent. It is obvious that, with the long term bond rate now standing at 5 per cent, the interest rate on advances to the trust should be in excess of 4 per cent. It is therefore provided by the Bill that, in lieu of the interest rate being fixed by section 23, the rate is to be fixed from time to time by the Treasurer. It is provided that different interest rates may be fixed in respect of advances made at different times, so that the interest rate to be paid on past advances when the bond term rate was low can differ from the interest rate on other advances. The Bill is a hybrid Bill within the meaning of the Joint Standing Orders on Private Bills and consequently, upon being read a second time in another place, was referred to a Select Committee. After hearing evidence and consideration of the Bill the Select Committee recommended its passing.

The Hon. K. E. J. BARDOLPH secured the adjournment of the debate.

ROAD AND RAILWAY TRANSPORT ACT AMENDMENT BILL.

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

The Hon. Sir LYELL McEWIN (Chief Secretary)—I move—

That this Bill be now read a second time.

This Bill provides that persons who operate unregistered commercial motor vehicles within South Australia shall pay a contribution towards the maintenance of our roads. As the only vehicle which can be driven in South Australia without registration are those exclusively used in interstate trade, the Bill will apply only to this class of vehicles. The Bill represents another stage in dealing with a problem which has already been before this Parliament on more than one occasion. Until the end of 1954 vehicles registered in other States were allowed to run in South Australia without registration under the Road Traffic Act; but if they carried passengers or goods for hire on roads declared to be controlled routes under the Road and Railway Transport Act they were subject to charges under that Act. The charges imposed were quite reasonable.

At the end of 1954 the Privy Council, in the case of Hughes and Vale v. New South Wales held that this system of imposing charges upon vehicles used in interstate trade was unconstitutional. However, some remarks in the judgments of the Privy Council and the High Court indicated that a law providing for "reasonable regulation" of interstate vehicles would be held valid, and it was a fair inference from what was said that a system of registering vehicles such as was prescribed in our Road Traffic Act would be regarded as a reasonable regulation. Acting on this hint, the Government, with the approval of Parliament, made regulations bringing the vehicles of interstate carriers under the Road Traffic Act. This law, in its turn, was challenged in the High Court and held to be invalid. It appeared that some of the previous judicial utterances as to what constituted reasonable regulation could not be taken at their face value.

The position therefore now is that vehicles engaged in interstate commerce are in South Australia not subject to the Road and Railway Transport Act and do not have to be registered under the Road Traffic Act. They are in the unique position of being the only class of vehicles at present using the roads without making a contribution to the Highways Fund. In the view of the Government this state of affairs should be altered, and the Government believes that it can be altered without violating the Constitution. The High Court itself has given some guidance as to the methods which may properly be adopted.

In the second Hughes and Vale case some of the judges of the High Court, including the Chief Justice, clearly expressed the opinion that the States had power to levy charges for the use of their roads by vehicles engaged in interstate trade. From what was said it seems likely that a road charge would be held valid

if it complied with the following requirements:—

(*a*) It must not discriminate against interstate transport.

(*b*) It must avoid unnecessary hampering of the movement of interstate vehicles.

(*c*) It must be a reasonable payment to the State as a contribution towards the maintenance and upkeep (but not the capital cost) of roads.

(*d*) The rate of the charge should be fixed by Act of Parliament and not left to the determination of an administrative authority.

(*e*) It must be based on the extent of the use of the roads by the vehicles on which the charge is imposed, *e.g.*, it must be based on mileage run, weight of vehicles or some other factor of this kind.

(*f*) The proceeds from the charge should be set aside for road maintenance.

In framing this Bill these principles have been kept in mind. The scheme is to impose a road charge computed according to the mileage run in South Australia, on every unregistered vehicle using our roads. The amount of the charge per mile depends on the tare weight of the vehicle, and is at the rate of one penny for each complete ton of tare weight, with a fractional part of a penny for parts of a ton. To simplify calculation the rate is expressed as one-twentieth of a penny for each hundredweight. In arriving at this rate the Government has considered a number of calculations made by the Commissioner of Highways and his officers as to the costs of road maintenance. The costs vary a good deal according to the roads which are taken into consideration and other factors. The rate in the Bill is below the average of those worked out by the Commissioner and cannot be criticised on the ground that it is more than a fair contribution. The vehicles to which the Bill applies are those falling within the definition of "unregistered commercial vehicle." This expression is defined to mean a motor vehicle the tare weight of which is 2½ tons or more and which is not registered. It includes both passenger and goods vehicles. As I mentioned, the only vehicles which can lawfully run on South Australian roads without registration are those engaged exclusively in interstate trade. It follows that this Bill will apply only to vehicles engaged in interstate trade.

It may be admitted that this Bill treats interstate vehicles differently from intrastate vehicles. But it does not discriminate against interstate vehicles in the sense of imposing greater burdens on them than on intrastate vehicles. If the owner of an interstate vehicle considers that the road charge imposed on him by this Bill is too high, it is open to him to register his vehicle in South Australia, in which case the road charge will not be payable.

The machinery for securing the payment of the charge is that the owner of an unregistered commercial vehicle which operates on South Australian roads must deliver to the Transport Control Board returns showing its mileage run on South Australian roads. The returns must be made monthly unless some special arrangement is made between the board and the owner of the vehicle. The road charges must also, in the absence of a special arrangement, be paid monthly at the time when the returns are delivered to the board. The charges for each month will have to be paid not later than the middle of the following month. It will be the duty of every owner of an interstate vehicle to see that proper records are kept of journeys taken in South Australia by the vehicle. The records must be kept on the vehicle itself and must be entered up daily. If a person drives an unregistered commercial vehicle without carrying the proper records on the vehicle, he will be guilty of an offence.

The road charges payable can be recovered from the owner of the vehicle concerned either by local court proceedings or by summary proceedings in a Police Court. In addition, if the owner of a vehicle is charged with not having filed a return, the Police Court can, in addition to fining him for that offence, make an order against him for payment of any road charges which the Court finds to be due. All money collected under the Bill as road charges must be paid into the Highways Fund and used exclusively for road maintenance.

The Hon. S. C. BEVAN secured the adjournment of the debate.

FRUIT FLY (COMPENSATION) BILL.

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

The Hon. Sir LYELL McEWIN (Chief Secretary)—I move—

That this Bill be now read a second time.

The object of this Bill is to provide compensation for loss arising from the campaign for the eradication of fruit fly which commenced in the Unley area in March this year. On the discovery of fruit fly in the area, stripping and spraying were begun, and a proclamation was issued on 29th March prohibiting the removal of fruit from the area. Subsequently, on 26th April a further proclamation was issued enlarging the area from which the removal of fruit was prohibited. Following the

practice of other years, the Government proposes that compensation shall be given for loss arising from these measures, and is accordingly introducing this Bill. The Bill provides for compensation for loss arising from these measures in the same manner as in previous years.

The details of the Bill are as follow:—Clause 3 provides that a person who suffers loss by reason of stripping or spraying on any land while the removal of fruit therefrom is prohibited by the proclamation previously mentioned shall be entitled to compensation. Compensation will be available for loss arising from the taking of fruit, for damage caused by spraying, and for any incidental damage. Clause 3 also provides for compensation for loss arising by reason of the prohibition of the removal of fruit from any land because of the proclamations. In previous years, though not last year, a third ground of compensation has been provided for, namely, loss arising from a prohibition imposed by proclamation on the growing of certain plants. No proclamation prohibiting the growing of plants has been issued this year, and the Government does not intend to issue such a proclamation. Even if such a proclamation were issued, the circumstances of the outbreak are not such as would justify the payment of compensation for loss arising from the proclamation. Accordingly, no provision has been made in this Bill for payment of compensation for loss arising from a prohibition of the growing of plants.

Clause 4 requires claims under the Bill to be lodged with the Fruit Fly Compensation Committee before February 1, 1957. In previous years, claimants for compensation for loss arising from a prohibition of the removal of fruit have been given until July 1 to lodge their claims. The Government, on the recommendation of the Committee, has decided to eliminate this provision, and to require the claims to be lodged by the same day as other claims, namely February 1. The Committee considers that since there are no commercial growers in the area, a later date for the claims is not necessary. Further, there have been very few such claims in the past, and having two dates for the lodging of claims has caused confusion.

The Hon. S. C. BEVAN secured the adjournment of the debate.

HOMES ACT AMENDMENT BILL.

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

The Hon. Sir LYELL McEWIN (Chief Secretary)—I move—

That this Bill be now read a second time.

The Homes Act, 1941, provides a method whereby Government assistance is given to persons desirous of purchasing their own homes. The Act provides that, where mortgage loans are made by one or other of the lending institutions mentioned in the Act, the Treasurer may guarantee the repayment of the loan.

The guarantee is limited to the amount which represents that part of the loan which is in excess of seven-tenths of the value of the house and the guarantee is limited to one-fifth of that value. The effect is that, if a mortgage loan is made up to 90 per cent of the value of the security, the guarantee relates to the part of the loan which represents from 70 to 90 per cent of the value.

Section 7 of the Homes Act sets out certain conditions which must be complied with before a guarantee may be given.

Among these is the condition that the interest charged on the loan is not to exceed 5 per cent if paid within 14 days after the due date and 5½ per cent if paid later.

These interest rates were fixed by the amending Act of 1952. Since that time there has been an upward trend in mortgage interest rates and the rates now generally charged by lending institutions are in excess of those specified in the section.

It is therefore proposed by the Bill to increase the permissible interest rates and it is provided that the Treasurer is not to guarantee a loan if the interest rate charged on the loan exceeds 6 per cent if paid within 14 days after the due date and 6½ per cent if paid after that time.

The Hon. K. E. J. BARDOLPH secured the adjournment of the debate.

LOAN MONEY APPROPRIATION (WORKING ACCOUNTS) BILL.

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

The Hon. Sir LYELL McEWIN (Chief Secretary)—I move—

That this Bill be now read a second time.

It has been the practice up to June 30 last to finance and record all operating transactions associated with Woods and Forests sawmills and mining and treatment of uranium ores through the Loan Fund. As the volume of operation in each undertaking has increased it has become increasingly difficult to handle these transactions through the Loan Account. The difficulty arises in that these purely operating expenditures were debited against the amount

authorized by the Loan Council to be borrowed, whereas, since all of the operating expenditure is recovered from the sale of the product, there is actually no usage of the loan moneys currently being borrowed, except for the amount of working capital which it is proposed by the Bill to appropriate from the Loan Fund. It is evident, then, that to continue this practice would restrict the State's authority to use loan moneys for capital works purposes at a time when the loan moneys available from this source are restricted, and not nearly sufficient to finance all the capital works we consider necessary and urgent.

The Government has therefore decided to provide an amount of working capital from the Loan Fund not exceeding £100,000 to finance operations through working accounts. This Bill also provides that any surpluses in the working accounts created from the proceeds from sale of dressed timber and uranium oxide, and not required to finance future expenditure chargeable to the working accounts, may be repaid to the Loan Fund. Clause 4 appropriates the moneys to be issued from the Loan Fund.

The Hon. K. E. J. BARDOLPH secured the adjournment of the debate.

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL.

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

The Hon. Sir LYELL McEWIN (Chief Secretary)—I move—

That this Bill be now read a second time.

This Bill deals with two matters. The first is the distribution of the property of a person who dies intestate leaving a widow or widower. The other is the power of the Treasurer, in a case where a Government employee dies with money owing to him by the Crown, to pay such money to his relatives, dependants or representatives.

I will explain first the clause dealing with the distribution of property upon intestacy. The particular matter dealt with in this clause is the share of the surviving husband or wife when the deceased dies without issue. The law on intestate succession has a long history of changes, but for the purposes of this Bill it is not necessary to go back earlier than 1891. By that time the legislature of this State had removed the ancient differences between the devolution of real estate and the devolution of personal property on intestacy, and also the differences between the rights of widowers and those of widows. The surviving spouse, whether widow or widower, had become entitled to one-third of the residue of the estate if the deceased left issue, and one-half if the deceased left no issue. The remaining portion of the estate went to the issue or next of kin.

By the Administration and Probate Act of 1891 the rights of the surviving spouse in a case where the deceased left no issue were increased. This Act provided that in such a case a surviving spouse, in addition to his or her share of the residue, should take the first £500. If the estate was under £500 the surviving spouse took the whole. If it was over £500 he or she took £500 with interest, and one-half or one-third, as the case required, of the residue. This South Australian Act of 1891 was based upon an Act passed in England in the previous year. The English Act, however, gave the £500 to widows only. There was no need to make any such provision for widowers because at the time the widower was, under English law, entitled on intestacy to the whole of his wife's estate. Strangely enough, there is no record in the English *Hansard* of any debate in the House of Commons on this Bill and very little was said about it in the Lords. No doubt the Act was part of the movement for improving the legal position of married women, but why the figure of £500 was decided upon in preference to any other figure is obscure. In the House of Lords Lord Bramwell said he thought it a fair thing, but could not give any reason for it. There is, in fact, no way of calculating or determining accurately what is the most appropriate amount to be given as a general rule in the circumstances now under consideration.

The other States of Australia quickly followed the principle of the English Act, and most of them adopted the sum of £500 as the additional share of the surviving spouse where there was no issue. However, the amount has gradually been raised in other States and the position is now as follows:—In New South Wales, if a husband or wife dies without issue the first £3,000 goes to the spouse. In Queensland, in the same circumstances the amount is £1,000, and in Victoria the amount was, in 1953, fixed at £5,000. In Western Australia the principle of giving a fixed amount applies, whether or not the deceased leaves issue. If there are issue the spouse is entitled to the first £2,500, and if there are no issue, to the first £5,000.

In Tasmania if there are issue the surviving spouse is entitled to the first £1,000 (plus the usual one-third share) and if there are no issue, to the whole estate. It will be seen that there are several different ideas about distribution on intestacy but all the other States concur in thinking that the sum of £500 originally prescribed is now too low. By this Bill the Government proposes that it shall be raised to £5,000. The increase is in the Government's opinion justified by the fall in the purchasing power of money and by the improvement in the standard of living. The Bill will be of particular benefit to widows in cases where, under the present law, the family residence would have to be sold to provide money for the shares of other persons having much less moral claim to the property of the deceased.

The other clause of the Bill re-enacts with amendments section 71 of the Administration and Probate Act. This provides that where the personal representatives of a deceased person are entitled under the Public Service Act to any sum not exceeding £100 the sum may be paid, with the consent of the Treasurer, to any person who appears to be entitled to take out probate or letters of administration. This law was originally enacted in 1891 to enable balances of salary and retiring allowances due to deceased public officers to be paid without probate or letters of administration where the estate was small. The section is at present used mainly for the purposes of enabling the Treasurer to pay amounts of salary owing to a public servant at the time of his death. However, the section is not wide enough in its scope to meet present day requirements.

In the first place it only applies to those Government employees who are under the Public Service Act. These are now a fairly small proportion of the total Government employees. It is desirable that the section should be extended so that it will cover all Government employees paid out of money under the control of the Treasurer, for example, railway employees, teachers and the daily-paid staff of departments engaged in works. Secondly, a payment can only be made to a person who appears to be entitled to take out letters of administration or probate. Thus, in many cases, payment cannot be made to the widow of the deceased or to other dependants.

It is proposed, therefore, to give the Treasurer power to pay the balances in question to any person to whom he deems it just to pay them. Any person to whom a payment is made may be required to undertake to indemnify the Government against the claims of any other person to the same money. If a payment is made to a person not entitled to the money, he may be compelled to pay it over to any person who is entitled to it.

It will be seen that the new section is of much greater scope and flexibility than the old and will be of considerable benefit to many people in their time of need. This legislation makes necessary amendments and new assessments in view of the changing value of money, and I commend it to the Council.

The Hon. S. C. BEVAN secured the adjournment of the debate.

ROYAL STYLE AND TITLES BILL.

Returned from the House of Assembly without amendment.

ADJOURNMENT.

At 4.23 p.m. the Council adjourned until Tuesday, October 23, at 2.15 p.m.