LEGISLATIVE COUNCIL.

Tuesday, August 18, 1959.

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

QUESTIONS.

CEILING HEIGHTS.

The Hon. K. E. J. BARDOLPH—In reply to my question on July 30 regarding ceiling heights under the Building Act the Minister of Local Government said that he had obtained a report from the Building Act Advisory Committee which he was referring to Cabinet forthwith. Has that report been presented to Cabinet and, if so, what is its decision?

The Hon. N. L. JUDE—I read also in the newspaper that this matter had been referred to in another place. It is still under consideration by Cabinet.

SPEED LIMIT ON PORT LINCOLN RAILWAY DIVISION.

The Hon. S. C. BEVAN—I ask leave to make a statement prior to asking a question.

Leave granted.

The Hon. S. C. BEVAN—The Port Lincoln division of the South Australian Railways consists of 520 miles of track over which speed limits, apparently of a precautionary nature, are imposed on various sections as follows:—over 52 miles 40 chains, 10 m.p.h.; over 65 miles 20 chains, 15 m.p.h.; over 98 miles 20 chains, 20 m.p.h.; and over nine miles 20 chains, 25 m.p.h. This makes a total of 225 miles 20 chains subject to speed limits, and on the remaining 295 miles a normal speed of 30 to 35 miles an hour may be attained. Can the Minister inform me whether the reason for the speed variations is the unsafe condition of the track, or any other reason?

The Hon. N. L. JUDE—The railway track on Eyre Peninsula is, in the main, not ballasted over long distances, and when we have to endeavour to carry a heavy harvest on that line it is highly desirable that speeds should be used which more than maintain safe conditions. I do not accept the honourable member's suggestion as to "the unsafe condition" of the track. The fact is that it is a very light track and it has to be used with suitable caution.

FRUIT FLY CONTROL.

The Hon. G. O'H. GILES—Has the Minister representing the Minister of Agriculture a reply to the question I asked on June 11 as to the possibility of the spread of fruit fly in rose hips?

The Hon. Sir LYELL McEWIN—I have a reply from the Minister of Agriculture as follows:—

Rose hips are a low preference host of fruit fly and may be "stung" when fruit fly populations are high. They are regarded as having a similar host preference to olives and many berry bearing bushes, *e.g.*, cotoneaster. In our eradication programme, with the exception of gardens in the immediate vicinity of an outbreak, these are not picked but are subjected to spray treatment.

RESPONSIBILITIES OF MOTORISTS AT PEDESTRIAN CROSSINGS.

The Hon. A. J. SHARD—On July 28 and 29 I asked the Minister of Roads questions regarding the responsibilities of motorists at pedestrian crossings. Has he any further information on this matter?

The Hon. N. L. JUDE—The honourable member will recall that he asked me questions regarding specific crossings and I was not able to give a specific answer at the time. In the meantime, Sir Edgar Bean, who is dealing with the Road Traffic Act, has advised me as follows:—

The pedestrian crossings at Grote Street and the Nailsworth school are laid down in accordance with section 130e of the Road Traffic Act and the regulations thereunder. The duty of motorists at these crossings is therefore to give way to any pedestrians on them, as required by subsection (5) of that section. This means that if there is a pedestrian on or entering the crossing as the motorist approaches, the motorist must stop, if that is necessary in order to allow the pedestrian to cross in front of his vehicle. If there are no pedestrians on or entering the crossing with whom the motorist might collide, he is under no duty to stop.

HILTON BRIDGE.

The Hon. K. E. J. BARDOLPH—On July 29 I asked the Minister of Railways whether he would take up with the Railways Commissioner the question of strengthening the guard rails on the Hilton Bridge as they are in a very flimsy condition. Has he a reply today?

The Hon. N. L. JUDE—The Railways Commissioner has advised as follows:—

Specifications covering the design of fences of bridges do not provide for these parts of the structure being strong enough to withstand impact from road vehicles out of control. The safety of the fences of the Hilton Road bridge is not in question but for the purpose which they are intended to serve, and it is not proposed to erect new fences in place of the existing. The latter will be maintained in good repair as circumstances require.

MATRIMONIAL CAUSES BILL.

The Hon. F. J. POTTER—I ask leave to make a statement prior to asking a question.

Leave granted.

The Hon. F. J. POTTER—My question relates to the Matrimonial Causes Bill now before the Federal Parliament. Last week in the *Advertiser* the Commonwealth Attorney-General was reported as saying that despite differences in the existing State procedures no major problems in introducing the Commonwealth proposals into State systems were anticipated. It is proposed under the terms of the new Commonwealth Bill that the State Supreme Courts shall have Federal jurisdiction conferred upon them for the purpose of administering this legislation. Although the Master and the Deputy Master of our Supreme Court are officers of the court I believe that some legal doubt exists as to whether or not they can exercise the jurisdiction of the court. As they have a great deal to do with matrimonial causes I ask of the Minister representing the Attorney-General, if it is found necessary to amend the Supreme Court Act with a view to granting Masters and Deputy Masters jurisdiction, will the Government introduce such legislation this session so that the Act will be amended before the Commonwealth legislation comes into existence?

The Hon. Sir LYELL McEWIN—I will refer the honourable member's question to the Acting Attorney-General, but I would not anticipate that we would pass legislation at any time anticipating something which might happen elsewhere. The time to consider it is after the Commonwealth has acted, and no doubt when the legislation has been passed the necessary amendment will be made here.

PUBLIC WORKS COMMITTEE REPORT.

The PRESIDENT laid on the table an interim report by the Public Works Committee on:—

Kingscote harbor accommodation,
Grand Junction Road trunk water main,
Augmentation of metropolitan water supply,
Automotive Trade School (additions and alterations),
Coomandook area school,
High schools—Plympton, Campbelltown, Elizabeth, New Millicent, Henley, Seacombe, and Gilles Plains.

JOINT COMMITTEE ON CONSOLIDATION BILLS.

A message was received from the House of Assembly requesting the concurrence of the Legislative Council in the appointment of a Joint Committee on Consolidation Bills.

The Hon. Sir LYELL McEWIN moved—

That the Assembly's request be agreed to and that the members of the Legislative Council to be members of the Joint Committee be the Chief Secretary, the Hon. Sir Frank Perry, and the Hon. K. E. J. Bardolph, of whom two shall form the quorum of Council members necessary to be present at all sittings of the committee.

Motion carried.

ADELAIDE UNIVERSITY COUNCIL.

The Hon. Sir LYELL McEWIN (Chief Secretary) moved—

That the Council do now proceed to elect by ballot two members of the Council to be members of the Council of the University of Adelaide.

The Hon. F. J. CONDON (Leader of the Opposition)—I regret that it is necessary for me to refer to the representation on the University Council, but the Opposition has raised this question on several occasions by question and in debates with no result. In another place three members are appointed to the council, two as nominees of the Government and one as a nominee of the Opposition. This House has two members elected by ballot (and they have always been elected unanimously, as they will be on this occasion). We have no wish to dispose of our two representatives as they have given us good service on the University Council, but we think that the Act should be amended to give this House representation equal to that enjoyed by another place. On October 1, 1957, I asked a question:—

In view of the requests made from time to time by the Opposition for representation on the University Council, has the Government considered amending the Act to give that representation?

The Hon. C. D. Rowe replied:—

The honourable member knows the control of the University is not under my department and consequently I am not in a position to give a firm answer. I am prepared to refer the matter to Cabinet.

Last year I asked the Chief Secretary a question to which he replied:—

The representation is decided by this Chamber and is not a Government appointment.

I later followed that up by asking whether the Government would consider amending the Act as promised in the previous session, and the Chief Secretary replied that it was a matter of policy. The University vote last year was about £1,000,000, and I take it there will be a further increase this year which this Council will be asked to pass. I believe that the Opposition is sufficiently interested in education to have some representation on the

council. In the four years since 1953-54 the University grant has been doubled. I am not raising this question again with any feeling, but as a matter of right and in the interests of this Council. Therefore, I ask the Government to consider amending the Act so that the Opposition will have representation, because I honestly believe we are justly entitled to it.

Motion carried.

A ballot having been taken, the Hons. L. H. Densley and Sir Frank Perry were declared elected.

LIMITATION OF ACTIONS ACT AMENDMENT BILL.

The Hon. Sir LYELL McEWIN (Chief Secretary) obtained leave and introduced a Bill for an Act to amend the Limitation of Actions Act, 1936-1956. Read a first time.

The Hon. Sir LYELL McEWIN—I move—

That this Bill be now read a second time.

A similar Bill was given some consideration last session, but was not concluded, and the present measure is slightly different from last year's. This Bill extends the time within which actions may be brought in cases where special Acts provide that actions must be brought within a specified period. There are many such Acts which usually relate to public authorities such as the Crown, Ministers, public officers and public bodies. The periods specified vary. Generally the period specified is six months but in many cases it is a shorter period. The Attorney-General introduced a Bill on this subject during the last session. As the result of further consideration the Government has made some changes in the Bill introduced last year, based upon suggestions made in this Chamber and representations which have been made to the Government.

The Bill, like its predecessor, lays it down that where an existing Act provides that an action must be brought within six months or any shorter period after the cause of action arose then, notwithstanding the provisions of the Act, the action may be brought within any of the following times:—

(*a*) not later than six months from the time when the cause of action arose; or

(*b*) between six and 12 months after the cause of action arose if, within six months, the plaintiff has given the defendant a notice of the cause of action; or

(*c*) between six and 12 months, if the court in which the action is tried is satisfied that failure to give notice was due to absence from the State, illness or other reasonable cause.

The general effect of the Bill will, therefore, be to allow 12 months for bringing these actions and, at the same time, to ensure that if action is not commenced within six months notice will be given within that time. The Bill does not lay down difficult conditions concerning notices, merely requiring them to give the name and address of the plaintiff and to state in ordinary language the nature, date and place of the act, omission or circumstances giving rise to the cause of action. Provision is made as to how notices are to be given to individuals and bodies corporate and the Bill is expressed to apply to actions commenced in the future, whether the cause of action arose before or after its passing.

The alterations which have been made in this Bill, as compared with its predecessor, are three in number. In the first place it is now provided that in case of the proviso concerning failure to give notice it must be shown not only that failure was due to absence from the State, illness, or other reasonable cause, but also that the defendant has not been prejudiced by the failure. This appears to be a reasonable requirement. The second alteration is the omission of the earlier provision that if there is more than one defendant the notice must be given to each defendant. This has been omitted, partly because of certain doubts expressed in this Chamber on the previous occasion and also because it is considered that the former provision is unnecessary. The third matter is the inclusion of an express provision that the provisions of the Bill shall bind the Crown. The object of the legislation being to give relief to persons suing public authorities, it has seemed desirable to make it quite clear that its provisions do bind the Crown. I thank members for granting me the privilege of moving the second reading today. The Bill will be circulated and placed on members' files to enable them to peruse it before the debate is resumed next week.

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

LOCAL GOVERNMENT ACT AMENDMENT BILL.

The Hon. N. L. JUDE (Minister of Local Government) obtained leave and introduced a Bill for an Act to amend the Local Government Act, 1934-1957. Read a first time.

The Hon. N. L. JUDE—I move—

That this Bill be now read a second time.

It makes a number of amendments to the Local Government Act. The amendments made by the various clauses are of a disconnected nature and are of varying degrees of importance. The Bill is in the same form as that which was before this House last year with, however, a number of new clauses, namely, Clauses 4, 6 (*a*), 10, 12, 13 and 18. The amending Act of 1957 removed from the Act the provision limiting to £100 the allowance which can be made to the chairman of a district council. A consequential amendment should have been made to section 52, and Clause 2 remedies the omission.

Clause 3 provides that a council may appoint one of its members to be deputy-mayor or deputy-chairman. He is to preside at meetings of the council in the absence of the mayor or chairman, as the case may be. Under the clause a deputy-mayor or deputy-chairman will be appointed only if desired by the council.

Clauses 4 and 18 will alter the polling hours in country areas from 8 a.m.-6 p.m. to 9 a.m.-5 p.m.

Section 228 provides that a municipal council may, in respect of any financial year, fix an amount, not exceeding 10s., which shall be the minimum rate payable in respect of any assessed property. District councils are given similar power by section 233a, but the amount mentioned in that section is 5s. Clause 5 proposes to delete these limiting words in each section, leaving it for the council to decide, with respect to any financial year, what is to be the minimum rate for the area. In the case of properties the assessed value of which is very low (which is often the case with vacant land in country areas), the present limit for the minimum rate does not permit of a council's recovering by way of rates the administrative cost of assessing the land, issuing rate notices and receipts. In the case of some land value councils, the rates recoverable from properties comprising dwellings or other buildings are so low as to be insufficient to meet the costs of the various services provided to the ratepayers. By removing the limitations now provided in section 228 and 233a it will be left to the council to fix the minimum rate suitable to local circumstances. If a council so desires it need not fix a minimum rate but if a minimum rate is fixed, it must, under the sections, apply uniformly throughout the area.

Paragraph (*a*) of clause 6 will empower councils to contribute towards the maintenance of or provison of equipment for incorporated lifesaving clubs outside their respective areas. The Municipal Association asked that such a provision be made to enable councils to contribute towards lifesaving clubs in the same way as they may contribute to ambulances outside their respective areas. Paragraph (*b*) will increase the amount which a council may subscribe to organizations for the furtherance of local government or the development of any part of the State in which the area of the council is situated. The original provision giving councils this power was enacted in 1952 and it is considered that the total of £50 then set is now inadequate.

Section 289a provides that all revenue derived by a council from such as the sale of timber is to be paid into a special fund and applied towards tree-planting purposes. It has been pointed out that the necessity to establish a special fund means opening a separate banking account and creates some administrative problems. Clause 7 therefore amends section 289a by removing the necessity to establish a separate fund, but preserves the obligation to expend on tree-planting the revenue in question.

Subsection (3) of the section now provides that, if at any time the money in the fund exceeds £300, the Minister may authorize the expenditure of the excess for other purposes. Clause 7 amends this to provide that, if the revenue in any financial year exceeds £300, authority may be given for the expenditure of the excess.

Regarding paragraphs (*a*), (*c*) and (*d*) of clause 8 section 319 provides for the making of contributions by adjoining owners towards roadmaking costs. Subsection (9) of the section provided that when a roadway was widened the council could recover contributions from the adjoining owners. The 1957 Act deleted this subsection, there being some doubt whether subsection (11) limited the total of an owner's contribution to 10s. a foot. It is considered that subsection (9) should be re-instated, and this is done by clause 8, which also amends subsection (11) to make it clear that an owner's total contributions for any purpose under section 319 are limited to 10s. a foot.

Subsection (10) of section 319, which was enacted in 1954, provides that, before a council can require an owner of ratable property to contribute to the cost of road work, the council must, within six months of the completion of the work, give notice to the owner

specifying the amount payable and requiring payment by the owner. Subsection (11) limits the total amount payable under the section to 10s. per foot of the frontage of the ratable property. Paragraph (*b*) of clause 8 provides that the notice given under subsection (10) is to include particulars of the amounts previously payable under the section, including the times when they were payable and whether payable by the present or any previous owner. Thus if in the past there have been payable at different times amounts of, say, 2s. and 4s. per foot, these facts must be stated in the notice and it then becomes apparent that, as 6s. per foot has been payable in the past, the maximum amount which can now be payable by the owner is 4s. per foot.

Section 352, which was first enacted in 1903, provides that if an owner of land contributes to the cost of making any roadway, footway, passage, lane, etc., he is to have a right to use the roadway, etc., which is to be appurtenant to his land. This section is open to serious objections. In the great majority of cases, the roadway, etc., is a public highway over which the public, including the owner of the land in question, have rights of access and it is quite unnecessary to provide for any special rights as is done by the section. In the few cases where the roadway, etc., is not a public highway, the owner is given statutory rights which are not indorsed upon any certificate of title and intending purchasers of land affected by the rights have no means, short of a search of all the appropriate council records, of ascertaining whether any rights exist. Even this is not sufficient, as the contributions may have been made to the owner of the land on which the roadway is situated. It is considered that, not only does section 352 serve no good purpose, but it can have mischievous effects as it is virtually impossible to ascertain with certainty whether any particular land is affected by rights given by the section. It is therefore proposed by Clause 9 to repeal the section.

However, it is considered that any existing rights under the section should be preserved subject to their being registered on the appropriate certificate of title. Clause 9 therefore provides that an owner of land claiming a right under section 352 is to make an application to the Registrar-General for the registration of his right. This application is to be made within 12 months after the passing of the Bill, after which time any right not registered will cease to have effect. On receipt of an application, the Registrar-General is to give notice to persons affected and is to give further notice of his decision in the matter. From that decision there will be a right of appeal to the Supreme Court. It is provided that, if the roadway, etc., is a public highway, the right is not to be registered, but in other cases, where the right is established, it is to be registered by the Registrar-General. This amendment is strongly supported by the Registrar-General.

Section 436 of the Act provides that every debenture, the principal of which is repayable by periodical instalments, shall have a table in the specified form "printed" thereon. This presupposes that debentures are always printed whereas, in fact, they are in many cases typewritten. Clause 10 substitutes the word "written" for 'printed.' Under the Acts Interpretation Act expressions referring to "writing" include printing, typewriting and other modes of representing words visually.

Section 528 and following sections provide that a council may require buildings within its area or any part of the area to be provided with septic tanks. Clause 11 provides that the council, with the approval of the Central Board of Health, may require the septic tanks to be "all purpose" tanks, that is, tanks capable of dealing with sullage and waste water in addition to sewerage. At one time it was considered that a septic tank would not function if sullage or waste water was directed into it, but it has been found that these "all purpose" tanks are as efficient as those limited to sewerage.

Section 666 of the Local Government Act originally provided that councils might remove abandoned vehicles from streets and roads and recover the expenses from the owners. In 1957 the section was amended to provide that, after the giving of notice to the owner of a vehicle so removed, the council could, in default of payment of all expenses in connection with the removal, custody and maintenance of the vehicle, sell the vehicle by public auction and after reimbursing itself of all costs and expenses pay any balance to the owner. These provisions are not adequate to cover the case of a vehicle which is so old, obsolete or out of repair that sale by public auction becomes impossible. Clause 12 will empower a council in such circumstances to dispose of the vehicle as it thinks fit and recover all costs and expenses in and about the removal, custody and disposal of the vehicle.

In 1957 the minimum penalties which might be fixed by by-laws were raised from £10 to £20. Section 684, which covers by-laws generally, was

overlooked and clause 13 of the present Bill remedies the omission.

Various provisions of the Act provide that a member of a council is not to vote or take part in any debate on a matter in which he is interested. The question was recently raised whether a councillor who was a member of, say, a local fire-fighting organization or similar body, could vote on a proposal before the council to subsidize the organization. Obviously the existing provisions are intended to provide that a councillor will not take part in proceedings before the council from which he can profit personally and it was never intended that these provisions should apply to such as the cases mentioned. Clause 14 therefore provides that a councillor shall not be deemed to be "interested" in a transaction between the council and a non-profit making organization of which the councillor is a member.

Section 779 provides a penalty not exceeding £20 for the offence of destroying or damaging property of the council such as streets, bridges, trees, street signs and the like. Clause 15 increases this maximum penalty to £50, as it is considered that the present maximum is inadequate to deal with vandals who wantonly damage public property of this kind.

Section 783 makes it an offence to dump rubbish of various kinds upon streets and other public places. Clause 16 extends the articles to which the section applies to include debris, waste and refuse. The dumping of rubbish on roadsides is prevalent and it is considered that, in order to deal adequately with this offence, the existing maximum penalty should be increased from £20 to £40. In addition, Clause 16 increases from £5 to £20 the maximum penalty under subsection (2) for permitting rubbish to fall from a vehicle on to a road.

Clause 17 increases from £10 to £50 the maximum penalty under section 784 for the offence of wilfully or maliciously damaging or removing a fence or gate erected under section 375 across a road subject to lease or under section 376 as an extension of a vermin-proof fence.

Until the amending Act of 1957, an application for a postal vote had to be witnessed by an authorized witness, but that Act altered the law to provide that the witness was to be a ratepayer of the area. The result is that, if a ratepayer is in another part of the State, he must secure a ratepayer for the particular area to witness his application and in many cases this would be either impossible or very difficult, although, if he is outside the State, his application can be witnessed by an authorized witness. This result was probably not intended when the Act was amended in 1957, and clause 19 therefore provides that, as regards a ratepayer making an application for a postal vote within the State, his application may be witnessed either by a ratepayer of the area or an authorized witness. Clause 20 merely corrects a drafting error in section 27 of the amending Act of 1957.

The Hon. F. J. Condon—Do all the proposed amendments come from the Municipal Association of South Australia?

The Hon. N. L. JUDE—The majority have come from either the Municipal Association or the Local Government Association. Those honourable members who have paid attention to the second reading will appreciate that most of the Bill is a re-introduction of the one that was discharged by this Council last session, but it has additional clauses that have been requested by certain bodies. I thank honourable members for permitting me to give the second reading today in order that they may have longer to consider the Bill before making their decisions.

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

HONEY MARKETING ACT AMENDMENT BILL.

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

ADJOURNMENT.

At 3.08 p.m. the Council adjourned until Wednesday, August 19, at 2.15 p.m.