LEGISLATIVE COUNCIL.

Thursday, December 3, 1959.

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

ASSENT TO ACTS.

His Excellency the Governor, by message, intimated his assent to the following Acts:—

Compulsory Acquisition of Land Act Amendment
Dog Fence Act Amendment
Police Pensions Act Amendment
Renmark Irrigation Trust Act Amendment
Vermin Act Amendment
Limitation of Actions Act Amendment
Local Government Act Amendment
Mental Health Act Amendment

QUESTIONS.

WHEAT PRICES.

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

Leave granted.

The Hon. F. J. CONDON—On September 15 I asked the Government to approach the Australian Wheat Board with a request to place an embargo on the export of wheat from South Australia. Since that date wheat has been exported from the Port Adelaide zone. On several occasions since I first introduced this matter I have urged the placing of an embargo on wheat exports. Further, I have pointed out in this Council, by speech and by question, that if some action were not taken the price of flour, offal and other lines associated with wheat would be increased. I am not objecting to the 4d. a bushel increase for wheat applicable to other States, but I am objecting to the extra 3d. that South Australian flour millers have to pay, which must be passed on to the consumers. What I predicted could have been avoided, and now everyone is becoming interested when it is too late. In any further negotiations with the Prime Minister will the Premier make a further attempt to prevent increases in the price of wheat to South Australian millers, and urge that wheat sold locally for flour export should be on a competitive basis in order that the consumers will not be further penalized?

The Hon. Sir LYELL McEWIN—This matter has caused some concern to the Government, and the Premier, as the honourable member is aware, has been in communication with and has personally visited the Prime Minister. I think that a fairly full report appearing in this morning's paper indicates that the Premier is fully alive to the necessity to avoid increases, not only to the millers but to the consuming public, and investigations are taking place which I hope will help to keep the position reasonably under control.

PORT PIRIE HOSPITAL.

The Hon. E. H. EDMONDS—I ask leave to make a statement prior to asking a question.

Leave granted.

The Hon. E. H. EDMONDS—In October last I had the privilege, as an invited guest, to attend the opening of a new operating theatre and adult patients block at the Port Pirie Hospital. The impression I gained then was that the additions to that institution were practically ready for patients to go into. According to an article in the *News* on Tuesday last, December 1, attributed to the medical officer of the Port Pirie Local Board of Health, there is a suggestion that some delay has occurred in the admission of patients into what I regard as a very valuable adjunct to that institution. Has the Minister of Health any comment to offer in respect of that article?

The Hon. Sir LYELL McEWIN—The honourable member apprised me yesterday of his intention to ask the question and I have gone into it because I wished to inform myself of what had happened before steps were taken last week to make the old theatre available for use. I find that the report mentioned is completely irresponsible, whether it was a report of the paper or a statement of the officer concerned. I find on looking through the correspondence that there is no blame whatsoever on the Director-General for the situation, and I quote a report from the Lay Superintendent of the Port Pirie Hospital which is directed to the secretary of the department. It states:—

I would advise for the information of the Director-General of Medical Services that the present general operating theatre has been closed and that for the time being all such operations are being performed in the outpatients department theatre. This has been brought about because of fine soot particles falling from the air-conditioning vents in the theatre resulting in fouling this area. The risks likely to occur from operating here are considered too great to permit this block functioning.

Dr. G. Viner Smith was unable to operate on Friday morning last because of this fault and the outpatients department theatre was prepared accordingly whilst the Architect-in-Chief fitter thoroughly checked the cooling

system. On Saturday morning the drapes, etc., in the theatre were again fouled and I instructed that the main theatre be temporarily closed and that all theatre work would be carried out in the outpatients department theatre. Dr. Hammill confirmed this action this morning. In recent correspondence it has been recommended that the theatres in the New Block be occupied on November 30, and it is not recommended that expense be incurred in repairing the air-conditioning plant in the present Theatre Block at this stage. That was a recommendation of the hospital itself, and that recommendation was approved, and the information was supplied to the Architect-in-Chief's Department. I think that what happened was that we had a heat wave. The next thing that happened was on the 25th, when the Director-General advised me and when it was reported that conditions were not favourable in that theatre because of that heat wave and high humidity. Immediately, an officer was sent up and what was not recommended locally was done—that was, that the theatre was made available for four days. It was during that fortnight's heat wave that it was considered it was not advisable to worry any more about this matter, as they would go into the new theatre when it was ready on November 30. The report mentioned by the honourable member was completely unfounded and unjust to the Director-General and the officers concerned. However, I am happy to say that the new theatre is now in occupation.

JURY SERVICE.

The Hon. A. J. SHARD—I ask leave to make a statement prior to asking a question.

Leave granted.

The Hon. A. J. SHARD—This morning I was approached by a person serving on a jury who complained bitterly of two things in connection with his service to the State. His first complaint was that he was considerably underpaid, receiving only £2 15s. a day. Multiplying that on the basis of a five-day week, which members of a jury do not always get, would make it £13 15s., which is only 4s. above the basic wage, and 99.9 per cent of those serving on a jury would be earning a wage well above that, so there appears to be some justification in that complaint.

His second complaint was that one has to serve on the jury a full month before one gets paid, and he may have family responsibilities. It causes hardship to have to wait practically four weeks for any payment. My questions are:—

(1) Will the Attorney-General look at the fees paid to a person serving on a jury, with a view to bringing them up to something in keeping with present-day money values?

(2) Will he examine the position to see whether jury men could not be paid on a weekly basis?

The Hon. C. D. ROWE—I have not looked carefully at the matter raised by the honourable member but shall be pleased to do so and investigate the position to see whether any action should be taken.

SALE OF LAND TO OVERSEAS INTERESTS.

The Hon. L. H. DENSLEY—Has the Attorney-General any information in reply to my question of yesterday with regard to the sale of land to overseas interests?

The Hon. C. D. ROWE—The answer to the question is that section 24 (2) of the Law of Property Act, 1936-1958, provides that:—

A person shall not, after the passing of the Law of Property Act Amendment Act, 1945, execute any instrument by which a person conveys, transfers, grants, assures, or agrees to convey, transfer, grant, or assure any legal or equitable estate of freehold in land to an alien unless the instrument bears a certificate, signed by the Minister of Lands or by a person authorized by him to sign certificates under this section, certifying that the Minister of Lands or the authorized person consents to the transaction intended to be effected or evidenced by the instrument.

The sale of land to Asians or any other aliens would therefore be subject to the consent of the Minister of Lands.

KIMBA WATER SUPPLY.

The Hon. E. H. EDMONDS (on notice)—

1. What number of water tanks have been erected by the Government to serve Kimba and districts during the five years commencing December, 1954?

2. In what localities are they situated and what are their respective capacities?

3. What amounts of water were stored in the tanks as at December 1, 1959?

4. What steps, if any, are being taken to augment supplies to the area?

The Hon. N. L. JUDE—The replies are:—

1. and 2. Since December 1954 seventeen tanks, each of one million gallon capacity have been erected in County Buxton at the following locations:—Moongi, Bascombe's Rock, Pinkawillinie, Cunyarie, Pilepudla, Malgra, Curtinye, Atora, Tola, Caralue, Lacroma, Mootra, Cortlinye, Wilka, Barna, Yalanda, Kimba.

3. To get the storage in the tanks on any particular day would necessitate a special

reading which would involve a very considerable mileage for the officer concerned. However, the District Engineer reports that the latest readings of the storages in the tanks taken on 24/11/59 are as follows:—

Location of Tank.	Storage at 24/11/59. Gallons.
Moongi (full)	1,000,000
Bascombe's Rock	392,000
Pinkawillinie	748,000
Cunyarie (full)	1,000,000
Pilepudla (full)	1,000,000
Malgra (full)	1,000,000
Curtinye (full)	1,000,000
Atora (full)	1,000,000
Tola (full)	1,000,000
Caralue	150,000
Lacroma (full)	1,000,000
Mootra (full)	1,000,000
Cortlinye	609,000
Wilka (full)	1,000,000
Barna	539,000
Yalanda (full)	1,000,000
Kimba*	838,000

* There are three concrete tanks at Kimba with a total storage capacity of 2,100,000 gallons and the storage shown above is that contained in all three tanks.

4. Although restrictions have been placed on the use of water for private gardens in the township of Kimba, it is probable that the tanks may empty and arrangements have been made to cart water by water tanker from another local supply as was done a few years ago. Other than this, no steps have been taken to augment supplies in the area. Shortly after the completion of the tanks a very dry year was experienced. Most of the tanks were full at the time and there is no doubt that these additional storages played a very valuable part in providing stock water for the County. Eleven of the seventeen tanks are at present full and there are appreciable quantities stored in the remainder. These storages will be an exceedingly valuable stand-by in this record drought year.

LOCK MAIN STREET.

The Hon. R. R. WILSON (on notice)—As suitable material is reported to be available a short distance away, is it the intention of the Government to seal the main street leading to the new grain silo at Lock so as to obviate the dust nuisance to business and private premises in the locality?

The Hon. N. L. JUDE—The sealing of Lock main street is not included in this year's programme. A report on the availability of suitable material in the vicinity will be obtained from the District Engineer in the next few days on his return to the office.

PARLIAMENTARY PAPERS.

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

That it be an order of this Council that all papers and other documents ordered by the Council during the session and not returned prior to the prorogation, and such other official reports and returns as are customarily laid before Parliament and printed, be forwarded to the President in print as soon as completed, and if received within two months after such prorogation, that the Clerk of the Council cause such papers and documents to be distributed amongst members and bound with the Minutes of Proceedings; and as regards those not received within such time, that they be laid upon the table on the first day of next Session.

Motion carried.

HOSPITALS ACT AMENDMENT BILL.

Read a third time and passed.

EIGHT MILE CREEK SETTLEMENT (DRAINAGE MAINTENANCE) BILL.

Read a third time and passed.

SCHOOL OF MINES AND INDUSTRIES ACT AMENDMENT BILL.

Read a third time and passed.

SOUTH-WESTERN SUBURBS DRAINAGE BILL.

Read a third time and passed.

MOTOR VEHICLES BILL.

In Committee.

(Continued from December 2. Page 1990.)

Clause 112—"Liability of insurer when judgment obtained against insured"—which the Honourable F. J. Potter had moved to amend by inserting after "hearing" in paragraph (*b*) the words "a copy of the statement of claim in such action has been served upon."

The Hon. C. D. ROWE (Attorney-General)—I had an opportunity to look at this matter and think that we would be better advised to leave the Bill as drawn. I bring to Mr. Potter's notice that before the insurer gets a statement of claim he gets a writ or a summons so he would have prior notice. I think the wording in the Bill would meet the case and I suggest we leave it that way and if it does work unfairly we will have another look at it.

The Hon. F. J. POTTER—This deals with the question where a person has obtained a judgment in an action against an insured person for death or bodily injury and the judgment creditor can recover, by action

against the insurer, the amount of money payable pursuant to the judgment. All that this action requires is that there should be two requisites. He has, first of all, to have obtained his judgment and secondly, he has to show that before the action came on for hearing the insurer knew that the action had been commenced. The effect of my amendment really is to provide some machinery so that the insurer will know that the action had been commenced. The machinery for that is my amendment that the insurer should get a copy of the statement of claim. I have not worried about the question of writ because there might be some question in a particular action whether it was a writ or a summons. There is nothing to show in this Bill how anybody can show that an insurer knew an action had been commenced.

This is a simple amendment to provide that a person who obtained a judgment can show quite clearly that the insurer knew about the action having been commenced because he had received a copy of the statement of claim. It has been put to me by one or two practitioners that there is a practice developing whereby, particularly as regards companies in other States or in actions in other States, solicitors merely write a letter to the insurance company concerned saying such and such an action has been commenced, but giving no details of the action or what the action is about. The next thing the insurance company knows is that the action has been disposed of.

The Hon. C. D. ROWE—I think the honourable member defeats his own case when he admits that at present a letter is normally written to say that action has been commenced. If I received a letter to the effect that action had been taken against me, I do not think I would throw it in the wastepaper basket. Until I am able to get more information than I have at the moment, the Committee would be well advised to reject the amendment.

The Hon. Sir ARTHUR RYMILL—I am not keen on the amendment. It seems to me to add further to the difficulties. The party concerned should know that action has been taken, and that can be done in several ways. I think it is our obligation to see that people can recover against the insurance company, and facilitate them in that way. I contend it is adding a technicality which could militate against that.

Amendment negatived; clause passed.

Clauses 113 and 114 passed.

Clause 115—"Claim against nominal defendant where vehicle not identified."

The Hon. F. J. POTTER—I move—

To insert "reasonably" before "possible" in paragraph (*c*) of subclause (1); and leave out "or within such time as would prevent the possibility of prejudice to the nominal defendant hereinafter mentioned."

This clause was apparently altered in the House of Assembly to accord with the wording of clause 113, which deals with the liability of an insurer when the insurer is dead or cannot be found. Clause 115 deals with a claim against a nominal defendant where the vehicle is not identified. It may be that a similar position arises in both cases, but there is a difference so far as the insurance company is concerned where there is a claim against a nominal defendant and the vehicle cannot be identified, and the case of clause 113, where the insurer is dead. In that case at least one knows who the person responsible is, although he may be dead or cannot be found. When the accident occurred at least he was an identifiable person. In the case of clause 115 the person cannot be found because he is a hit-and-run driver and is not known. It is essential that every opportunity should be extended to the insurance company involved to trace the missing man, but if the clause remains as at present there will be no time limit at all in which the injured person must notify the insurance company that he does not know the identity of the vehicle involved in the accident. A section is provided in New South Wales in regard to claims against a nominal defendant. It provides that no action to enforce the claim is to lie against the nominal defendant unless notice of intention to make the claim is given by the claimant to the nominal defendant within a period of three months after the occurrence on which the claim arose, or such further period which the court upon sufficient cause being shown may allow. There is a limited period, but it is subject to the court allowing an extended time, which is necessary in the case of sickness, etc. No-one is suggesting that there should not be some allowance for such circumstances, and therefore I propose to insert the word "reasonably" before "possible," which would be subject to the usual judicial interpretation, and would leave out the unlimited period inserted by the House of Assembly.

The Hon. C. D. ROWE—I have had a look at this matter and I think we should be better advised to leave the clause as drawn. Mr. Potter says that we should perhaps follow more the New South Wales legislation, which

sets a period of three months, with power for the court to extend the period in certain circumstances. It seems to me that the way the clause was drafted protects the person concerned. A man who wants to protect his claim is entitled to do so, provided it is not to the prejudice of the nominal defendant and that he is protected. A man may be in hospital for 12 months after an accident, and I think it is rather foolish to set any particular period. The test is whether the other party concerned is prejudiced; under the clause as drawn he is protected.

The Hon. Sir FRANK PERRY—I support the amendment. I understand that the Bill was drafted by Sir Edgar Bean and a group of men associated with the intricacies of the traffic laws. They produced a Bill which I thought in the main satisfied most honourable members. This clause was altered in the House of Assembly and to my mind it places a hardship on the insurer. This Bill transfers the liability of a driver of the car, or the Government or anybody else, to a group of insurers who must perforce take the risk if the driver cannot be located. We should give the insurer a reasonable chance, and as the Bill was drafted it did so. With the addition of the word "reasonably," proposed by Mr. Potter, he has a little more chance than the Bill as drafted gave him. Consequently, I feel that justice would be done to the insurance company or the insured, and surely if the injured party notifies the body concerned as soon as he can reasonably do so that he intends to make this claim for damages it is a logical and sensible approach to the matter.

The Hon. C. D. ROWE—Mr. Potter moved not only to insert "reasonably" but as well, and consequentially, to delete "or within such time as would prevent the possibility of prejudice to the nominal defendant." I suggest that those words remain in the Bill.

The Hon. F. J. POTTER—The relevant section in the existing Act deals with the matters mentioned in clause 113 and is worded almost exactly the same as clause 113. Subsection (3) of that section deals again with the unknown defendant and provides that as soon as possible after he knew that the identity of the vehicle could not be ascertained he gave to the Treasurer notice of claim. In other words, a distinction was drawn between the two situations, and now under this Bill that distinction is eliminated. I think there was some reasonable and sensible purpose behind the distinction in the first place. There is an historical case where an insurance company by dint of its own efforts found the missing driver when the police had failed to do so. If that is possible in the future they must have notice within some reasonable time. I suggest that the wording of the Bill gives almost unlimited time because it is almost certain that an insurance company would never be prejudiced if this extended time were allowed.

The Hon. Sir FRANK PERRY—The Attorney-General has referred to the second portion of the amendment, but I did not think it necessary to discuss that.

The Hon. Sir Arthur Rymill—It is not a corollary.

The Hon. Sir FRANK PERRY—If the word "reasonably" is inserted I think we can accept the fact that the other words will be eliminated. As a lawyer the Attorney-General will know that "without prejudice" although it sounds very well, is difficult to prove, especially after six or 12 months have elapsed. If the plaintiff knew the facts at the time he might have been able to discover the party who caused the accident. The people concerned in this matter regard it as a difficult point at any time to establish "without prejudice." I think the Attorney-General knows it is difficult to prove, and I think that the phraseology should be easily understood by all. If an accident occurs the injured party is quite entitled to advise the insurer as soon as reasonably possible. That is quite simple and logical, and I think justice would be done to the insurer. I support the amendment.

The Hon. Sir ARTHUR RYMILL—On a point of order. Do you rule, Sir, that one could vote for this part of the amendment and against the deletion of the words proposed to be deleted?

The CHAIRMAN—I shall put the questions separately.

The Hon. Sir ARTHUR RYMILL—I am quite agreeable to "reasonably" going in because the law courts have already construed this as meaning as soon as reasonably possible, and I am all for clarity in legislation. However, I am opposed to the other words being deleted. They are a protection to the plaintiff. The plaintiff is the injured party who seeks to recover damages, and the defendant is the insurance company. The defendant, whom the deletion of these words would protect, is a voluntary entrant into this situation. He is not compulsorily there like the plaintiff. He comes

into the situation because he has accepted a premium to insure. He is in this for business purposes to make money.

The Hon. Sir Frank Perry—You would not say that surely. The Act forces him to come in.

The Hon. Sir ARTHUR RYMILL—There are companies that do not accept third party insurance. The defendant comes in for the purpose of making money; whether he does so or not is another matter. Consequently, I see no reason why he should be any further protected. It is a protection for the plaintiff to see that he does not get out of time by some mischance. I am not enamoured of arbitrary time limits that may put a person into a situation where damages cannot be recovered, and I am in favour of anything reasonable that will protect the interests of the aggrieved party. I think the words proposed to be deleted are for that purpose and I propose to support their retention, but I see no reason why "reasonably" should not be included in the first part.

The Hon. C. D. ROWE—I am always anxious to facilitate the desires of members and in this matter I would not strongly object to the insertion of "reasonably," but I would object to the deletion of the other words. If Mr. Potter would agree to allow those words to stand we could probably agree on this point.

The CHAIRMAN—I will put the first part of the amendment first: that the word "reasonably" be inserted before "possible" in subclause (1) (*c*).

Amendment carried.

The Hon. Sir FRANK PERRY—I was amazed at Sir Arthur Rymill's remarks in relation to the second part of the amendment. This is a third party compulsory insurance Bill in which the Government forces companies to group together as the nominal insurer for the purpose of insuring people who are injured in accidents in which the driver at fault is unknown. It is a benefit granted to the injured party, admittedly, and I have no objection to that. However, I have a strong objection to the party forced to accept the risk not being told in a reasonable time that he is responsible for the risk. Surely, anyone responsible financially or in any way is entitled to know as soon as possible whether he is liable and whether he can protect himself. There should be no objection to that. The word "reasonably" has been inserted and it gives the injured party a reasonable time to give notice. The second part of the amendment allows the injured party to go on indefinitely and eventually give notice after all trace or thought of the accident has gone.

The Hon. C. D. Rowe—Not if the nominal defendant has been prejudiced.

The Hon. Sir FRANK PERRY—I think the Attorney-General knows that that cannot be proved very easily, and it very seldom is. It seems to me that we have an obligation to those who undertake this risk perforce to allow them sufficient time to protect their interests.

The Hon. Sir ARTHUR RYMILL—I always like to bow to my honourable Leader and shall do so in this case because I think he is right in respect of nominal defendants. Probably all insurance companies have that obligation. However, I do differ from him in one or two other matters. He has said that it is difficult to prove that one has been prejudiced by a failure to give notice. In my view, which I think is right in this case, the onus is on the plaintiff to prove under this clause as at present drawn that the defendant has not been prejudiced; it is not on the defendant to prove that he has been prejudiced. In other words, as a condition precedent to taking action, the plaintiff, who is the injured party, has to give notice under this clause, and in a court of law has to prove that he has given notice. He not only has to prove that, but has to prove that he has given valid notice; and then he has to prove that he gave it as soon as possible after he knew the identity of the vehicle could not be ascertained, or he has to prove that he has given it within such time as would prevent the possibility of prejudice to the defendant. It is not on the insurance company to prove anything at all, but it is a right of the insurance company to negative such proof as the plaintiff can offer that he has given his notice within the time allowed.

So we get this situation that, if there has been a possibility of prejudice, the defendant has not got to prove that at all. He can prove that by the plaintiff failing to prove, the onus being on the plaintiff. This is a proper clause to be inserted because I do not like to see people lose their rights through a misunderstanding, a mistake, or lack of knowledge of the fact that there is a time limit.

This is an escape clause for someone who has not given notice as soon as reasonably possible through ignorance or something of that nature, and people should be protected against these arbitrary laws by giving some loophole to enable them to show that, although

they have not given the notice, the defendant has not been prejudiced thereby, and therefore the case can go on.

Amendment negatived; clause as previously amended passed.

Clauses 116 and 117 passed.

New Clause 117a—"Claim against spouse by injured person."

The Hon. JESSIE COOPER—I move to insert the following new clause:—

117a. (1) Where an insured person has caused bodily injury by negligence in the use of a motor vehicle to the spouse of such insured person such spouse shall notwithstanding anything contained in section 101 of the Law of Property Act, 1936, or any rule of the common law relating to the unity of the spouses during marriage be entitled to obtain by action against the insurer such judgment for damages for such bodily injury as such spouse could have obtained against the insured person if he or she were not married to such insured person.

(2) Nothing in this section shall derogate from or limit any right which any such spouse would have had at common law or pursuant to section 101 of the Law of Property Act, 1936, if this section had not been enacted.

(3) Nothing in this section shall affect or limit the provisions of section 25 (*d*) of the Wrongs Act, 1936-1959.

(4) An insurer sued under this section shall be deemed to be a tort feasor for the purposes of Part III of the Wrongs Act, 1936-1959.

This clause concerns a claim against a spouse by an injured person. Subclause (1) gives a right of action not against the spouse but against the insurance company direct. This now exists where the driver is dead or cannot be found or cannot be served with process.

Subclause (2) preserves the rights which wives now have. Not everybody carries comprehensive insurance, and without subclause (2) a question might arise whether the rights that spouses now have to property damage claims were preserved.

Subclause (3) refers to section 25 (*d*) of the Wrongs Act. This says that, where the wrong causing the damage was committed by the husband or wife of the person suffering the damage, and some other person, that other person may recover contribution from the husband or wife as if the husband or wife had been liable to the person suffering the damage.

Subclause (4) is a technical clause dealing with the rights on contribution. Where you have a nominal defendant or an insurance company defendant—not the actual driver—one has to provide that the nominal defendant or the insurance company defendant is in the same position as the driver, otherwise, no rights of contribution (that is, of allocation of percentage of blame) would apply.

It may be suggested that this amendment is so important that we must have more time to consider it. I would say that this whole Bill is very important and that we are being asked to consider vital legislation with the speed of summer lightning. I, therefore, ask honourable members to have courage and vote for this amendment now.

After all, this matter has been discussed by the general public and all concerned with the law for many years, and there is no guarantee that we shall find ourselves with more time in the first week of December, 1960, than we have today. If the possibility of collusion between husband and wife is raised, I would say that there are ample laws covering fraud in this State, just as in other types of insurance. Collusion between husband and wife is to my mind no more likely than between father and son, uncle and nephew, or two men who are in business, and certainly it is a great deal less likely than between a man and his *de facto* wife. The latter pair have transgressed in the social law and are far more likely to plot a fraud than an ordinary law-abiding person like myself. Yet, the man and his mistress, the woman and her lover, have the right to benefit from insurance, but not the husband and wife. In any case the real point is that we must not legislate to damage the many to defeat the few criminals in our community.

Yesterday, I said that this amendment gave an opportunity to the South Australian Parliament, long known as the righter of wrongs and injustices, to legislate in a matter vital to every married couple who use a motor car. I beg honourable members' earnest consideration of my amendment.

The Hon. Sir LYELL McEWIN—I have examined this amendment carefully, and it has been the subject of a long Cabinet discussion on its merits. Undeniably, it has merits, but I am using the suggestion made by the Hon. Mrs. Cooper that important legislation should not be dealt with in lightning fashion. "No risk, no fun" may apply in some cases, but it does not apply to legislation. The legislation has been on a basis of care rather than plunging into realms unknown. As the honourable member herself suggested, there are possible implications in this amendment. She referred to the Wrongs Act and the position relating to husband and wife. This amendment relates to negligence, and that is where the problem comes in. There are matters

that should be considered and some qualifications may be required. As we shall bring down further legislation on motor vehicles next session, I assure the House that this matter will receive further consideration and examination with a view to introducing a properly considered amendment to meet the position referred to by the honourable member. In view of that, I ask the Committee not to accept the amendment at this stage.

The Hon. Sir ARTHUR RYMILL—I support this amendment. As the Hon. Mrs. Cooper has pointed out, we are urged by the Government to pass legislation very speedily.

The Hon. Sir Lyell McEwin—Not recklessly.

The Hon. Sir ARTHUR RYMILL—If a certain Bill comes along which we anticipate and which we have not yet seen, we shall be asked to pass it either today or by early tomorrow morning.

The Hon. A. J. Shard—It will be like greased lightning then.

The Hon. Sir ARTHUR RYMILL—Yes. With this amendment the boot is on the other foot, and the Government for once is making a protest that it is being hurried. I could not sympathise with it more. I am so glad that it can now see our point of view.

The Hon. Sir Lyell McEwin—The other legislation was before the House for a fortnight, not five minutes.

The Hon. Sir ARTHUR RYMILL—If we do not pass this now, we shall have a year's wastage to contend with, because the amendment will not be passed for twelve months. There will be a wastage through accidents of husbands and wives in the meantime and, if we do not pass this amendment, they will go uncompensated for that further period, as they have done in the past. We are often asked by the Government when we have expressed doubts on some piece of legislation to try it, to give it a chance till next session and, if it does not work properly, then we shall have the right to amend it. In fact, that is almost what the Minister said in another relationship a moment ago. I think we are entitled to ask the Government the same sort of thing on an amendment like this. Let us give it a try till next session and see if it works. If it does not, we can amend it.

This compulsory insurance is in a category of its own. There is the time-honoured principle of British Common Law that there are certain liabilities for negligence and so on that do not exist between husband and wife; but that is based on contribution of husband and wife and not on some third party who has accepted a premium for the purpose of stepping in and paying for the negligence of one or the other. That is in a different category and that is why I do not feel there are implications that should worry the Minister. It has always seemed illogical to me that a driver's father or mother, or son or daughter, in an accident is entitled to full compensation under this Act, but his wife is not, and *vice versa*. Who can say there is any logic in that? If his father and mother are entitled, which they are, and his son and daughter are entitled, which they are, and his uncle and nephew, or his aunt and niece are entitled, why should not the husband and wife be entitled to insurance? I cannot see any logical reason why they should not.

The Hon. Sir Lyell McEwin—It is not automatic.

The Hon. Sir ARTHUR RYMILL—I do not know what the Minister means.

The Hon. Sir Lyell McEwin—You are leaving out negligence altogether.

The Hon. Sir ARTHUR RYMILL—I do not think so.

The Hon. Sir Lyell McEwin—If this is carried.

The Hon. Sir ARTHUR RYMILL—If it is not carried. There we come to the illogicality of it again, but the boot is on the other foot. It won't stand up to any test. Let us take another illustration. A man is driving with his fiancee. They are getting married on a Saturday but on the preceding Friday night there is an accident. The fiancee can recover against the insurance company but if the accident happens on the Sunday night she cannot recover. This point won't stand up to any logical test. I emphasize again this does not apply to the ordinary principles of common law. It applies to the principles of common law applied to this case where it is entirely different; where the third party has come in as a compensator which is a completely different principle from that on which the common law based this law of England whereby a wife cannot sue her husband for negligence and *vice versa*. I am not speaking at random or recklessly on this because I have had to consider this matter for 30 years or more and I have always felt this is a defect in the law. I am very glad that the Honourable Mrs. Cooper has had the courage to come along and move to amend it, and I give her all my support.

The Hon. F. J. POTTER—I support this amendment. As honourable members will

remember, I raised this question in an earlier debate when dealing with the Wrongs Act. I there expressed the opinion that it was about time the whole question of the legal relationship between husband and wife should be looked into and I mentioned this specific case where a husband had no right to sue his wife and *vice versa* in the case of a claim arising out of a motor accident. I thought that something more fundamental was necessary than merely an alteration to the Wrongs Act and that we had to go to the Law of Property Act to find the root cause of the trouble. This particular amendment is designed to cure one facet of the problem and it is the big problem that arises in connection with this fiction of the law that the husband and wife are one person and therefore they have no right of action against each other.

This particular matter is the subject of a favourable recommendation from the Law Review Committee in England and it has been the subject of favourable recommendations in practically every State of the Commonwealth and I understand that legislation is to be brought in, if it has not already been brought in, in the States of Western Australia and Victoria. I ask honourable members just to look for a moment very carefully at the actual wording of this amendment. The Minister said that there was some question about negligence. It is confined to the one thing—negligence in the use of a motor vehicle—not negligence at large. It is confined to a claim against an insurer for such amount as could have been obtained against an insured person. In other words, it is limited to the total amount that could be claimed under a third party policy—namely, £4,000. It does not touch at all the present common law position or statutory position as far as other actions between husbands and wives are concerned. It does not cover some accident that takes place in the home and it does not cover other torts, but merely negligence in the use of a motor vehicle and it is limited to a claim against an insurer for an amount recoverable under a third party policy. I do not wish to add anything further to what Sir Arthur Rymill said because I think he put the case admirably. It is a curious anomaly in our law which, as far as accidents on the highways are concerned, ought to be cleared up and the time is now.

The Hon. A. J. SHARD—I support the amendment. I have listened with attention to the comments of the legal members and I now rise to put the layman's point of view and to state a concrete case. Some 10 years ago I knew a couple who were involved in an accident. They did not get a penny in the way of compensation out of the insurance company, but the insurance manager was a particular friend of the person concerned and he did go to the extreme of making an *ex gratia* payment of £25. That amount represented a mite because the accident caused 10 years of illness to the spouse and monetary loss which I suggest would have amounted to at least £1,000 for medical care and attention. I have never given any thought to an amendment such as this, but I am happy to support it because without it very grave hardship may be caused to people unfortunate enough, through no fault of their own, to be involved in an accident in which the husband and wife are injured. If there is any fault in this legislation let us correct it now. On many matters in which I have been vitally interested I have always been asked to wait and I am tired of waiting. If the Government will bring up matters at this late stage of the session let us have some backbone and vote according to our personal opinions. I hope this amendment is carried.

The Hon. JESSIE COOPER—I thank honourable members for their support and I must say to the Chief Secretary it is not my habit to plunge into rivers recklessly because I am a very poor swimmer. As to putting this off for another year, I think that would be disastrous. We have been asked to deal with legislation with the facility and speed of an electronic brain and I feel we can safely feed this amendment in without giving the machine indigestion.

The Committee divided on the Hon. Jessie Cooper's amendment:

Ayes (15).—The Hons. K. E. J. Bardolph, S. C. Bevan, F. J. Condon, Jessie Cooper (teller), L. H. Densley, E. H. Edmonds, G. O'H. Giles, A. C. Hookings, Sir Frank Perry, F. J. Potter, W. W. Robinson, Sir Arthur Rymill, A. J. Shard, C. R. Story, and R. R. Wilson.

Noes (3).—The Hons. N. L. Jude, Sir Lyell McEwin (teller), and C. D. Rowe.

Majority of 12 for the Ayes.

Amendment thus carried.

The Hon. C. D. ROWE—Following on the voting which resulted in the amendment being carried, I think we should give consideration to a further amendment in the form of a new subclause (5). I move—

That new subclause (5) be inserted, the subclause to read—"Such action shall not be brought against an insurer unless the spouse

has as soon as reasonably possible after the injury was caused given the insurer full particulars of the act, omission or circumstances alleged to have caused the injury and to have given rise to the cause of action and the date and place on and at which such act, omission or circumstances occurred.''

The Chief Secretary rightly pointed out that in the matter of a claim by a husband against a wife there is a possibility of collusion and I think, if we impose this law on an insurance company, we should take every precaution to see an unfair advantage is not taken in the matter. I am thinking particularly of an accident which occurs when the husband and wife are the only occupants of the vehicle. Let us suppose they run into the side of a cliff or the car is tipped over and no one except the husband and wife has any knowledge of the circumstances, or could give any evidence. This amendment will insist that the party who seeks to make the claim, whether it is the husband or the wife, gives to the insurance company as many particulars as possible within a reasonable time.

The Hon. Sir ARTHUR RYMILL—The amendment is unnecessary, because every motor vehicle policy already contains a clause to the effect that unless one gives notice within a certain time of the accident, one cannot recover under the policy. In the case mentioned by the Minister, the husband and wife would have to give notice or they could not recover anything.

The Hon. C. D. ROWE—We are embarking upon new legislation and the least we can do is to make sure that it will not be abused. My amendment will not deny anyone who has a just and valid claim his proper rights, but will ensure that where there is a possibility of fraud or of improper statements being made, the necessary protection is available. Therefore, I am justified in asking the Committee to accept the amendment.

The Hon. F. J. POTTER—I do not like to vote on the amendment without having a chance to see the actual wording and how it fits in with the clause. It may be harmless, but I am not happy with the example given by the Minister. At the moment I am not satisfied that the amendment is necessary.

The Hon. Sir FRANK PERRY—I agree with the amendment. The insurer will have some knowledge of an accident as soon as it is possible for him to get it. It is advisable that the authority carrying the risk should be notified of an accident as soon as possible.

New subclause inserted; clause as amended passed.

Clauses 118 to 124 passed.

Clause 125—''Duty of insured not to litigate or negotiate claim.''

The Hon. F. J. POTTER—I move—

To insert at the end of subclause (1) ''by any police officer.''

This clause seeks to protect the relationship that exists between the insurance company and the insured person. The company has the control of any litigation or claim arising out of an accident and this clause gives the company the right to take charge of the whole affair. The insured person must not enter upon any litigation, make any offer, promise, payment or settlement, or any admission of liability without reference to the insurer. However, he is not prevented from truthfully answering any questions reasonably asked of him. In most cases two insurance companies are involved. It would be undesirable to have representatives of the opposing insurance companies asking questions and getting admissions, which would be contrary to the rest of the clause. Nothing should stand in the way of a proper investigation by the police of any accident, and I am sure it was intended that this clause should relate to questions by police officers.

Amendment carried; clause as amended passed.

Remaining clauses (126 to 146), schedules and title passed.

Clause 100—''Application of this Part to Crown and Tramways Trust''—reconsidered.

The Hon. Sir ARTHUR RYMILL—This is the clause which the Chief Secretary yesterday agreed to recommit for the purpose of enabling amendments to be moved if necessary. Although it may not be necessary I feel that this clause could be clarified. The thing that disturbs me is that there is a possible construction that could be put on subclause (2) which says that the Crown or the Tramways Trust shall be deemed to be an insurer. This means that its liability as an insurer is substituted for its liability as an owner. On that construction the Crown or the trust would have a liability limited to £4,000, whereas the owner has an unlimited liability. To put the matter beyond doubt I move—

Insert after ''shall'' in line 2 of subclause (*a*) the words ''without affecting its rights or liabilities, if any, as an owner.''

The Hon. Sir LYELL McEWIN—The honourable member seeks to make sure that the clause means what I indicated it meant, and therefore I accept the amendment.

Amendment carried; clause as amended passed.

Clause 117a—"Claim against spouse by injured person"—reconsidered.

The Hon. Sir ARTHUR RYMILL—I merely want to move a minor amendment to the Attorney-General's amendment to Mrs. Cooper's new clause 117a. I do not think it will disturb the Government in any way because it follows its own language. I move to insert after "caused" in new subclause (5) "or within such time as to prevent the possibility of prejudice to the insurer."

This imports into this clause the same words as the Government insisted upon remaining in clause 115. If it is proper that they should be in clause 115, they should be in this clause. It gives some further protection to the injured person in cases of mishap or forgetfulness or failure to give notice.

The Hon. Sir FRANK PERRY—The mover is suggesting that the plaintiff should have unlimited time in which to make up his mind. I think that is quite unreasonable and contrary to the spirit of the clause mentioned by the Attorney-General under which notice has to be given as early as possible so that the facts can be examined and so that there is no possibility of intention to defraud or mislead. The words "as soon as reasonably possible" are already in the Bill and rather than extend the time indefinitely I would prefer that the parties at least make up their minds and let the insurer know.

The Hon. Sir ARTHUR RYMILL—I expected that Sir Frank Perry would oppose this amendment because he opposed the same words being used in clause 115. However, this Committee has said that it is proper that they should be in clause 115 and therefore I think it proper that they should be in this clause. Sir Frank is worried about the interests of the insurance companies. I say they are in this business to make money. I am worried about the injured, who should have every reasonable opportunity to recover damages, which is what this amendment is aimed at.

The Hon. Sir FRANK PERRY—The honourable member suggests that I am acting for the insurance companies, but nothing could be further from the truth. I admit I am thinking about them, but I am not acting for them, and I resent the suggestion that I am. They are entitled to be informed of their risk as soon as possible and consequently I think that these words, in this case if not in the other, are not necessary.

The Hon. Sir ARTHUR RYMILL—I certainly did not intend to imply that Sir Frank Perry was acting for the insurance companies. I said he was worried about them and I cannot see any implication there that he is acting for them. I am worried about other parties, but I am not acting for them.

The Committee divided on the amendment:

Ayes (13).—The Hons. K. E. J. Bardolph, S. C. Bevan, F. J. Condon, Jessie Cooper, L. H. Densley, A. C. Hookings, N. L. Jude, Sir Lyell McEwin, F. J. Potter, C. D. Rowe, Sir Arthur Rymill (teller), A. J. Shard, and C. R. Story.

Noes (4).—The Hons. G. O'H. Giles, Sir Frank Perry (teller), W. W. Robinson, and R. R. Wilson.

Majority of 9 for the Ayes.

Amendment thus carried; clause as amended passed.

Bill read a third time and passed.

ROAD TRAFFIC ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from December 1. Page 1927.)

The Hon. A. J. SHARD (Central No. 1)—On a point of explanation, I want to refer to an interjection I made yesterday which, unfortunately, an honourable member took the wrong way. During the debate on the Motor Vehicles Bill, while the Hon. Mr. Wilson was speaking, I said that nobody could make a good speech on it. I was referring to the late time at which it was introduced here, and not to his speech. It is not for me to challenge the ability of anybody to make a good speech in this Chamber. I was referring to the large number of clauses in the Bill and the little time that members had to prepare their speeches. If I offended Mr. Wilson, I here and now publicly tender him my humble apologies. I hope Mr. Wilson, for whom I have the greatest respect, will receive my humble apology in the way in which I tender it.

The Hon. R. R. Wilson—Thank you.

The Hon. A. J. SHARD—I want now to complain, as others on this side have already complained, about the lateness of the hour at which such an important Bill as the Road Traffic Act Amendment Bill is brought before this Chamber. Having spoken on a similar Bill on at least three occasions in this Chamber over the years, I feel it is a most important one for the people of South Australia. To break off for a moment, it seems to be a habit that Ministers leave their seats in the Chamber when I speak. If nobody wants to hear me, I am prepared to sit down. The last time it happened I raised the point that at least the Minister in charge of the Bill should have the

time and courtesy to sit in his place and listen. I want to direct some questions to him. If he is running about the place, he cannot listen to what I have to say, nor can he give a reliable answer.

We have been accused on this side of not being militant enough in putting forward our points. If we are in the mood to make points, whether the Minister appreciates them or not, he should at least sit and listen. I want to voice my protest at the lateness of the hour at which this all-important Bill has been introduced. The amendments to the Act affect everyone in the State, from school children to those who drive cars. It is not right or fair that honourable members here should have to deal with such an important Bill, which contains 26 most important clauses, in the dying stages of the session. This happens every year, but it can be avoided. I suggest that even now the Government should consider moving that this debate be adjourned until some date after December 10, so that the Bill could be resubmitted at an early sitting of Parliament next year. I do not think it is possible—and the remarks made yesterday on this point support me—for honourable members to consider this Bill fairly and justly in the time available. Although passed now, it will be back next year for us to amend some of the things we are doing today. Doing things in this way savours of this Chamber becoming virtually a rubber stamp for another place, and I do not like that, but if this state of affairs continues, we cannot think otherwise. The interest taken in the Bill at this late hour can be gauged by the numbers now prepared to sit and listen to a second reading speech on it.

I do not intend to speak about each clause, though I may be pardoned for saying that every clause should be spoken to because, except for one or two consequential amendments, every clause in this Bill is important. I have taken the trouble to compare these amendments with the original Act and its subsequent amendments. I shall be pleased when Sir Edgar Bean consolidates the Act because anybody who tries to follow it through, as I have tried to in the last 48 hours, finds it a most difficult Act to piece together and understand. As it will be consolidated and brought up to date next year, I doubt whether it is worth our rushing through this Bill at this late hour.

I intend to touch on a few of the more important clauses rather than run the risk of being told that I have taken too much time. I refer first to clause 6, which provides some additions to section 91. I am sorry the legal fraternity is not in the Chamber now because, as I see it from a layman's point of view, this touches on individual rights and I should be happy to have the benefit of a legal point of view as to whether my layman's opinion is right or wrong and to help me make up my mind whether I shall vote for or against this clause. My present intention, unless changed, is to vote against it. Clause 6 (2) (*a*) provides:—

> Where an offence committed against sections 86, 87, 88 or 89 of this Act consists of driving a vehicle in contravention of one of those sections, the Court may for a second or subsequent offence, in addition to imposing a monetary penalty, order that the defendant be disqualified from holding and obtaining a driver's licence for a period not exceeding 12 months.
>
> Provided that the court shall not order that the defendant be so disqualified if the court is satisfied that the defendant did not know . . . that he was committing the offence or was acting under an order of his employer.

That puts the onus of proof on the defendant, not on the Crown. I shall be interested to hear other opinions. If that is the position I intend to vote against this clause because I think it is against all British principles that the onus should be on the defendant to prove that he is not guilty rather than that the Crown should prove that he is guilty.

The Hon. F. J. Potter—Not that he is guilty, but that he should be disqualified.

The Hon. A. J. SHARD—The fact is that he has to prove the point. The other point is that the defendant has to prove to the court that he did not know he was doing something. Is it not British justice that the Crown always takes the attitude that it is its responsibility to prove a defendant guilty? That is my point. There is also the fact that the defendant may suffer a double penalty. In addition to the monetary penalty, he loses his licence and he is further penalized because he loses his livelihood, if he is guilty. I do not know how the defenders of civil rights can stand up to that. The clause continues:—

> (*b*) Where an offence committed against sections 88 or 89 of this Act consists of causing or permitting a vehicle to be driven in contravention of one of those sections—(ii) in addition to any other penalty provided by this Part the court for a first offence may impose a fine not exceeding £100 and for a second or subsequent offence where all such offences including the first occurred after the passing of the Road Traffic Act Amendment Act, 1959, may impose a fine not exceeding £500 provided that the court shall not impose fines as provided by this subsection if the

court is satisfied that the defendant did not know and could not reasonably have been expected to know that the vehicle was overloaded.

Again, the onus is placed on the defendant to satisfy the court rather than that the court should be convinced on the evidence of the Crown. I should like to hear some of our legal friends on that point.

The Hon. N. L. Jude—Your legal friends put this amendment in.

The Hon. A. J. SHARD—I am not concerned about that. I am here to put it as I see it, and we will stand up and put our own point of view. For the information of the Minister, this is not a Party matter. We are free to vote and speak as we like and I am speaking as I please. If my point of view is right, my intention is to vote against clause 6, despite who put it there. I would be pleased to hear somebody with professional knowledge on the matter so that I may be assisted to make up my mind.

The Hon. F. J. Potter—You are probably not alone there.

The Hon. A. J. SHARD—I do not think I am. I think the penalty is severe. I ascertained the penalty for drunken driving and while I do not agree that people should overload their vehicles the penalty provided is very severe and it is almost as much as that provided for drunken driving. I ask, is there any comparison between the two offences? There is not in my opinion. I have no time for anybody who breaks the law in that regard, but I think a person who overloads his vehicle is not nearly such a menace to the community as a drunken driver and therefore the penalty should not be so much.

I intend to deal with clause 7 at length. This clause amends section 99 of the principal Act which was amended in 1955. I think a matter of principle is involved here and at the risk of wearying the House I think section 99 should be read so that honourable members know what they are voting for. This is a serious departure from normal practice. Section 99 reads:—

(1) Any member of the police force, any inspector, or any authorized officer, may—

(*a*) direct the driver of any vehicle on a road to stop such vehicle;

(*b*) request the driver or the person apparently in charge of a vehicle on any road to answer any question put to him for the purpose of ascertaining the name and address of the owner of the vehicle.

The proposed amendment is to add the words:—

"or the nature or constituents of the load carried on the vehicle, or for the purpose of enabling an estimate to be made of the weight of the vehicle or its load or both."

I have no objection to that part. Subsection (2) of the section reads:—

(2) Any person who—

(*a*) does not obey any direction given to him under this section; or

(*b*) does not answer any question put to him under this section; or

(*c*) gives any untrue information in answer to a question put to him under this section

shall be guilty of an offence.

Paragraph (*b*) of the amending legislation says this—and this is the part I am objecting to:—

(*b*) by adding at the end thereof the following subsections:—(3) The powers conferred by this section may be used for the purpose of the administration and enforcement of this Part or any other law.

This is the kernel of my complaint—

(4) Every person for the time being in charge of a ferry established under Part XXIX of the Local Government Act, 1934 to 1958, shall be an authorized person within the meaning of this section.

That is the part I take exception to because the Act, by this legislation, gives to any person in charge of any ferry the same rights as a member of the police force or any inspector or any authorized officer. I do not travel on the ferries often, but I have at times seen some very young people in charge of them and I think to give them the right to inspect a load and to do all these things is wrong.

The Hon. N. L. Jude—What alternative do you suggest?

The Hon. A. J. SHARD—I am not suggesting anything. You are the Government and you are the people who have put this Bill before us at this late stage. It is the Government that has introduced this Bill which infringes two rights of the people, but the Minister asked me to throw in alternatives. If he wants me to do that he will have to do as I suggest and adjourn further debate on the Bill until next year, preferably early in the year, because it is too important and touches on too many vital principles to be rushed through in the dying hours of this session.

The Hon. F. J. Condon—If we suggest any amendments do you think the Government will take any notice of them?

The Hon. A. J. SHARD—No, although it may in five years' time and then take the credit for them. I spoke on this very principle

when dealing with the Vine, Fruit, and Vegetable Protection Act Amendment Bill but under that Bill the persons appointed by the Department of Agriculture were appointed in the *Government Gazette*. I said then that the people appointed should be people of good standing in the community and possessed of honest intentions and human understanding. Under this Act the Government goes further and gives an open cheque to any person who is for the time being in charge of a ferry. Is that reasonable? I do not think it is and at the moment I am going to vote against that clause.

Clause 11 is a good one and is worth mentioning. It inserts a new section to be known as section 122c. Section 122b gives the Commissioner of Highways the right to make lines and signs on the road and to direct traffic. In other words, before any council can make islands and so on the matter must be submitted to the Highways Commissioner. At last we are likely to get some uniformity in that direction.

The proposed new section 122c gives the Highways Commissioner exactly the same rights in connection with traffic signs and colours of lights. The clause is a very good one and fair to everybody. It states that before a council can provide traffic lights it shall submit plans to the Highways Commissioner and if he sanctions the installation of the lights that is all right. In the event of a disagreement the council has the right to appeal to the Minister, who shall decide the matter. The Minister's decision shall be final. I hope we do not run into trouble in that respect, but as this is the year 1959 common sense should prevail. I do not come in contact with the Highways Commissioner a great deal, but I have a great respect for his ability and I believe he is a man quite capable of fair reasoning. I think if the councils put these matters before him the Minister would not have to decide on many of them.

Clause 12 is another with which I agree. It sets out in great detail what can be done with red lights, green lights, green arrows, amber lights, amber colours and so on. All that is set out very well and I think it is quite good. While speaking on this matter of traffic lights and intersections I think every set of traffic lights that go in is an improvement to our roads. I do not recall whether I have referred to the lights at Gepps Cross. I have yet to see a better set of lights than those and although I do not know who was responsible for them that person has my personal congratulations and I think he will receive the congratulations of the motoring public as a whole because they are an excellent set of lights and help traffic considerably.

The Hon. N. L. Jude—The officer who went to America was responsible for them.

The Hon. A. J. SHARD—If it was Mr. Johinke I will say something to him personally. I hope that councils and the Government will not worry too much about the cost of these lights at the really dangerous intersections because, if they prevent traffic accidents and loss of life, whatever their cost they are worth it. Clause 12 sets out very clearly what can be done and I hope in time the public in general will read it.

Clause 14 makes an amendment to section 130e of the principal Act. It mainly deals with pedestrian crossings at schools and other places. That amendment does not go as far as I would like it to. I draw the attention of honourable members to the fact that earlier in the session I asked the Minister a series of questions on this matter, but I did not get on too well until I referred to section 130e. I remarked at a meeting of a certain committee of which I was a member that motorists were not compelled to stop at these pedestrian crossings. I was told in effect that I did not know what I was talking about. The amendment proposed makes the position a little better, but does not go far enough. Now, motorists are not compelled to stop unless there is a likelihood of collision with someone entering the pedestrian crossing.

Clause 12 relates to the operation of red, green and amber lights at intersections or junctions. I think that the Belisha system of lighting is wrong. There is a marked pedestrian crossing in Grote Street and another near the Nailsworth primary school. I do not believe that these crossings are in the most advantageous positions. The one in Grote Street creates a bottleneck and is most unfair to motorists. The regulation provides that a pedestrian on the crossing has the right of way. I invite any honourable member to go to the Grote Street crossing from 3.30 p.m. onwards and see the position for himself. I have seen a police constable there directing the traffic. For the safety of pedestrians, this crossing should be at the Morialta Street intersection with circular red, green and amber lights, which would give protection to motorists and pedestrians. I believe that the crossing at the Nailsworth school has proved to be worse than that at Grote Street. At both the northern

and southern ends of the crossing at Nailsworth is an intersection. There should be a red and green light at both these intersections and this would give complete safety to children, and also keep the traffic flowing. On two or three occasions I have seen boys and girls line up prior to crossing the road, and instead of going forward in a group, one walks across, and then as soon as the cars start to move another does the same, and this practice continues. On one occasion I saw 15 motor cars waiting. Most motorists pay proper attention to the schools, but I think it would be better for everyone if we kept to the red and green lights, which could be adjusted to operate at certain times. The lights could be cut off after school hours and turned on again before school started.

It would appear that the Adelaide City Council has tried an experiment with pedestrian crossings and is not happy with the one in Grote Street. Had it been happy about it, I do not think it would have provided one at North Terrace with red, green and amber circular lights. To my mind the North Terrace crossing is ideal. Everyone obeys the lights, but many are getting tired of the confusion caused by the amber lights. In the interests of everyone, where possible pedestrian crossings should be at an intersection with red and green lights installed. I believe that the Minister has tried to improve the position. It is mandatory for motorists to stop, and therefore at times traffic is impeded. I have discussed this matter with a number of people and studied the position at the crossings. Wherever I have seen lights functioning, no matter in what part of the world, I have noticed that those which give the greatest satisfaction to everyone are the red and green lights. I invite Sir Arthur Rymill to look at clauses 6 and 7 and give his views on what he thinks is wrong. I have read every clause and compared them all with the principal Act, and therefore hope that the Chamber will consider the views I have put forward.

The Hon. C. R. STORY (Midland)—One of the first clauses we should be pleased with is clause 3, which deals with disqualifications. It has happened that when a person goes to court in his vehicle, travelling some 20 or 30 miles, he has not the slightest idea he will be disqualified from driving, and sometimes finds that he gets a ride at the expense of the Government to "another place" or is deprived of his driving licence, and so must make other arrangements in order to get back home. This clause will enable the motorist, under certain circumstances, to drive his vehicle home, after which the order of the court will begin to operate. The clause dealing with the driving of vehicles without the consent of the owner is a most useful provision. Previously there was no real power to deal with these people. It is far more important to apprehend the wrongdoer before the act, or at the time of the act, as this saves him from a heavier sentence, and also saves the vehicle owner much embarrassment and monetary loss. The point in which I am vitally interested is clause 6, which amends section 91 of the principal Act, and which relates to the penalty for overloading. As originally introduced in another place it read:—

> 6. Section 91 of the principal Act is amended by adding at the end thereof the following subsection (the previous part of section 91 being read as subsection (1)):—
>
> (2) Where an offence committed against section 86, 87, 88 or 89 of this Act consists of driving a vehicle in contravention of one of those sections, the Court may, in addition to imposing a monetary penalty, order that the defendant be disqualified from holding and obtaining a driver's licence for a period not exceeding twelve months.

That is what the Government intended, but it was the subject of many hours of debate and a number of amendments were put forward but not accepted. However, as it finally reaches us we find that it now includes a long penalty clause. In the Government's original draft the onus was put squarely on the driver of the vehicle. The penalty was severe, namely, a monetary fine and a maximum disqualification not exceeding 12 months. In an attempt to shift the onus in some way from the driver a number of amendments were moved, and eventually three were accepted. The first was to apply the penalty for a second offence, which certainly made it a little easier. However, subsequently the onus was shifted from the driver to the owner of the vehicle and I can visualize some frightful things happening under this provision. Firstly, I think the discretionary power given to the court in this case is far too wide. A court could pre-judge the case before an offence occurred. A magistrate may say, "If this sort of thing does not stop I will make an example and the next person who comes before me will get the maximum penalty." In one part of the State a reasonable penalty may be imposed, but in another part, a person could be prejudged before any evidence was heard.

Secondly, a vindictive driver who has the hump and who is already thinking of leaving his employer to go to another could very

easily put his employer in a very difficult and expensive situation by taking the defence open to him under the last provision of this clause by claiming that "he did not know and could not reasonably have been expected to know that the vehicle was overloaded." For an aggrieved employee that is the nicest way in the world of catching up with somebody. He says, "I did not know the vehicle was overloaded," or else he says, "My employer told me to overload it."

I consider that the effect of the maximum penalty under this clause is absolutely terrific. It is a penalty which one might expect to be imposed on a trade union for not complying with a court's order, but for an ordinary offence of overloading it is far too severe. I am open to listen to the Minister in reply, but at the moment I am of opinion that this clause should be deleted and another put in its place. I should like to see a reversion to section 91 of the principal Act as it stands; incidentally, in addition to any other penalty provided the court, for a first offence, may impose a fine not exceeding £100 and for a second or subsequent offence may impose a fine not exceeding £500. Under section 91 of the principal Act the penalty for an offence against sections 86, 87, 88 or 89—that is for overloading—shall be:—

> . . . calculated at a rate of not less than five shillings and not more than two pounds for each hundredweight or part of a hundredweight carried in excess of the amount allowed by this Act.

I do not condone the offence; I abhor it because I am one of the taxpayers who has to pay for it, but nevertheless I do not think that penalties should be so severe as to put a person out of business. If he has a vehicle on hire-purchase and is penalized by disqualification he cannot carry on that business. I would like to see, in addition to what is provided by section 91, a provision that if he has overloaded to a greater extent than 20 hundredweight a penalty be imposed of not less than £2 and not more than £5 for each subsequent hundredweight by which the vehicle is overloaded.

The Hon. K. E. J. Bardolph—Don't you think the Bill should be withdrawn?

The Hon. C. R. STORY—I think this clause should be deleted and that we should continue in the meantime under this simple method provided by section 91. This would provide an opportunity for further examination of this matter. I do not say that the Government should not rush into legislation of this kind at the last moment, for I know that it was introduced in another place some time ago and took a long time to reach us. This is a very complicated legal matter, and the system we are asked to adopt at such short notice has not been proved in any manner. It would be much better if the Government had another eight or nine months in which to prepare something that would stick. It is obvious that what was originally drafted was not acceptable to another place or otherwise we would not have had such a sheaf of amendments. I feel that we should reject this clause so as to give the Government another few months and, in co-operation with Sir Edgar Bean, to thoroughly investigate this penalty clause and its ramifications, because I am quite mindful of the difficulty in collecting the fines imposed by the courts.

The Hon. K. E. J. Bardolph—You think the Bill should be withdrawn?

The Hon. C. R. STORY—I made it clear that I think this clause should be deleted. In other respects this Bill is too important to be withdrawn as it contains a lot of useful legislation. The Government may be able to produce some statistics during the next eight or nine months to show how many fines the courts have been unable to recover; that would be very interesting. We are somewhat in the dark as to how serious an offence this is. I am not at all happy about clause 6 in its present form and I will move that it be deleted.

The Hon. A. J. Shard—You have one supporter, anyhow.

The Hon. C. R. STORY—Whether I proceed further will depend largely on the Minister's reply. I would draw attention to another factor, namely, the difficulty of dealing with overloading in cases where the weight of the commodity is not known. It is fairly easy to deal with superphosphate or cement where the weight of each bag is known, but in cases where the weight of the commodity cannot be established at the point of pick-up there should be some revision to make overloading not an offence while the vehicle is moving from the pick-up point to the nearest authorized weighbridge. What I have in mind is one commodity that I know better than most—grapes. Normally, it takes about 120 tins of grapes to make one ton. That can vary with seasonal conditions; it can vary with the baumé of the grapes themselves. It can be as low as 105 tins to the ton, and as high as 130 tins to the ton. If, therefore, a person places what he thinks is about a ton (120 tins) on a truck

and it is actually one ton 3 cwt., by the time he has eight or nine supposed tons of fruit in that load, he is grossly overloaded.

The Hon. Sir Arthur Rymill—Would you explain "baumé" in detail?

The Hon. C. R. STORY—No, I would not, because the President would immediately criticize me for getting away from the Bill. So there could be anything up to 13 cwt. in excess of a load thought to be on a truck. A carrier picks up a load and moves on to a bitumen road; he is proceeding along it and an inspector stops him and says, "Will you come along to the nearest weighbridge; I want to weigh your load?" He then finds he is 13 cwt. in excess and, under this provision, he is in trouble. So there should be some exemption for him providing he has not passed the nearest weighbridge. If he has, he is for it. I should like consideration given to that point. I am not being flippant when I say that these carriers have to go on to the bitumen road and, provided their intention is good and they are making for the nearest public weighbridge in the district where they got their load, I do not think they should be taken to court and made to prove that they were doing so, because I do not believe in lawyers' harvests. If you make a man go to court, he has to prove his case.

Clause 7 has some amendments, to one of which Mr. Shard objects. That deals with the inclusion of a ferry man in addition to those people mentioned in the principal Act. That occurs under section 99. The ferry man must have some rights in this matter. One or two ferries recently have cost the Government much money because they were sunk by people who were probably overloaded, and the ferry operator put them on the ferry, which caused the ferry to sink.

The Hon. A. J. Shard—Whose fault was it that they went on—the driver's or the ferry man's?

The Hon. C. R. STORY—The ferry man had no authority to stop them or say to them, "What have you got under that tarpaulin?" The first two feet of the load may be "Crispies," but then there may be 35 tons in the load. Unless somebody has authority to inspect a vehicle if he suspects it is overloaded, he cannot say, "I will not take you on this ferry." He can just stand by on the road and appeal to the police.

The Hon. N. L. Jude—Do you think that heavy commercial vehicles crossing on ferries should carry their weighbills?

The Hon. C. R. STORY—Yes, I think they should. As we now have road blocks situated on the western and eastern sides of the State and a weighbridge on the eastern boundary through Bordertown in the vicinity of Keith, interstate transports should be forced to weigh when they enter this State, and they should carry their weighbills. Then there would not be any overloading. If people tried to beat the road block and were caught, then they would be for it.

The Hon. A. J. Shard—That is better than giving the ferry man the power.

The Hon. C. R. STORY—That is only a suggestion out of the air, but the amendment about the ferry man may be realistic because those trucks are going across the ferry every day.

The Hon. A. J. Shard—But if the driver has got his weighbill note it is simpler?

The Hon. C. R. STORY—Yes.

The Hon. A. J. Shard—What is your alternative?

The Hon. C. R. Story—I say that the ferry man has power only to do the things that we say he should do under this clause.

The Hon. A. J. Shard—He could go anywhere with them?

The Hon. C. R. STORY—No, he could not because the Bill says in subclause (4):—

> Every person for the time being in charge of a ferry established under Part XXIX of the Local Government Act, 1934-1958, shall be an authorized person within the meaning of this section.

The Hon. A. J. Shard—So any authorized person has the right to do that.

The Hon. C. R. STORY—While he is the person in charge of a ferry. That is how I read it. The Minister will no doubt tell us, but I believe that the person while he is in charge of the ferry under the conditions of this clause has these powers but, the moment he goes away, he does not. He is not like the local constable who retains his authority when he leaves the ferry. I make the point that the ferry man should have those powers.

The Hon. A. J. Shard—He has the authority within the meaning of this clause?

The Hon. C. R. STORY—Quite.

The Hon. A. J. Shard—And he can go anywhere.

The Hon. C. R. STORY—No, he cannot. The wording of the subclause is "Every person for the time being in charge of a ferry . . . shall be an authorized person." It is only

while he is in charge that he has the powers. I shall be in the honourable member's corner if that is not so.

The Hon. A. J. Shard—It is not so; I differ from you there.

The Hon. C. R. STORY—It is a matter for the "legal eagles."

The Hon. A. J. Shard—I think you are wrong.

The Hon. C. R. STORY—That will be proved later when the matter gets into Committee. I do not wish to waste more time on that. This Bill contains some useful provisions, but I have raised a few points that I do not like about it. Much of the Bill is purely a Committee matter dealing with specific things and I do not wish to labour them any further. To sum up, I am opposed entirely to clause 6 in its present form and ask the Minister to look into the matter of exemptions for people using weighbridges. Further, I should like clarification on whether I am correct in my assumption that a ferry man has the powers conferred on him only when he is in charge of the ferry. I support the second reading.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—"Penalty for overloading."

The Hon. C. R. STORY—I move—

In line 1 to strike out all words after "amended" and insert in lieu thereof the following passage:—

(i) by inserting after the word "shall" in line 2 the words "where the weight carried in excess of the weight allowed by this Act does not exceed twenty hundredweight"; and

(ii) by adding at the end of this section the following subsection (the previous part of section 91 being read as subsection (1)).

(2) Where the weight carried in excess of the weight allowed by this Act exceeds twenty hundredweight, the penalty in respect of the first twenty hundredweight shall be as provided in subsection (1) of this section, and not less than two pounds nor more than five pounds for each hundredweight exceeding twenty.

The effect of this amendment will be that anybody who overloads can be found guilty of an offence and fined from 5s. to £2 if he is carrying up to 20 cwt. in excess of his normal or proper load.

The Hon. Sir Frank Perry—£2 per cwt.?

The Hon. C. R. STORY—The maximum would be £2 per cwt. That is for the first offence. That provision is in existence now and would continue to be so if the present clause 6 were passed. I wish to go further than that and say that, in addition, where the excess weight of the vehicle is greater than the 20 cwt., the minimum penalty for each hundredweight in excess of the first 20 cwt. will be a fine of £2 for every additional hundredweight, and the maximum £5. I believe some people would think it worthwhile to be convicted if they knew they were only going to be fined 5s. for each hundredweight overweight. They would be prepared to take the risk up to one ton. If they got £20 a ton for the load they could afford to pay the fine and still be on the right side. On the other hand if they were liable to a penalty or a fine of £2 a hundredweight or a maximum of £5 a hundredweight—

The Hon. A. J. Shard—And lost their licence.

The Hon. C. R. STORY—No, the driver will not lose his licence. I am going back to section 91 and making it tougher for the person who grossly overloads.

The Hon. Sir Arthur Rymill—You are worried about section 92 with all this.

The Hon. C. R. STORY—If we did not have that we would be in a lot better position. That is my point and I offer it to the Committee. I think it is much simpler in its operation and it should be given a trial until the consolidating and amending Bill we have been promised comes before the Council. We should not do away with something that has not had a chance to be proved by practice. Members know that once it goes into the Act it will not be taken out when the Act is consolidated. We need time to consider this matter and it will give the Government an extra opportunity, with the penalties I have suggested, to collect a little more revenue from those people who are grossly overloading their vehicles. It does not matter much where a vehicle is overloaded to the extent of five to ten hundredweight, but some people overload to the extent of five or six tons and they are the ones who are really causing the trouble. If a man has five or six tons over he is really going to pay the penalty, but at least he does know under this sliding scale what he is up for. Under clause 6 at the present time he does not know what he is up for. If caught he may get out of it with £30 or it may cost him £500 and the suspension of his licence for 12 months. That is why I do not think it is wise to leave such a wide discretion with the courts. This is laid down on a graduated scale and I think it is a better proposition. We should give it a go until the Parliamentary Draftsman consolidates the legislation next year.

The Hon. G. O'H. GILES—I support the Honourable Mr. Story in his remarks. I would not accept his arguments, although I agree with the end result. We should not look at this clause thinking whether we can have a penalty inflicted for overloading.

The Hon. L. H. Densley—Do you accept it as a practice?

The Hon. G. O'H. GILES—There is a danger that it could become a practice and that is why I will not agree with it. Mistakes can occur through a load absorbing moisture, and a person could err unintentionally. I agree with Mr. Story's principles, but not with his reasons. I think higher penalties on overloading from one ton upwards are a good thing, but not nearly as severe as under the original section. Section 91 of the Road Traffic Act is the penalty section and section 92 contains the rules and maximum weights under which these penalties would work. I accept that as a good principle and in my opinion clause 6 is not workable as it stands. I support Mr. Story's amendment.

The Hon. N. L. JUDE—I have listened with considerable interest to the remarks of members on this vexed question of clause 6—overloading of vehicles. As the Hon. Mr. Story said, this clause comes to us in a very different shape from the one in which it was introduced. The Government has given close consideration to this matter and is determined to stamp out this practice of overloading. The amendment suggested by Mr. Story has considerable merit because it suggests a sliding scale under which a person who may unknowingly overload to a slight extent is not fined as much as a person who grossly overloads his vehicle.

However, many implications besides power weight are coming before Cabinet's notice as time goes on and one of the most important things is the relationship of the distance travelled to the excess weight. It is perfectly obvious if a person carries that weight 180 miles from the border to Adelaide he is committing a far greater offence than if he carries it from a quarry in the hills to Adelaide. After consultation with the ex-Parliamentary Draftsman the Government feels it is desirable to leave section 91 as it is but, having given further consideration to clause 6 as suggested to be amended, the Government feels that the penalties provided are somewhat vicious. There are possibilities in both directions. There is the possibility of collusion to avoid coming under that penalty and there is the possibility of collusion by the driver to put the owner in.

Until we have made further research into what is a fair and equitable thing I indicate it is my intention to amend this clause. I give notice to honourable members that I will move to delete the words "one hundred pounds" and insert in lieu thereof the words "fifty pounds" and to delete the words "five hundred pounds" and to insert in lieu thereof the words "one hundred pounds."

Mr. Story made a point of people who took wine grapes and grossly overloaded without knowing it. Although he may be quite sincere in his approach there are other means of assessing the weight apart from filling up the truck with grapes and not knowing what there is on it. The owner has a fair idea of the weight by virtue of his springs and so on. I have no doubt, if he is slightly overweight, he would receive clemency from the court and could get out under the escape clause if he could not reasonably know he was overloaded.

The Hon. C. R. Story—He should not be taken to court.

The Hon. N. L. JUDE—I do not think the honourable member would be so naive as to suggest that the owner would not have a fair idea when he was over-loaded. If we are going to accept from everybody on the road that he has not had an opportunity to weigh where will we get? We have to look at the implications of section 92. The Government does not like people to have more forms to fill in and I do not think the honourable member would want that. The provision has some merit and the Government is considering it in relation to ferries. I leave that question at the moment and ask honourable members not to accept the amendments suggested by Mr. Story. At the same time I give the House an assurance that this matter is being carefully considered by the Government and will be reviewed before the consolidating Bill is brought in next year.

The Hon. C. R. STORY—On a point of order, Mr. Chairman, I have an amendment before the Chair. The Minister gave notice of an amendment. When do we speak on the Minister's amendment?

THE CHAIRMAN—If the words as moved by the honourable member are struck out the amendment goes by the board unless the Minister can insert them in the amendment which has been moved by Mr. Story.

The Hon. Sir FRANK PERRY—I think we must do something about this clause either with the amendments of the Minister or with the amendments of Mr. Story. I ask whether the member has considered the relative weights of a vehicle. A five-ton vehicle could be

overloaded by one ton and a great deal of damage might be done, but a 15-ton vehicle could be overloaded by one ton and very little damage might result. There should be some relation between the load and the overload. It is the damage to the roads that the Government is worried about and the speed at which the vehicles travel. To provide the same penalty for a three-ton truck overloaded by one ton and for a 15-ton vehicle overloaded by one ton is an anomaly.

The Hon. N. L. Jude—The honourable member must remember it is the axle load.

The Hon. Sir FRANK PERRY—The axle loading permitted in South Australia is higher than that in Victoria. I should like to know whether weight is calculated on the gross load or on the axle load.

The Hon. N. L. Jude—It is on the weight on the axle.

The Hon. Sir FRANK PERRY—At first blush, I do not like the provision of a penalty up to £500.

The Hon. Sir ARTHUR RYMILL—I should like to deal with the provision relating to the disqualification from holding a driver's licence. It seems to me that the section in the Act has been completely overlooked, not only in the Council but also in the Assembly, and also possibly by the Draftsman. I call attention to section 38a of the principal Act:—

(1) When any person is convicted, before the Supreme Court or any other court, for any offence against any provision of this Act relating to motor vehicles, or for any offence in the commission of which a motor vehicle was used, or the commission of which was facilitated by the use of a motor vehicle, the court may order that that person be disqualified either for a period fixed by the court or until further order from holding and obtaining a driver's licence.

Subsection (2) of new section 91 provides that where an offence committed against sections 86, 87, 88 or 89 of this Act consists of driving a vehicle in contravention of one of those sections, the court may for a second offence or subsequent offence in addition to imposing a monetary penalty order that the defendant be disqualified from holding and obtaining a driver's licence for a period not exceeding 12 months. That is a reduction because section 38a of the principal Act provides that an offending driver may have his licence taken away for any period. Apparently this section set forth to provide an additional penalty on drivers, but it whittles down what can already be imposed. I think that the penalties provided are too high and could bear very heavily on fleet owners. I am not very happy with the amendment inserted by the House of Assembly, or with either of the amendments now proposed. I think that Sir Frank Perry hit the nail on the head when he said that the penalties were calculated on the axle load and had different application in respect of different vehicles. He said that a one-ton overload on a three-ton vehicle was very serious, whereas a one-ton overweight on a 16-ton vehicle was not nearly so serious. I feel that either of the amendments put forward in this Chamber is better than what was provided by the Assembly. I should like to see Mr. Story's amendment passed and the Minister's amendment further considered, or alternatively we should have more information now on the Minister's amendment.

[*Sitting suspended from* 5.50 *to* 7.45 *p.m.*]

The Hon. C. R. STORY—To say the least, this is a savage clause. Originally it dealt with drivers who contravened the law. Subsequently the position was altered by moving the onus from the driver to the owner, and in doing that we have got a hotchpotch of a clause. The best legal authority drafted the clause in an attempt to cope with the difficult position in which the Government was placed when dealing with people who grossly overloaded vehicles. The moving of the onus from the driver to the owner has confused the issue and now we cannot see the wood for the trees. Under my amendment operators of interstate and intrastate transports will know where they stand. If they grossly overload a vehicle they will be subject to a severe penalty. Under the clause some discretion is given to the court, but I said earlier that I did not favour it having such discretion. I therefore ask the Committee to support my amendment.

The Hon. N. L. JUDE—I do not intend to repeat the remarks I made about this clause before. I remind Mr. Shard that the Government has carefully considered the matter of fines, and that distance has never been considered in relation to offences. The matter should be left as it is now, with an assurance that the Government will review the matter. Should the Committee not support the amendment, and I hope it will not, I will move that the words "fifty," "one hundred" and "five hundred" be deleted with a view to inserting "one hundred."

The Committee divided on the Hon. C. R. Story's amendment:—

Ayes (13).—The Hons. K. E. J. Bardolph, S. C. Bevan, F. J. Condon, L. H. Densley,

E. H. Edmonds, G. O'H. Giles, A. C. Hookings, Sir Frank Perry, F. J. Potter, Sir Arthur Rymill, A. J. Shard, C. R. Story (teller), and R. R. Wilson.

Noes (4).—The Hons. N. L. Jude (teller), Sir Lyell McEwin, W. W. Robinson, and C. D. Rowe.

Majority of 9 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 7—''Power to stop vehicles and ask questions.''

The Hon. C. R. STORY—The Minister gave a clear explanation of this clause, which Mr. Shard and I were discussing, but we were not in agreement. I said if Mr. Shard were right I would be happy to support him, as I believe that a person for the time being in charge of a ferry would be, under the Local Government Act, an authorized person within the meaning of this clause. I believe that a ferryman, when he comes off duty, hands over his authority. When the Minister replied, he said he thought I was correct in believing that the person handed over his responsibility, did not carry his badge of authority on his arm, and could not apprehend someone 10 miles up the road.

The Hon. N. L. JUDE—The Parliamentary Draftsman is satisfied that this means what it says—that this is the power of the ferryman in charge at the time.

The Hon. F. J. POTTER—The wording is ''for the time being.'' Is it ''for the time being in charge'' or ''for the time being an authorized person''? I should think it could be argued both ways. I do not see why we cannot add a few simple words, such as ''whilst he is actually in charge of such ferry.''

The Hon. A. J. SHARD—I should be happy if he were defined as the person in charge of a ferry but, if there is any doubt about it, I still maintain the stand I took this afternoon. The Parliamentary Draftsman says it means what it says—''while he is in charge of a ferry.'' I would raise no objection to that. I am inclined to think that any lay person would take my view unless he were educated as Mr. Story was. Unless it is more clearly defined, I intend to vote against the clause.

The Hon. Sir ARTHUR RYMILL—If there is any doubt about it, a simple amendment could alter this. We could omit the words ''for the time being'' and insert the word ''whilst.''

Clause passed.

Clauses 8 to 11 passed.

Clause 12—''Obedience to traffic signs.''

The Hon. Sir ARTHUR RYMILL—I move—

To strike out paragraph (*b*) of subclause (2) (*b*).

This clause relates to stop lines in association with traffic lights and defines a stop line as it was defined in section 123 of the principal Act: ''Stop line'' means—

a line marked with studs, paint, or otherwise near a traffic control signal so as to indicate a stopping place for traffic approaching that signal.

The subclause that I am moving to delete reads—

(*b*) if no such line is marked, an imaginary line running transversely at right angles across the road and passing through the centre of the pedestal of the signal.

The clause as drawn means that, if there are stop lines, they have to be marked in that manner and if there are no stop lines, then one has to visualize an imaginary line and stop there. An imaginary line is something new. There has been no line previously although there are dozens of traffic signals in Adelaide and the suburbs. It is not a good thing because stop lines are an integral part of any system of traffic lights. If we are to have traffic lights we can mark stop or stud lines at the same time. If we are not prepared to mark those stop lines, then we should not have the traffic signals. I discussed this Bill this morning with solicitors who practise in the Traffic Court and asked them if there was anything they thought should be considered. They immediately drew attention to this provision and produced the same idea as I had, that it was totally unnecessary and could be open to abuse.

Consider an imaginary line and a policeman, on the one hand, saying that a person was a foot over it and the person, on the other hand, saying that he was a foot behind it. It would lead to all sorts of trouble. If we do not want stop lines, we do not have traffic lights, for they are associated with each other all over the world. I do not like drawing on the imagination as to what is right or wrong. The Act would be better without this. It has not proved necessary up to date. Under this new Bill the Highways Commissioner will have an oversight of traffic signals all over the place and he can see that the stop lines are there if he permits traffic lights to be installed as they should. This provision is something intangible that could lead to much trouble.

The Hon. N. L. JUDE—I have considered this for some time and discussed it with the

Parliamentary Draftsman. This Bill was drawn by Sir Edgar Bean, who unfortunately is not available at the moment. While I should be the first to admit that Sir Arthur's amendment possibly has some merit, more particularly as the Highways Commissioner has control over these matters at the moment, I am equally certain that Sir Edgar would not have left it there had he not thought it was necessary. It is a reasonable precaution in unusual circumstances. I shall have no hesitation, if the Committee leaves the Bill as it is, as I trust it will, in bringing the matter to Sir Edgar's notice. This is really a stop-gap Bill until we have proper consolidation of the Act next year. Therefore, I ask that the Committee support the Bill as it stands.

Amendment negatived; clause passed.

Remaining clauses (13 to 22) and title passed.

Bill read a third time and passed.

STUART ROYAL COMMISSION'S REPORT.

The Hon. F. J. CONDON—This afternoon the Chief Secretary laid the report of the Stuart Royal Commission on the table and did certain things under Standing Orders. I ask, Sir, on a point of order, whether the Chief Secretary will report to the Council what that report contains.

The Hon. Sir LYELL McEWIN—The report was delivered to His Excellency and it was supplied to me this afternoon. In order that it could be available at the earliest opportunity I laid it on the table and moved that it be printed so that it would be available for the information of members. I have not had an opportunity to study it and am unable to inform the Council in any way as to what it contains.

The Hon. F. J. CONDON—The contents of the report have been broadcast by radio and I think Parliament is entitled to consideration. I ask the Chief Secretary what right has such an important document to be submitted to the press before Parliament.

The Hon. Sir LYELL McEWIN—That question is easily answered. Once a paper is laid on the table it becomes public property. This practice is followed throughout the session. Papers are laid on and are then available to anybody. The information is not released by the Government, and I repeat that I have not seen the contents of this document and know nothing of it. In the ordinary course it would have gone to the Chief Secretary's office and would have been laid on the table the following day, but because this is the last day of the session, and because it was asked for by members, it was tabled today.

The PRESIDENT—I cannot allow any more questions. I should not have allowed those already asked.

The Hon. F. J. CONDON—On a point of order, I think I had a right to ask those questions and the Minister has replied to them. The report was tabled and I have a right to know what it contains.

The PRESIDENT—There is a right time in which to ask questions and that time has passed.

The Hon. F. J. CONDON—I could not ask these questions at the usual time and therefore I am taking the right, under Standing Orders, to ask now.

The PRESIDENT—The honourable member has no rights at present.

HIRE-PURCHASE AGREEMENTS BILL.

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

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

That this Bill he now read a second time.

Introduction.—In introducing this Bill I desire to outline as briefly as possible the extent to which hire-purchase finance has grown and to comment on legislation which attempted to deal with this problem when hire-purchase was more or less in its infancy. I would also like to explain the reasons which led to my Government's decision to bring in a new Bill covering hire-purchase transactions, and which will be, in effect, a uniform Bill for all States including the Australian Capital Territory.

History.—In the 1920's the idea of selling furniture on terms was first conceived, although there were isolated instances prior to this time. The early form of hire-purchase was merely the legal means of getting around the difficulties of possession by the hirer with ownership retained by the vendor who was able to exercise some control over the goods. In the event of his not being able to maintain instalments, the hirer had few rights. As a consequence of the depression which began in 1930, repossession of goods and chattels under hire-purchase took place to some extent.

Current Hire-Purchase Act.—An Act, dealing mainly with repossessions, giving the hirer some rights, was passed in South Australia in December, 1931. The Act to which I refer is called the Hire-Purchase Agreements Act,

1931, and is a product of the period during which it was passed. Economic conditions are essentially different now and the provisions are inadequate in terms of the volume and scope of present day hire-purchase business. Under today's conditions the 1931 Act which is still current does not meet the position for the following main reasons:—

(*a*) The hirer has insufficient legal rights under the present form of hire-purchase contract which, in a number of cases, is loaded in the owner's favour so far as legal liability is concerned.

(*b*) There is no statutory requirement that the hirer be informed of details of hiring and other charges or of the number and amount of instalments involved before he enters into the contract.

(*c*) There is no statutory provision for a rebate which may be due to the hirer in the event of early repayment of the amount owed.

(*d*) The 1931 Act deals mainly with repossessions and does not cover widely enough the terms of the contract itself.

(*e*) It allows the hirer's premises to be forcibly entered for the purpose of repossessing goods, which is not desirable in the absence of very special circumstances.

Position in other States.—Legislation somewhat similar to the Hire-Purchase Act, 1931, has been operating in other States and the Australian Capital Territory for a number of years, but more recently all Governments have reached the conclusion that the older Acts do not meet the position in view of the proportions and magnitude which hire-purchase transactions have assumed in the trading community today.

Advantages of Hire-purchase.—The hire-purchase system has much to commend it. It gives the wage earner the opportunity to buy essentials and to make life more comfortable thereby improving the standard of living. It allows the primary producer to buy implements and equipment which will help him increase production and assist in protecting him against seasonal fluctuations. It enables manufacturers and other operators (particularly the smaller ones) to obtain the necessary plant to extend their operations and to progress at a rate which they would be unable to attain otherwise. It stimulates demand for consumer goods and so assists commerce and industry to achieve a higher rate of output with a resultant reduction in the unit cost of these goods which are eventually purchased by the community.

Growth of Hire-purchase.—Hire-purchase has, however, grown to such proportions that the Governments of all States and the Commonwealth, whilst conceding its advantages, have also become concerned with its repercussions. It has now established itself as playing such an important part in the economy of the nation that its ramifications call for some form of governmental action.

In order to appreciate better the extent of the growth of hire-purchase in the community, I will outline some figures recently made available. At June 30, 1945, the total hire-purchase debt outstanding (for Australia) was approximately £5.5 million. The debt rose to about £100 million by June 30, 1952, and today stands at over £350 million. At September 30, 1959, £366.8 million was owed to finance companies alone. The value of hire-purchase under new agreements made with finance companies in 1959 for the year ending June 30 was just on £260 million. A detailed analysis of the growth of hire-purchase (Australia-wide) during these years shows the following:—

Year (as at June 30).	Amounts owing to finance companies.	Amounts owing to retailers.	Total outstanding H.P. debt.	Annual increase in total debt.
	£m.	£m.	£m.	£m.
1944-45	3.6	2.0	5.6	—
1945-46	6.6	3.2	9.8	4.2
1946-47	13.1	6.0	19.1	9.3
1947-48	21.8	10.3	32.1	13.0
1948-49	33.7	14.4	48.1	16.0
1949-50	52.1	18.2	70.3	22.2
1950-51	69.7	22.9	92.6	22.3
1951-52	78.3	23.8	102.1	9.5
1952-53	88.8	24.2	113.0	10.9
1953-54	132.4	33.0	165.4	52.4
1954-55	182.9	42.9	225.8	60.4
1955-56	213.0	46.7	259.7	33.9
1956-57	236.5	48.3	284.8	25.1
1957-58	296.6	56.4	353.0	68.2

Reasons for Uniformity.—The eastern States were the first to experience difficulty under their earlier legislation on hire-purchase. New South Wales particularly, with the largest and most cosmopolitan population, found that the position called for some action. Victoria was the next State to feel repercussions which resulted from various new practices which were creeping into hire-purchase transactions. In due course these problems extended to all other States and it becomes not uncommon at various conferences of State Premiers and other Ministers to find that all concerned were in accord that the necessity was becoming apparent for a uniform and more realistic type of legislation to govern hire-purchase transactions. In the last two years particularly, at the instigation of all Governments, State and Commonwealth authorities have kept hire-purchase finance under close scrutiny. A number of investigations has been carried out and comprehensive reports have been submitted and, in some cases, exchanged among the States. The advent of television, coupled with the huge increase in motor vehicle transactions—particularly covering secondhand motor vehicles—brought about additional problems. All States by now had become aware of the malpractices being introduced by other than reputable companies and realized that the position could further deteriorate unless some action were taken to protect the public against "hidden charges" and other matters associated with hire-purchase agreements.

Interstate Conferences.—On January 14 this year at Sydney a Premiers' Conference was held at which all States and the Commonwealth were represented. The Commonwealth representatives were there as observers. It was unanimously agreed that a uniform code governing hire-purchase transactions should be drawn up. Since then, two further conferences of State and Federal Ministers have been held to consider draft legislation drawn up and to ensure that uniformity in principle was maintained. While some States preferred not to interfere with interest rates and deposits, others were of the opinion that there should be some control exercised over these also. As regards these two somewhat controversial matters, it was agreed that the manner in which they would be treated by the individual States would not affect the uniformity of the legislation proposed. All Ministers were unanimous that control on interest rates and deposits could adversely affect some of the smaller States.

S.A. Preparation.—The State has been particularly active over a lengthy period as regards the legislation now being proposed. Government officers have continued to investigate all phases of hire-purchase activities and have interviewed as many interested parties as possible including hirers, potential hirers and trade organizations, for the purpose of meeting the requirements of all concerned where practicable.

Submissions made by interested parties have in all cases been gone into in great detail and given the greatest consideration. Wherever possible, matters raised have been conceded and incorporated in the proposed legislation provided that they have not cut across the intentions of the legislation or detracted from its general uniformity as agreed to by Ministers. Precautions have been taken to ensure that the primary producer who for various reasons, including poor seasonal conditions, may not be able to keep up his payments, does not have his implements or other equipment repossessed when such action would curtail seeding or harvesting operations thereby seriously affecting his future ability to meet his commitments.

Difficulties.—I desire to point out at this stage that a certain amount of uniformity with other States on this legislation is an absolute necessity. In view of this basic consideration it is not possible for a Bill of this nature to meet the requirements of all interested parties. It has been found impossible, for instance, to avoid a certain amount of documentation covering hire-purchase transactions if the hirer is to be protected against "hidden charges" in hire-purchase agreements and also if he is to be made aware of the nature of his obligations before he enters into any agreement. The legislation is essentially designed to perform this very function.

Effect on Economy of State.—Particular attention has had to be given to the question whether the proposed legislation is likely to disrupt the economic stability of the State and also to the likelihood of the State's industrial expansion being retarded in any way. For these reasons, after a great deal of consideration, it has been decided that it would be unwise for this State to attempt to exercise control over both interest rates and deposits. Any action which might reduce the volume of business would be decidedly detrimental to our cost structure and economy.

Demand for Hire-Purchase.—At the same time, the Government is convinced that the alleged evils of hire-purchase have in some cases been greatly exaggerated. The majority of hire-purchase finance companies do not in themselves initiate hire-purchase business.

Generally speaking, they do not come into the picture until members of the public have already selected an article and have signed an agreement with the dealer or retailer, as the case may be. They do, however, meet a demand which they do not create. The position of the retail trader, who in many cases provides the finance for his own hire-purchase scheme, is somewhat different. The retailer in these cases may initiate the hire-purchase business but it must be remembered that in such cases the person entering into any agreement also has the choice of purchasing the goods concerned at the same store for cash, or on account, if he or she so desires and is in a position to do so.

Recognition of Need for Legislation.—It is indeed gratifying to know that apart from members of the public, the reputable hire-purchase finance companies, insurance companies, retail stores, and dealers, together with many other organizations have accepted the fact that new legislation governing hire-purchase transactions is warranted. There are a few isolated cases where perhaps some disappointment may be genuine. In these cases it has not been possible to meet the situation as regards some essential clauses in the Bill, if uniformity with other States is to be maintained. Generally speaking, I should imagine that any individual or organization who strongly objects to this Bill would be more likely to belong to the minority category who in some respects have contributed to the necessity for the introduction of such a Bill.

Provisions of Bill.—I come now to the Bill itself. It follows almost in its entirety the text of the Bill as agreed among the various States, and I shall explain in general terms what it seeks to do. Part II of the Bill, which relates to the formation and contents of hire-purchase agreements, requires an owner to give to a prospective hirer a summary of the proposed transaction in writing before any hire-purchase agreement is made. Every hire-purchase agreement must be in writing and must be signed by or on behalf of the hirer and all other parties. Where the hirer is a married person, both spouses must sign if they are living together in the same residence. The agreement must set out in clear terms certain necessary details concerning the transaction. In particular the agreement must contain precise particulars in tabular form of the various amounts required to be paid under the agreement with an indication in each case as to what those respective amounts are for (clause 3). As a further protection to hirers, clause 4 provides that an owner must serve on the hirer within 21 days after the agreement is made a written copy of the agreement, a notice advising the hirer of his general rights, and a copy or details of any insurance policy. Part III of the Bill is entitled "Protection of hirers." I shall not go into detail on the several matters set out in all of the clauses but, again, will describe them in general terms. Clause 5 sets out certain warranties and conditions which are by law implied as part of hire-purchase agreements. They cover such matters as title to the goods, quality of the goods, fitness and the like.

Clause 6 confers upon hirers certain statutory rights in relation to representations made by owners or dealers. Clauses 7 to 10 confer further statutory rights upon hirers, the first being the right of the hirer at any time to obtain a copy of the agreement and statement of his position and the second the right to appropriate payments where there are two or more agreements.

Clause 9 entitles a hirer to assign his rights with the consent of the owner who, however, may not unreasonably withhold such consent. Clause 11 confers upon a hirer the right to finalize his agreement at any time by paying or tendering to the owner what is described as the net balance due. This amount is defined as the balance payable under the agreement, less what has already been paid and less what are defined in the Bill as the statutory rebates. These rebates are defined by reference to a formula which was very carefully worked out during the conferences. They may, however, be described as rebates in respect of terms, charges, insurance and maintenance allowable to a hirer who completes his agreement at an earlier date than the completion date in the agreement.

Clause 12 entitles a hirer to terminate the hiring at any time by voluntarily returning the goods, in which event he is liable at the most for the amount that he would have had to pay if the goods had been re-possessed. Clauses 13 to 17 regulate the rights of the parties in respect of re-possessions. Clause 13 prevents an owner from re-possessing goods for non-payment of instalments until at least seven days after notice to the hirer. I should perhaps mention that the period of the notice in the case of farmers and farm implements is 30 days under clause 25. Within 21 days after exercising the right of re-possession an owner is required to serve the hirer with a notice advising him of his rights. Clause

14 of the Bill requires the owner to retain the goods for that period of 21 days.

Clause 15 entitles a hirer not only to regain the repossessed goods or to require the owner to sell the goods to a cash purchaser, but also to recover from the owner the difference between the value of the goods and the net balance due from the hirer. At the same time this clause places a limitation upon any amounts that an owner can recover from a hirer after the owner has repossessed the goods. Clause 16 entitles a hirer to regain possession of his goods upon certain conditions which, shortly stated, are payment of all amounts due, together with reasonable costs of the repossession and the remedying of other breaches of the agreement.

Clauses 18 and 19 deal with guarantees, the former preserving certain normal rights of guarantors and the latter avoiding certain undesirable features found in some guarantees. Clause 19 also renders an owner concerned with any such unlawful conditions guilty of an offence unless the guarantor has had independent legal advice. Clauses 20 to 23 cover the question of insurance. An owner may not require a hirer to insure with any particular insurer, hirers are entitled to any insurance rebates, and contracts of insurance must contain certain details. An important provision of clause 22 is that in subsection (2) which avoids any requirement that disputes under an insurance contract must be referred to arbitration. Clause 24 confers a wide jurisdiction on a court to reopen hire-purchase transactions where the court considers them to be harsh or unconscionable.

Clause 25 is largely based on section 5 of the old Act. It is designed to meet the special needs of the primary producer as to the seasonable employment of his plant and equipment. Where an agricultural implement or a motor truck owned by a farmer is the subject of a notice that repossession is about to take place, the period of notice has been increased from a minimum of seven to at least 30 days. During this period of 30 days the primary producer may apply to the court for an order restraining the owner from repossessing. Members will appreciate the position of the primary producer who, faced with repossession of some vital unit of his plant, might otherwise be forced to curtail his seeding or harvesting operations. Without this provision premature repossession at a critical period would have the effect of not only curtailing production but seriously damaging the future ability of the farmer to meet any commitments. The important point to note is that the farmer is given the opportunity to take action before actual repossession takes place. If the court is satisfied that the farmer has a reasonable chance of meeting his payments within 12 months, the court may make an order restraining the owner from taking possession for a period not exceeding 12 months. I might mention that this State was responsible for the inclusion in the uniform Bill of clause 25, which appealed to the representatives of the other States at the conferences.

Clauses 26 and 27 deal with liens and fixtures. The first, while giving a workman a lien, provides that this shall not apply where the hire-purchase agreement contains a clause prohibiting creation of a lien and the workman had knowledge of that provision. Clause 27 precludes hire-purchase goods from becoming fixtures except as against a *bona fide* purchaser of an interest in land without notice. Clause 28 makes void any provision which excludes the hirer's right to determine the agreement, imposes on him greater liabilities than those permitted by the Bill, requires him to pay interest on overdue instalments at more than 8 per cent simple interest, relieves owners from liability for dealers' defaults or generally avoids or limits the operation of the Bill. A particular provision in this clause makes void any provision authorizing an owner to enter premises to re-possess goods.

Clauses 29, 30, 31 and 32 prohibit a number of undesirable transactions, while clauses 33 and 34 require hirers to state where goods are and penalize fraudulent disposal of them. Clause 35 empowers a court to extend times. Clause 36 empowers a court of summary jurisdiction to order the delivery up of goods to the owner after service of notice of demand and non-compliance with such an order is made an offence. Clauses 37, 39, 40 and 41 deal with miscellaneous matters, while clause 42 exempts hire-purchase goods from distress for rent and clause 43 empowers the making of regulations, including regulations altering the forms in the schedules. Clause 44 makes the Bill binding upon the Crown, as was the 1931 Act. One important provision of the Bill is that of clause 38, which requires hire-purchase agreements and specified documents to be in clear handwriting or in ten-point Times type.

Part VII of the Bill provides for a minimum deposit. The governing clause is clause 45 which requires the owner to obtain from the hirer before the agreement is made a deposit in cash or goods or both to a value equal to at least one-tenth of the cash price of the goods.

Clause 46 is designed to prevent evasions of the principle enunciated in clause 45. It provides that certain payments are not to be treated as deposits for the purposes of Part VII. These payments are of four types. The first is cash amounts borrowed directly or indirectly from or through the owner, through the dealer, or through any person whose business is by agreement with the owner or dealer to advance money for deposits. The second type is the amount by which the allowance on goods exceeds the value of the goods where the amount is substantially greater than the value. The third type comprises any amounts allowed in respect of amounts previously paid by the hirer as rent or hire for the goods, while the fourth type comprises goods which were acquired by the hirer for the purpose of being used to provide the deposit. Subclauses (2) to (5) cover transactions with dealers. Subclause (2) provides that if a dealer has obtained a deposit in accordance with the requirements of the Bill the owner shall be deemed to have complied with the Bill. Subclause (3) prevents a dealer from buying goods from a hirer, the price being applied towards a deposit, which might defeat the deposit requirements.

Subclause (4) requires dealers to give certificates regarding deposits obtained by them. Subclause (6) protects owners acting on the faith of dealers' certificates. Subclauses (5) and (7) provide for offences.

Clause 47 makes it an offence for persons other than bankers to carry on the business of lending deposits. Clause 48 defines "cash" as including a cheque drawn on a banker.

The Hon. Sir FRANK PERRY (Central No. 2)—A Bill of this nature introduced in the last hours of a session must cause the Council much apprehension. The Minister traced the growth of hire-purchase from 1920 and showed that from that early date when hire-purchase first started it has grown into a very big thing in the lives of many people and has had a big effect on manufacturing industries and has caused a big strain on the finances of the country. The growth of hire-purchase is astounding. The figures quoted by the Minister showed that in 1949 the sum of £33,000,000 was owing to finance companies, whereas in 1958 the amount had grown to £296,000,000. That money is owing to finance companies only, but, as everybody knows, a number of hire-purchase arrangements are entered into with business houses. This business has a tremendous effect on all sections of the community and it is small wonder that the Governments of the country have given attention to it. The companies have grown to a remarkable extent with little supervision and have made fabulous profits but at the same time they have served the country in a satisfactory way. I have not heard many complaints about hire-purchase companies. Hire-purchase sales, amounting to the figure they do, have a big effect on manufacturing industries. Developments such as this must receive consideration and the various Governments in Australia met to consider uniform legislation in each State. The Bill presented by the Government in another place was drafted accordingly. It may have differed in certain respects, but we do not know what the differences are. In the main, the Bill covered the combined ideas of the various Governments.

The Minister's speech indicates a close examination of the matter was made before the introduction of the Bill. I have heard of dissatisfaction amongst the hire-purchase companies. This Bill is undoubtedly drafted to protect the hirer—although it may protect the hire-purchase company to a slight degree—and I think that is right. I do not agree with hire-purchase to the extent to which it is carried on today. It serves a good purpose up to a point because people are enabled to obtain goods which they need and can see a reasonable prospect of paying for. They can obtain those goods and have the reasonable use of them through hire-purchase arrangements, but the point is that hire-purchase business has shifted considerably from what it was when it was first established. Then a reasonable arrangement was made and hire-purchase transactions were much smaller than they are now. This Bill does give attention to the protection of the hirer against repossession, informing him of the transaction he has entered into, defining repossession, and controlling many of the activities of these finance companies.

It is impossible for this House at this late hour to go into the full details of the Bill. I think the House could accept it to the extent to which it was agreed upon by the conference of Ministers representing the States or as it was first introduced in another place. When we are asked to consider amendments which have been proposed and which involve a 10 per cent deposit and the signing of an order by the wife and the husband, that introduces something that requires more information and more careful examination than this House can give in the time available. Rather than allow the

Bill to be shelved I think we should accept it in its original form. Opinions differ on the 10 per cent deposit. Some companies demand up to 25 and 30 per cent, while others ask for nothing. Those of us who have wireless and television sets hear persuasive talks over the air asking people to buy goods without making any deposit or payment on anything for three months. I would not be prepared to go that far without much more examination. The trouble is that this Bill settles on a 10 per cent deposit but we have a margin of from 10 to 33 per cent. This House should inquire into the percentage and arrive at a decision on that matter. I do not think the House would be justified in passing the amendment at this stage.

While I hesitate to support the Bill at such short notice I am prepared to accept it as introduced in another place because that was a result of a Commonwealth-wide conference at which the essentials of the Bill were discussed. To do otherwise would involve us in a lot of inquiries and affect the economy that has grown up around hire-purchase in South Australia and which, according to a great many people, is essential to our economic progress. I support the second reading, but ask the House to reject the amendments listed. We have the Assembly's Bill and a separate list of Assembly amendments. As I understand the position the amendments are not included in the Bill.

The Hon. C. R. Story—We cannot accept amendments in this form.

The Hon. Sir FRANK PERRY—We have the Bill and the amendments on separate sheets. There has not been sufficient time to print the Bill as amended and that is why they are on separate sheets.

The Hon. C. R. STORY (Midland)—The Council should not receive a Bill such as this in its present form, with a sheet of amendments in the name of Mr. Hambour attached as part of the Bill. We do not know who moved the amendments unless we have done our homework. We should discuss the Bill on its merits and not on something that is appended to it because there has not been time to print the Bill with the amendments included. I have never indulged in hire-purchase as a habit. I have always called it the glad-sorry system—glad that you have it and sorry that you cannot pay for it. I am not opposed to what Sir Frank Perry said, but only to the manner in which he submitted his case, because what he said was, I think, slightly misleading. A deposit of 10 per cent on hire-purchase transactions is unnecessary. In the purchase of motor cars and such goods one pays much more than a 10 per cent deposit. If the Bill is passed in its present form I suggest that the minimum will become the maximum, because one has to compete with others. I believe that business is done on a regular pattern and that each commodity has a value according to supply and demand. If various firms seek to embark on competitive business, that is good for the public. I cannot understand the view of those who favoured the payment of a 10 per cent deposit. If they had suggested 25 per cent I should have been more inclined to agree with them. A deposit of 10 per cent is very low, and I consider that a minimum deposit would become the maximum for practically everything. I do not intend to support the Bill.

The Hon. Sir ARTHUR RYMILL (Central No. 2)—This Bill has come along rather late in the session. No doubt there are good reasons for that, but the fact remains that it is an important Bill in its way and it has come along at this late hour. We received the final print as passed by another place at 8.40 p.m. and now it is 9.50 p.m., and we are expected to address ourselves to it. The same sort of thing happens at the end of every session of this Parliament. Some members complain, others take it calmly, and still others try to keep up with the progress of the legislation in another place so that they will be able to address themselves to the Bill at short notice when it is received in this Chamber. I have been a member in each of those categories from time to time. In this instance I have tried to keep up with the Bill, which has not been easy because important amendments have been inserted which have made a big difference to it. Nevertheless, I am as familiar with the Bill as one can be in the circumstances. It is a long Bill and it is somewhat novel legislation to us. I am prepared to sit here just as long as is necessary for the purpose of giving the fullest consideration to it and doing whatever the Council sees fit, but while expressing that view I would like to say that I am a little dubious about the wisdom of trying to put a Bill of this magnitude and of this nature through at this late stage.

I have nine amendments that I wish to put in Committee. It may be that at this time some people may say, "Why worry us with amendments?" My answer is that it is our duty not to put through any Act of Parliament unless we have properly considered it and are

satisfied that it is workable. We can sit here late tonight as we have done on many occasions; we can sit here until tomorrow morning, or we can sit again tomorrow or next week, and I am genuinely prepared to do that. The only query I have is whether it is necessary. Is there any urgency attaching to this Bill that necessitates our dealing with it before Parliament adjourns tonight or tomorrow morning? I consider that hire-purchase is going on very well indeed in South Australia. I have heard of extremely few cases of hardship. I know that many people commit themselves to more than they can afford, but this Bill will not correct that. I cannot think of any case of hardship caused by any of the matters that this Bill sets out to rectify. I have not read any letters in the newspapers complaining about it. On the contrary, I have heard many people say that hire-purchase is a wonderful thing. They say, "If it were not for hire-purchase I would not have a television set or a washing machine or all the other amenities I have in my home."

I believe that hire-purchase is good. It has lifted the standards of living of most people in Australia. I believe in hire-purchase for that reason and I believe in it too because it has helped the development of Australia; it has helped our manufacturers, particularly those in South Australia, which has seen such great progress in that arena. It has helped people to obtain goods which they might never otherwise have possessed. In fact, it is a method of voluntary saving, but once the contract is entered into it is an enforced saving, whereby people obtain valuable and useful goods with money they might otherwise waste on the race-course or somewhere else. As Sir Frank Perry mentioned, hire-purchase has become the bank for the less fortunate. It is, perhaps, more like a mortgage or bill of sale for people who do not find themselves in the happiest of financial circumstances, and in common with other members of this Council I am all for giving them the highest standard of living that we possibly can.

I do not think that this Bill will have much impact on that, although I am genuinely in favour of it and will give it my support, subject to the various amendments which I think are necessary to make it workable. It regulates certain things that should be regulated, not on account of the very fine hire-purchase companies we have but because of the few people who, in all walks of life, want to take someone else down. If we do not pass the Bill this session I do not think anyone will be hurt; they will still get their hire-purchase. People are still entitled to make their inquiries, and if they deal with reputable companies they will get proper treatment. After all, we are not here to protect each individual against himself, but to protect the masses of people against certain things, and I believe that that is about the total effect of this Bill. It contains many clauses. There were 44 when it was presented to the House of Assembly and there are now 48, as well as four schedules. That makes it a Bill of some moment in a physical sense, and of some magnitude. Some provisions may be more theoretical than practical, and some could well hamper hire-purchase companies in their operations. I would like to make this point clear, particularly to my friends of the Opposition: I think we should facilitate people getting hire-purchase accommodation rather than hamper them. I for one do not want to do anything that will prevent anyone from getting hire-purchase accommodation which, in my view, is one of the things that an amendment of the Opposition in another place would have done. To put an interest rate into this Bill below the rate at which hire-purchase companies have to borrow their own funds would have had the effect of bringing hire-purchase business to a standstill. We are here to encourage industry and to help people to have a high standard of living. Certain amendments were included in another place. I do not agree with them and propose to deal with them in a moment. There are aspects of the Bill with which hire-purchase people agree; there are aspects with which some agree and some do not agree, according to my inquiries; and there are some aspects with which none agree. I fear that some clauses may not work out in practice. When the Bill becomes law we can see how it works and, of course, if it does not work, it is capable of amendment; but I only hope that, if we pass this Bill hastily, we shall not do anything to upset the flow of hire-purchase, for that is a danger in respect of which the Bill needs proper consideration.

The Bill is not rectifying any tangible evil. It deals with intangibles, with evils that may happen but seldom do. Nevertheless, it is a virtuous Bill because it will give some measure of protection in general. But I cannot see that that protection is urgent. To my knowledge, we have had hire-purchase in this State for well over 30 years on an increasing scale, but on a considerable scale even before the last depression. It has existed in this State all that time and yet it seems that from

tonight from 20 minutes to nine onwards we are asked to pass a Bill to deal with things that have been going on for 30 years and about which there does not seem to have been a great amount of discussion or dissent. In every field of commerce and other activities there are always people who are trying to take other people down, and I do not think it exists any more in the hire-purchase field than elsewhere. The evils in the hire-purchase field are due not to the hire-purchase aspect but the sale of secondhand goods, which goes on irrespective of this hire-purchase Bill.

I now want to deal with some of the clauses. I should like, first of all, to deal with an entirely new amendment that was put in in another place, I think only today. It is rather substantial and formidable. It is comprised in clauses 45, 46, 47 and 48. Apparently, that amendment is aimed at one thing—the insistence on a minimum deposit of 10 per cent. The draftsman of the amendment wanted to establish a minimum deposit of 10 per cent and he then apparently found that there were certain concomitant features with which he had to deal, otherwise unscrupulous people could get round this matter. So he has produced now about two and a half pages of verbiage which I have as yet not had time to read, nor has any other honourable member who has engaged in debate on other Bills with which we have had to deal hastily, such as the tax on hire-purchase agreements, which has exercised me. We have not had a chance to read this amendment yet, so I propose to read it now so that honourable members as well as myself may understand it. Clause 45 relates to the minimum deposit and provides:—

> Where an owner enters into a hire-purchase agreement without having first obtained from the proposed hirer thereunder a deposit in cash or in goods or partly in cash and partly in goods to a value equal to at least one-tenth of the cash price of the goods comprised in the agreement, the agreement shall be void.

I suppose that means, in simpler language, a 10 per cent deposit is the minimum. Apparently, one can take it partly in goods and partly in cash, but there has to be a 10 per cent deposit; or one can take it wholly in cash or wholly in goods. That seems clear enough. Apparently, that was the aim of the mover of this amendment. But he has found flaws in his amendment so he has to go on with a lengthy clause 46, which occupies two pages. It reads:—

> (1) No deposit—
> (*a*) to the extent that it is in cash and that it is made out of moneys borrowed directly or indirectly—
> (i) from or through the owner (if the owner is not a banker);

We do not know why that is; we may find out later on. It continues:—

> (ii) through the dealer; or
> (iii) from or through any person whose business or part of whose business it is by agreement with the owner or dealer or any person acting on behalf of the owner or dealer to advance money to enable deposits to be paid in respect of hire-purchase agreements with the owner.

I do not know whether anyone understands that. So far, I do not. I had better look at it again.

The Hon. C. R. Story—You have done very well.

The Hon. Sir ARTHUR RYMILL—I hope Mr. Story understood it. If he did, it means that I put the right inflexion on it, but I did not understand it myself and still do not know what it means but, as I have not got to the end yet, perhaps that is understandable. Then it continues:—

> (*b*) to the extent that, where the deposit is in goods or partly in goods and the amount allowed in respect of the goods is substantially greater than the value of the goods, that amount exceeds that value;

Although I am used to interpreting Acts of Parliament, I find it rather confusing to know what that means. I hope that some honourable members are wiser about this than I am. We may understand it better as we go along. Then we come to paragraph (*c*) which, like (*b*), is qualified by the words "no deposit." It reads:—

> (*c*) to the extent that it is made out of an amount allowed or credited in respect of or by reference to amounts paid by the hirer as rent or hire under a bailment of the goods before the making of a hire-purchase agreement in respect of the goods; or
> (*d*) to the extent that it is provided by goods that were to the knowledge of the owner or dealer acquired by the hirer for the purpose of being used by the hirer to provide the deposit under the agreement,

shall be taken into account for the purpose of determining whether the provisions of section 45 of this Act have been complied with.

I can see the intelligent look on the faces of all honourable members as they grasp that. Then we come to the following subclauses:—

> (2) The provisions of this Part shall be deemed to have been complied with by the

owner if a deposit in accordance with the provisions of this Part has been obtained by the dealer.

(3) Where a dealer buys goods from a proposed hirer and the price, or part of the price, of the goods is applied as or towards a deposit under a hire-purchase agreement, then in relation to the agreement—

(*a*) the goods shall, for the purposes of this Act, be deemed to have been obtained by the dealer as a deposit; and

(*b*) the price, or the part of the price, as the case may be, so applied shall, for the purposes of this Act, be deemed to be the amount allowed by the dealer in respect of the goods.

(4) The dealer shall, in relation to the deposit obtained by him under a proposed hire-purchase agreement, certify in writing—

(*a*) where the deposit was paid or provided solely in cash, that the deposit was paid or provided solely in cash;

(*b*) where the deposit was provided solely in goods—the nature and description of, and the amount allowed by the dealer in respect of, the goods;

(*c*) where the deposit was paid or provided partly in cash and partly in goods—the amount of the deposit that was paid or provided in cash and the nature and description of, and the amount allowed by the dealer in respect of, the goods.

The haze is clearing a little, but it is still a thick fog. The draftsman of this amendment has been confronted with the situation that, although he has stipulated that there should be a 10 per cent deposit, people can bring along their old shaver and will be allowed £3 for it when it is worth only 2s. I shall need time to make up my mind on whether that is the meaning or not. I cannot do it tonight; it is getting too complicated altogether.

The Hon. F. J. Potter—Look at subsection (6).

The Hon. Sir ARTHUR RYMILL—I have not got to that yet. I will take them chronologically, which is about the only way I can get any sense into them. The clause continues:—

(5) A dealer who under subsection (4) of this section certifies as the amount allowed by him in respect of goods an amount that is not a reasonable estimate of the value of the goods or gives a certificate that is false in any other material particular shall be guilty of an offence against this Act.

I have no doubt there is a penalty for it somewhere. Mr. Potter seems to think highly of subclause (6), which reads:—

(6) Notwithstanding anything contained in this Part where an owner in entering into a hire-purchase agreement acts on the faith of a certificate given under subsection (4) of this section by the dealer and the amount certified in the certificate as being the amount allowed in respect of the goods whose nature and description are certified therein is substantially greater than the value of those goods the agreement shall have the same effect as if the amount so certified were the value of those goods.

That has got me licked again, but I suppose I can work it out if given a little more time. Then it states:—

Nothing in this subsection shall affect the liability of any person to be convicted of an offence against this section.

I am not criticizing the draftsmanship; I am criticizing the fact that the language is so involved that it is difficult for us to interpret at this stage what it means. I think the Attorney-General will give us only a limited time to see what it means. Subclause (7) states:—

Any person who knowingly enters into or procures, arranges, or otherwise assists or participates in a transaction contravening this section shall be guilty of an offence against this Act.

That seems clear enough. Then we come to clause 47. It begins:—

(1) Any person, other than a banker, who (whether or not he carries on any other business) carries on the business of lending or making loans to other persons for the purposes of enabling those other persons to pay the deposits required by or under section 45 of this Act shall be guilty of an offence against this Act.

I can understand that, but it seems extraordinary that I can go along to my banker and borrow the deposit of 10 per cent, but I cannot go to Sir Frank Perry and borrow that money although I am sure he would be willing to lend it. The clause continues:—

(2) Any person who accepts as a deposit under a hire-purchase agreement any money or other consideration that he has reasonable cause to believe or suspect was lent to the hirer by any person, other than a banker, who carries on the business referred to in subsection (1) of this section shall be guilty of an offence against this Act.

I can understand that, too. Not only the person who borrows the money but the person to whom he pays it, if he suspects that the money may have been borrowed, is guilty of an offence. Pardon my hilarity, but it does seem an extraordinarily complicated rigmarole, and all for the purpose of trying to get in a provision for a deposit of 10 per cent, with which I do not agree anyhow. Then we come to clause 48, which states:—

In this Part "cash" includes a cheque drawn on a banker.

Again, that is clear enough. I do not believe in any minimum deposit of 10 per cent being put into this Act. I believe that 10 per cent

in most cases is an insufficient deposit and conversely I believe these hire-purchase companies are capable of carrying on their own business. If there is to be any minimum deposit I think it should be 25 per cent, or something proper as the ordinary companies usually charge. I am told that television sets lose about one-third of their value for re-sale as soon as they are taken out of the shop, although they retain their value in the physical sense. A motor car loses a considerable part of its value as soon as it is taken off the sale room floor. A reasonable deposit is required because as soon as the goods are taken out of the shop they are only worth the amount outstanding in many cases.

Another place has found it necessary not to insert a sensible deposit, but a trivial deposit that is neither one thing nor the other. We have all had the experience, since we have had Acts of Parliament limiting various business activities, of what these things mean. We all know that under the Prices Act the fixed maximum price has always tended to become the minimum price as well. That is a tendency when we get fixations. I know certain hire-purchase companies are afraid that if any minimum deposit is fixed that deposit will tend to become the criterion for deposits and there will be great competition surrounding that deposit to the benefit of no one. I know not all companies believe that, but some do. There are conflicting views on this matter and my own coincides with those who think the minimum deposit will tend to become the deposit on most transactions. I think that would be a very bad thing because although we hear a lot about hire-purchase on no deposit, there is little of it done in my experience. It is more of a catch cry—something to sell goods or get people into the shops, which then explain the benefits of paying a higher deposit and saving interest. They ask for the Savings Bank books of the customers to see if they are credit worthy. They tell the customers they can have the goods on no deposit, but explain they are getting 3 per cent on their £50 savings or whatever they are, but that if they borrow from the company they will be paying £12 to £15 in interest and that it is better for the customer to pay that £50 to the company instead of leaving it in the Savings Bank.

There are many things in practice which I imagine are not known to the draftsman of this Bill and we must take a lot of notice of them. I have not dealt with the Bill in the form it was originally presented by the Government; I am dealing with the Bill as amended. The Bill as drafted—although I have a number amendments I propose to outline to this House—is more to my liking than with the amendments that have been made. There is an amendment that was put in in another place that honourable members will find on page 5 of the Bill. It took me a long time to find this one, but it is in clause 3 (2) (*b*), and it is the proviso. It is qualified by the words "every hire-purchase agreement shall be signed by or on behalf of the hirer and all other parties to the agreement." This is how it was presented in another place and superimposed on that, was a proviso that, "provided where a hirer is a married person the agreement will be signed by that person and the spouse of that person if both are living together in the same residence." That conjures up some thoughts in my mind, but then I may have a vivid imagination.

In the United Kingdom the wife's income is added to her husband's income for the purpose of ascertaining the rate of tax that each shall pay. Apparently if you marry a girl you get her income added to yours for taxation purposes, and you are made poor by the Government by paying high taxes. If you do not marry her, heaven knows what happens, but I don't want to go into that. The proviso I mentioned says the spouse of the hirer must sign the agreement if both are living in the same residence. They can be living in the same residence, but not speaking to each other, which may make it difficult for one to get the other's signature. As a practical lawyer I know of many cases like that. On the other hand, they may be on the best of terms, but may be living apart for a long period of the year through the husband working in the country, and then the Act does not apply. This seems to me to be an attempt by the draftsman of the amendment to ensure that the people are on reasonably good terms and therefore may give consent to the hire-purchase agreement. Surely it is a pretty rough and ready attempt in view of the examples I have given and it shows the fallacy of the thing. Suppose the husband wants to buy a tractor and the wife does not want him to buy it because she thinks it is extravagant or because she wants him to buy a secondhand one. She refuses to sign the agreement so he cannot have a tractor. She wants a fur coat instead of a tractor, in which case she may say, "You can have a tractor if you sign for me to have a fur coat." She may want a utility, and the same thing applies. A wife may want a sewing machine, but the husband may want a television

set. How ridiculous it is to bring the other spouse into the other's business—a woman or man does not know anything of the business the husband or wife is carrying on. I cannot imagine anything more illogical.

I do not propose to deal with the Bill in detail. I have gone through it in its original state because I knew there would be a great deal of hurry about it, but I have done less than justice to it. I have done my best and have read a lot of it, but in the last few days, since the Bill has been available in some sort of semblance to the way it would come to us, we have had to deal with many other Bills and have had to debate them in this House. Yesterday I spent the whole morning reading through the Road Traffic Bill and the Motor Vehicles Bill. They were substantial measures and there were many implications in them. It has been hard to study this Bill thoroughly, but I have nine amendments to outline to this House because members will probably be called on to vote on them later.

The first is a suggestion that in the definition clause the word "guarantor" be added to by inserting "and guarantee shall have a corresponding meaning." That is the customary thing in Bills and I think it has been missed out of this Bill. The Attorney-General thought a little while ago I was trying to slight the Parliamentary Draftsman, but I assure him nothing was further from my mind. I think our new Parliamentary Draftsman has done a wonderful job this session. It is very hard for a man to come to a lot of new Acts of Parliament and catch up with them. He must have had to work tremendously long hours and he has done a wonderful job. He has been most helpful to members and to me personally. I should hate it to get abroad that I do not appreciate and admire his work, particularly in the difficult circumstances. His work would have been difficult even if he had not those difficulties to surmount. I was not criticizing the amendment made in another place because of its verbiage, but because it was dealing with such a concatenation of circumstances. By the looks on members' faces they found it difficult to follow, too. This Bill was not drawn up by our Parliamentary Draftsman at all, but by a number of draftsmen. I think it is similar to a Bill enforced in Victoria at the moment. I would not think it a badly drawn Bill, but it is a Bill that is rather novel legislation that has not stood the test of time and thus we do not know quite how it is going to work and I should also think that the draftsman or draftsmen of this Bill did not know sufficient about the practical workings of hire-purchase and hire-purchase companies.

This Bill sets out to regulate those workings and practices and there are some things I have seen and also to which my attention has been drawn as well that seem, from my limited knowledge of hire-purchase, to need attention before the Bill is workable. If we pass this Bill without appropriate amendments it will hamper the operations of hire-purchase companies and it will be to their detriment and will be to the detriment of the hirers of the goods also. We are setting out to protect the hirer of goods and to regulate the practice of hire-purchase companies, but in a way to protect them as well and not raise difficulties for them.

My second amendment is also to the definition clause. It is a suggestion that an amendment be made to "statutory rebate" which honourable members will find on page 3, and which runs to page 4. After the word "months" in paragraph (*b*) (ii) I want to add the words "provided that where an insured has under any contract of insurance been paid out as on a total loss of the goods insured there shall be no rebate of premium." I do not know whether honourable members understand that in its verbiage, but I think it is fairly clear. This Bill provides for certain rebates to be made if the contract is concluded earlier than its specified time including provision of insurance, and my idea is that where an insured has been paid out as on a total loss he shall not have his premium back. That is fair enough. It is an obvious omission in the Bill. The reason for this is that it is contended that where a person pays a premium for a policy which provides for a maximum cover and while that policy is current something happens which goes to the full amount of the cover he should not be entitled to the rebate of premium. That happens in every contract of insurance. If I insure my house for 12 months and have a fire next day, the company pays, but I do not get my premium back. It must be remembered that insurance covers are made with insurance companies, not with the owner. The present position is somewhat akin to that where a person dies having effected a policy on his life and having paid the current year's premium. His executors ask for payment of the unexpired portion of the annual premium in addition to payment of the full amount of the cover.

Clause 3 (1) provides:—

Before any hire-purchase agreement is entered into in respect of any goods the owner or, if there is a dealer, the dealer, shall give or cause to be given to the prospective hirer a statement in writing duly completed in accordance with the form in the First Schedule:

Provided that where the agreement is entered into by way of acceptance by the owner of a written offer signed by or on behalf of the hirer, the provisions of this subsection shall be deemed not to have been complied with unless the written statement was given to the prospective hirer before the written offer was so signed.

It is suggested that a further proviso be added at the end of the clause, as follows:—

Provided further that if there be more than one prospective hirer it shall be sufficient if the written statement be given to one of such prospective hirers.

Clause 3 provides that a notice must be given in the form of the First Schedule before any hire-purchase agreement is entered into. Where a husband or a wife is to take goods on hire on behalf of both of them or where one person in business desires to take an article on hire for the partnership, then the wording of clause 3 makes it imperative for both husband and wife and all partners (there may be three or four—it is not uncommon for two men to be in partnership with their two wives) personally to attend prior to the signing of the agreement to receive the notice in the form of the First Schedule. In many cases that is impossible. It makes it difficult not for the hire-purchase company, but for the hirer. If notice is given to any one, that should do for them all.

The next amendment I propose is that in clause 3 (5) the words "before which any proceedings are brought" be inserted after the word "court" in the second line. The word "court" is defined as being a Local Court of Full Jurisdiction and it is obvious that proceedings under clause 3 would be taken in a Court of Summary Jurisdiction. That seems to be a defect in the Act and must be rectified. My next amendment relates to clause 12 (6). The wording of this subclause seems rather difficult to follow. It gives the owner certain rights against the hirer, including the right to recover what the owner would be entitled to if he had repossessed. Clause 15 does not give the owner any entitlement, but says in clause 1 (*c*) what he shall not be entitled to recover. Therefore, I am proposing to move after the word "due" in clause 15 (1) (*b*) "and the owner shall be entitled to recover from the hirer the amount by which the said value of the goods is less the net balance due." Under clause 14 the owner is obliged to serve on the hirer a notice under the fourth schedule. That notice says "If you do not reinstate or finalize the agreement you will be liable for the owner's loss unless the value of the goods repossessed is sufficient to cover your liability;" and a little later "on the basis of the owner's estimate of the value of the goods you are liable to pay the owner £. . ."

Clause 15 (*c*) provides that the owner shall not be entitled to recover any sum, which in effect would mean that the owner gets back no more than he legally bargained for. There is no actual provision to enable him to recover his loss. All that the clause provides is that he shall not make a profit. The intention is obviously that he should recover his loss, and this is evidenced by the wording of the fourth schedule. This right to recover a loss should be put beyond doubt. It seems to be confused at the moment. At present the clause could be construed so as not to give such rights to the owner and anything in the Fourth Schedule could not be used legally to support a contention that the owner is entitled to his loss.

In my sixth amendment it is sugested that the following words be deleted from clause 16 (*b*):—"and actually incurred by the owner in doing any act, matter or thing." Clause 16 enables a hirer to regain possession of the goods in certain circumstances. He must pay all arrears; he must remedy every breach of the agreement; he must pay the owners reasonable costs of repossessing. The wording of paragraph (*b*) makes the operation of the clause ineffective. A not unusual breach of an agreement is that the hirer does not keep the goods in proper repair, particularly motor vehicles. One hire purchase company man told me that most vehicles repossessed were in a deplorable condition and that is why the hirer is willing to part with them. It is the hirer's obligation to keep the goods in repair, but he cannot remedy that breach because the owner has taken possession of the goods. The vehicle may be in bad repair and the owner, before allowing it to go back to the hirer, may require the hirer to pay the cost of reasonable repairs. Under the provisions of paragraph (*b*) the hirer would be able to obtain the goods back even though they may be in shocking condition, because the costs of putting them in repair have not been actually incurred by the owner.

My next amendment relates to clause 19 (1) (*a*). It is suggested that the words "balance originally" be struck out and the word

"moneys" inserted instead. This would mean that an owner could, without going through all the formalities in clause 19, obtain a guarantee against loss. In certain circumstances further amounts will have accrued due by the hirer during the currency of the agreement which were not originally payable, such as a further insurance premium or cost of repairs which the hirer has failed to carry out.

My eighth amendment relates to clause 26. I propose to move that this clause be amended by striking out the following words from subclause (2); "and the worker had notice of that provision before doing the work upon the goods." If these words were removed it would place the law in the same position as it is now. The insertion of clause 26 as it is now makes a complete reversal of the present legal position, because the hirer would hardly tell the repairer either that the article was under hire or of the existence in any agreement of such a clause as is suggested in clause 26. The law as it is has worked satisfactorily for all concerned and there does not appear to be any call for any alteration. Bearing in mind that the Bill is mainly an Act relating to the form and content of hire-purchase agreements and the rights and duties of the parties thereto (see title), it seems strange that Parliament should be asked to go out of its way to protect repairers. Finally, in clause 27 I will suggest that subclause (2) be deleted. This would leave the law in the same position as it is now. Subclause (2) is as follows:—

(2) Notwithstanding anything contained in subsection (1) of this section, the owner shall not be entitled to repossess goods which have been affixed to a dwellinghouse or residence if, after the goods have become so affixed, any person other than the hirer has *bona fide* acquired for valuable consideration an interest in the land without notice of the rights of the owner of the goods.

The same arguments in support of leaving the law as it is with regard to the previous clause applies equally to this clause. Alternatively, the words "as purchaser" should be added after the word "interest" in the next to last line.

The Hon. K. E. J. Bardolph—Are you making a general survey of your amendments?

The Hon. Sir ARTHUR RYMILL—I am making a general survey and pointing out certain defects in the Bill which I hope to rectify. Members will notice the use of the words "interest in the land." That could refer to a mortgagee or a lessee and the hirer could circumvent the clause by leasing the land to a member of his family, and that should not be so. It might be argued that these two provisions have been brought into the Bill to conform with the legislation in other States. That seems to be the sole purpose. I understand there was some agreement of that nature, but I do not think there is any force in the argument because the new hire-purchase legislation in Queensland contains many clauses additional to those in the Bill. It purports to fix minimum deposits, something similar to what was placed in this Bill in another place. The New South Wales legislation purports to fix a minimum deposit and interest and insurance rates. I think Tasmania has done something similar. The law in South Australia, as set out in sections 26 and 27, is well known, and it has worked satisfactorily for years.

This is my main survey of the Bill. I believe it needs a good deal of close attention. I hope that when I move my amendments in Committee they will receive the fullest consideration. I believe the Bill has a lot of virtue in it. It is welcomed by hire-purchase companies provided that it is passed in a more practicable form than it is at present. We must give the closest attention to the details of the Bill, even if we stay here until Christmas. It is not fair to have a Bill that has not been properly considered, and any half-baked legislation will hamper the activities of the hire-purchase companies, and thereby hamper the interests of future hirers of goods. I support the second reading. I feel it is my duty to make the Bill as workable as possible and that is why I have indicated my amendments.

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

Adjourned debate made an Order of the Day for "the next day of sitting."

The Hon. F. J. CONDON—On a point of order, Mr. President, do I understand that the Bill has now been put into cold storage?

The PRESIDENT—Order!

STAMP DUTIES ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from December 2. Page 2001.)

The Hon. A. J. SHARD (Central No. 1)—I am not in favour of the Bill because, I understand, it adds a tax of one per cent to hire-purchase agreements. We have previously heard that the Government did not intend to increase taxes. There is no more vicious tax

than an indirect tax and for that reason I oppose the proposal, notwithstanding the fact that there is, I believe, a clause that prohibits the hirer from passing on the stamp duty tax in the cost of articles. I do not know who the Government thinks it is tricking, because no matter what happens any increased costs to merchants will be passed on to purchasers. A few months ago the Premier returned from a Premiers' Conference in Canberra with a blare of trumpets and much publicity, and we were told that South Australia would no longer be a mendicant State. One did not need to be a deep thinker to know what would happen. He said at that time that South Australia would stand on its own feet and that we would be much better off. An examination of the position reveals that rail fares and freights have increased by about 14 per cent, and that water rates and tramway fares have been considerably increased.

I am a member of the Joint Committee on Subordinate Legislation, which was told that the Harbors Board had increased some of its fees by as much as 400 per cent. No one in his wildest dreams would believe that those added costs would be borne by those on whom they were inflicted, for we know that they will be passed on to consumers. In 1957 registration fees in the Factories and Steam Boilers Department were increased by 100 per cent and there was a further 100 per cent increase this year. Since 1957 the registration fees for small businesses and factories have increased by 300 per cent. We are told that the tax to be levied under this Bill will return to the Government £225,000 and the Premier and his Government would have us believe that the people who sell the goods will carry the burden. I do not know whom he hopes to delude, but he will not delude me. This tax will be included in the cost structure and passed on to purchasers.

Members of the Labor Party are in a hopeless minority on the Joint Committee on Subordinate Legislation, some of whose decisions have been made on Party lines. On one occasion I invited the "captain of industry" in this Chamber to move for the disallowance of a certain regulation and promised him four votes. This voting on Party lines does not apply to the same degree now as it did with the previous committee, whose decisions were on a purely political basis.

The income of the Factories and Steam Boilers Department has increased in recent years from about £44,000 a year to about £93,000. That is only a small indication of what is in store for us. I am in complete sympathy with those suffering as a result of drought conditions. I would be keen to see how the Government would finance its projects under normal conditions without having to approach Canberra for assistance. This is not a good year in which to judge its activities, because of the drought. I cannot see how the Government will meet its expenses, and I will be interested to see how the Budget appears next May. Long before the present drought I prophesied on a public platform that in a normal season the Government would have to tax the people more heavily to get additional revenue, or delay the completion of some public works, which would lead to unemployment. The Government will pay for its foolhardy policy over the years of not taking all the money it could have received from the Loan Council, because it wanted to set an example to the other States. We could have had more money for hospitals and for education, but we did not accept it. As a layman I consider that this State, for the term of this agreement, will pay dearly for it.

The Hon. Sir ARTHUR RYMILL (Central No. 2)—Other States have stamp duty on hire-purchase agreements. We have it within certain limits, so I suppose it is inevitable that we should ultimately have a similar tax upon our Statute Books. At present there is a limited tax on hire-purchase agreements; I have struck it in legal practice—years ago, of course. I think it is £1 a £100 treated as a conveyance, and speaking from memory, the person who pays the stamp duty is entitled to a refund if he does not fulfil the agreement and the property does not pass. Speaking again from memory, for I have not had occasion to look it up, the present stamp duty applies only to agreements between private persons. In general, under our present Stamp Duties Act we have two categories of stamp duty that can be related to hire-purchase agreements. The first is the conveyance category which is exercised at the moment. It is £1 for every £100, and under £100 similar proportions. We also have had the bill-of-sale and mortagage category of stamp duty whereunder the duty is 2s. 6d. a £100, or one-eighth per cent instead of one per cent.

During the Chief Secretary's second reading speech it became apparent that some States have followed the conveyance scale of £1 a £100; and one State at least—I think Western Australia—has adopted the one-eighth per cent. So there we see a conflicting set of precedents, and our Government has settled for the higher

figure. I should have thought that the category of bills-of-sale and mortgages would be the correct one, because if hire-purchase agreements are stampable at £1 a £100, why are mortgages stampable at the same rate; I do not want to go on record as advocating that, but surely a hire-purchase agreement is a sort of bill-of-sale—a security over goods.

The Hon. C. D. Rowe—Under a mortgage the property does not pass to the mortgagee. Under a bill-of-sale the property does ultimately pass.

The Hon. Sir ARTHUR RYMILL—I think it is the other way round. Under a hire-purchase agreement the property only passes when the contract is fulfilled, whereas under a mortgage the land is in the ownership of the mortgagor; under a bill-of-sale the property is in the possession of the grantor of the bill-of-sale. I can see the Attorney-General's point, but I still think that this is more in the category of a security—which is a bill-of-sale—than a conveyance. I would further illustrate that by saying that the ordinary sale of a television set or motor car is not done by a legal document of conveyance, but by the passage of cash on which no stamp duty is payable. If a person buys a television set for cash he does not pay any duty, but if he has to buy it on a hire-purchase agreement, under this Bill he will not only have to pay stamp duty, but a substantial duty.

I am conscious that this Council can only make suggestions to the other place, because obviously this is a money Bill, and if I were a member of the other place I think I would take this a little further into the relationships which I have just mentioned. In this place I feel that I should not do that because I do not think it would be acceptable to the other place. The Government is in charge of the finances of the State and, I may add, it has done a wonderful job as I have said many times, and thus I do not think it is for me, as a member of this Chamber, to intervene in the matter. However, there is one small amendment which I propose to move as a suggestion, and I commend it to the Government and to members of this Council. Under clause 6 members will see a schedule showing the scale of stamp duty. It will be seen that where the net cash price does not exceed £25 the stamp duty is 5s., and it rises in steps of 5s. for each £25 up to £100, when it is £1. However, where the net cash price exceeds £100, for every £100 or part thereof the duty shall be £1. It is the latter part that I would like to amend. I do not want to do so in a way that alters the rate, but I want to get it into the same steps as the first part. Instead of having £1 for every £100 after the first £100 I would like to see it made 5s. for every £25 after the first £100: in other words, to split it into four steps of 5s. for each £100.

I imagine that this Bill has been drawn on the analogy of conveyance of sale; that is, £1 a £100. Sales of land under £100 are fairly rare and they can go into the hundreds of thousands of pounds category nowadays, and therefore I think it would be rather silly to have 5s. for every £25 in that category. Hire-purchase agreements, however, are in an entirely different category. I should think it most rare that a hire-purchase agreement would involve £1,000, and the normal transaction on, say, a television set would be between £100 and £250. If the Bill stands as it is it means that if one bought a television set for £100 one would pay £1 stamp duty, but if it cost £101 the duty would be £2, and it does not seem right that the step should be so great. For the first £100 I want to see that it goes up by the steps mentioned in the Bill and then 25s. up to £125, 30s. for £150, 35s. for £175, and £2 for £200. That is the intention of the legislation, but I believe it has been drawn in relation to the conveyancing of land which can run into hundreds of thousands of pounds, whereas we are dealing with comparatively lower value goods. I support the second reading and will bring forward my amendment in Committee.

The Hon. F. J. POTTER (Central No. 2)—I find that Sir Arthur Rymill has made a speech in almost identical terms with what I proposed to say and therefore I do not intend to occupy the time of the Council at any length. I would simply say that I think a case can be made out for the imposition of duty on hire-purchase agreements. Other States have entered this field and we have lagged behind. For many years there has been an exemption for people engaged in hire-purchase transactions as a business, whereas duty has been charged on transactions between individuals at the full conveyancing rate of £1 a £100. Like Sir Arthur, I intended to suggest that the Government might consider a more graduated scale after the first £100. In similar legislation in New South Wales the stamp duty for the first £100 is exactly as proposed in this Bill, but thereafter it provides for a duty of 5s. for every £25 or part thereof. I therefore support the Bill and indicate that I will also support the amendment suggested by Sir Arthur Rymill.

The Hon. F. J. CONDON (Leader of the Opposition)—I am approaching this Bill from a different angle. Stamp duty on hire-purchase agreements is imposed by the suggested legislation in the form of taxation. We were told before the last election that there would be no further taxation on the people of South Australia. What is this but a form of taxation by this Government which promised that it would not inflict any further taxation on the people?

The Hon. F. J. Potter—Do you call this "on the people"?

The Hon. F. J. CONDON—Yes, I do. It has also been said that South Australia is the only State where hire-purchase agreements are not subject to any stamp duty. We are told that South Australia stands out in this matter. It also stands out in the matter of Ministers' and members' salaries. In that respect we are the lowest paid State in the Commonwealth, except for Tasmania. In spite of increased basic wages and marginal increases, it appears that we are not worthy of consideration in the matter of salaries, allowances and superannuation. Every time I sign for my salary, I have to affix a stamp. We should examine what stamp and succession duties mean to South Australia. Last year stamp duties were up by £94,000. Cheques, bills and promissory notes were up by £7,267, and amounted to £374,000. Receipts were up by £2,645, and amounted to £148,652. Conveyances, transfers, mortgages and other instruments were up £85,259 and amounted to £939,648. The total amount of stamp duties, less commission and refunds, was approximately £1,750,000. That shows what stamp duty has meant to the Government. Combined with the succession duties of £3,884,000 were the receipts, resulting in an excess of receipts over payments for the year of £3,850,000, which is a colossal sum. What is this but taxation? If the Government wants extra revenue, let it get it, but why tell the people that it does not believe in increased taxation when it is taking every opportunity of increasing taxation? Honourable members here say, "We do not believe in increased taxation." It is their funeral. However, I support the second reading.

The Hon. K. E. J. BARDOLPH (Central No. 1)—It seems anomalous to me that, while the Premier has stated that South Australia is no longer a mendicant State and there has been a flourish of trumpets about our financial status, this Government since that statement was made has been attempting to introduce by various pieces of legislation an imposition of taxes that will weigh heavily upon the people. When we were a mendicant State, the Grants Commission took away from us our sovereign powers as to what we should do by way of increased charges and fares on railways and tramways to bring them up to a position comparable with those in other States. We passed a measure here only this week that gave great concessions to primary producers in succession duties. My Party moved an amendment that those concessions should be extended to all sections of the community. I am not cavilling at the decision of this House against it, but the Government appears, on the one hand, to be giving concessions of great monetary value to one class while, on the other hand, this evening it is introducing this legislation. It appears to be in a financial dilemma.

The Commonwealth Statistician's figures disclose that one in every five persons in Australia is employed in either State or Commonwealth service. That means that we are slowly coming under the control of a bureaucracy, which must find money. It is not Labor's policy. Labor's policy aims to give the greatest benefit to the greatest number of people in the community. This Government by subterfuge attempts to use every taxation avenue available to it to get the money necessary for maintaining this great bureaucracy. In view of that and the lateness of the hour at which we are compelled to discuss this legislation, I suggest we should refer this matter to a Select Committee.

The Hon. Sir Arthur Rymill—What, again?

The Hon. K. E. J. BARDOLPH—Yes, and why not?

The Hon. Sir Arthur Rymill—That is the third.

The Hon. K. E. J. BARDOLPH—I remind my honourable friend that before he came into this Chamber and when Sir Collier Cudmore was the Leader of his Party in this House, he moved for a Select Committee in regard to the acquisition of the Adelaide Electric Supply Company, and we supported him. It is only fair, just and equitable when these imposts of taxation are to be made, when acquisition is demanded whether by a Government or by the people, that representatives in Parliament should determine whether those imposts should be imposed. Therefore, Mr. President, I request your ruling on this matter. I desire to move now that Standing Orders be so far suspended as to enable me—

The PRESIDENT—Order! The honourable member cannot move the motion he has suggested until after the second reading of the Bill.

The Hon. K. E. J. BARDOLPH—I thank you, Sir, for your guidance. I have said sufficient to indicate my views on the matter and at the appropriate time I shall take the action I have indicated.

The Hon. Sir FRANK PERRY (Central No. 2)—This Bill seeks to tax hire-purchase sales. I have always regarded hire-purchase as the working man's bank. I am surprised that this point has not been raised by the Opposition. It means that the working man is taxed by the amount mentioned in this Bill on his hire-purchases. I have heard the Minister say that it will be paid by the company. The working man is least able of anybody to afford these payments. Under hire-purchase he has to pay a 10 per cent flat rate on his purchases, which is bad enough in all conscience, and now we are increasing it to £100. Unless we can be shown by the Minister that it can be confined to the company, which is making good profits out of hire-purchase, to pay this money I think the Government is ill advised to introduce this Bill. If it can be shown to be that way, I have no objection.

The Hon. F. J. Potter—Subclause (4) is in.

The Hon. Sir FRANK PERRY—I know, but I am doubtful whether it is possible to say under that clause that that amount is not put on to the purchase of the goods. A man with money gets his 2½ per cent discount for cash but the working man, who cannot pay at the time, pays 10 per cent flat rate interest for a period of years plus the imposition of this tax by the Government.

The Hon. L. H. DENSLEY (Southern)—I support this Bill. Mention has been made of hardship on the working man. I have been a farmer for 50 years and during that time farmers have been buying machinery, etc., under hire-purchase and have been happy to do so for as long as I can remember. For that reason, we must admit that it is not a class tax unless there is a distinction between those with and those without money. Obviously people with money to spend will pay cash and save themselves the extra cost of tax by purchase by hire-purchase while those without money have the privilege of owning machinery plant and other amenities earlier than they otherwise would because they can buy them under hire-purchase. There is no law forcing people to buy under hire-purchase terms. They do it because they feel they can get possession of goods at an earlier stage and it is a privilege they avail themselves of to a large and growing extent. The practice is uniform throughout the other States to collect this tax and I see no reason to oppose it.

Bill read a second time.

The Hon. K. E. J. BARDOLPH—I move—

That Standing Orders be so far suspended as to enable me to move that this Bill be referred to a Select Committee.

On the motion being put.

The PRESIDENT—There being a dissentient voice the Noes have it.

The Hon. Mr. Bardolph called for a division.

The PRESIDENT—Leave may only be given by the unanimous consent of the House. Therefore, a division cannot be taken.

The Hon. F. J. CONDON—I do not think honourable members have understood the position.

The PRESIDENT—Did the honourable member ask leave of the House or move that Standing Orders be suspended?

The Hon. K. E. J. BARDOLPH—I moved that Standing Orders be so far suspended as to enable me to move that this Bill be referred to a Select Committee.

The PRESIDENT—The motion before the Chair is that Standing Orders be so far suspended as to enable the honourable member to move that this Bill be referred to a Select Committee.

Motion carried.

The Hon. K. E. J. BARDOLPH—I move—

That a Select Committee be appointed for the purpose of having this Bill referred to it and to make necessary investigations into the import of the Bill and to report back to Parliament.

I appreciate that this is the last night of the present session, but there is no urgent need for this measure to be carried tonight because it refers to taxation. We have not garnered this taxation over the years and I agree with Sir Frank Perry that it will be a heavy burden on those who use hire-purchase. I am not opposed to hire-purchase because it assists people in their homes and it also assists the manufacturer to distribute his goods to the people who need them. I have vivid recollections of years ago when only people in a strong financial position could afford to have refrigerators, washing machines and so on in their homes. Today those items are in general use. Although the Bill provides that this imposition shall not be handed down to the purchaser everyone knows that there are ways and means by which people in business can recoup charges imposed

on them. I hope honourable members will accept my suggestion and refer the Bill to a Select Committee.

The Hon. C. D. ROWE (Attorney-General)—I hope that members will not accept the suggestion to refer this matter to a Select Committee. It is usual to call in the assistance of a Select Committee when there are problems of unusual difficulty, when there are facts not obvious to us, and when we cannot understand what the Bill proposes to do. We know precisely what is proposed in this Bill, which is a counterpart of what has been in operation in other States for a very long period, and it is designed to help the Government in regard to its revenue in this most difficult year—the most difficult there has been in the State's history. A case has not been made out for a Select Committee and I ask the House to deal with it accordingly.

The Hon. K. E. J. BARDOLPH—I am surprised at the statements made by the Attorney-General. He let the cat out of the bag when he said that this Bill, in this very difficult year, would help the Government to garner increased revenue. He also said that this duty was imposed in other States. Since I have been here we have always been told that we do not follow other States, but that they follow us. It is surprising to hear that we must impose this because we are going through a very difficult year. Next year may be more difficult. The Attorney-General loses sight of the fact that we have had 12 years during which Divine Providence has been very beneficent. We cannot look upon the vicissitudes of one year and make that the datum line on which we are to base all our legislation and everything appertaining to the welfare of our State. South Australia stands pre-eminent amongst the States for facing up to its trials and tribulations and I am surprised that the Attorney-General, in an attempt to frustrate my efforts to refer this Bill to a Select Committee, should make that statement. What can be done with a Select Committee?

The Hon. Sir Arthur Rymill—You may delay the Bill with it.

The Hon. K. E. J. BARDOLPH—My object is not to delay the Bill. If a Select Committee brings in a report in favour of the Bill my Party will wholeheartedly support it. We are not prepared, in the dying hours of this session, to pass a Bill which will have repercussions on the workers. As the Honourable Sir Frank Perry said, it would be an imposition on the workers.

The Hon. Sir Frank Perry—I didn't say that.

The Hon. K. E. J. BARDOLPH—The honourable member did say it would be an imposition on people who used hire-purchase facilities in South Australia. I can see no difference between this and what happened about the acquisition of the Adelaide Electricity Supply Company. I ask the House to refer the Bill to a Select Committee and whatever the decision of the Committee may be I and my Party will accept it.

The Council divided on the motion:—

Ayes (3).—The Hons. K. E. J. Bardolph (teller), F. J. Condon and A. J. Shard.

Noes (13).—The Hons. Jessie Cooper, L. H. Densley, E. H. Edmonds, G. O'H. Giles, A. C. Hookings, N. L. Jude, Sir Lyell McEwin, Sir Frank Perry, F. J. Potter, W. W. Robinson, C. D. Rowe (teller), Sir Arthur Rymill and R. R. Wilson.

Pair.—Aye—Hon. S. C. Bevan. No—Hon. A. J. Melrose.

Majority of 10 for the Noes.

Motion thus negatived.

In Committee.

Clauses 1 to 4 passed.

Clause 5.

The Hon. Sir FRANK PERRY—I should like to know from the Minister that this provision is powerful enough to ensure that the hirer is not charged the extra stamp duty.

The Hon. C. D. ROWE (Attorney-General)—There is a specific clause in the Bill that the amount of tax shall not be passed on. The rates of hiring are virtually the same in this State as in the other States where such a tax has been imposed for a considerable time. Selling goods on hire-purchase has been competitive and if it were found that a firm added the additional tax to the price of its goods it would soon become generally known and it would lose business.

The Hon. K. E. J. BARDOLPH—The Minister said that the tax had been imposed in other States. There is nothing in the Bill to prevent a hire-purchase company from passing on the 1 per cent. He said that if any company attempted to do it, legislation would probably be brought down to rectify the position. Before voting for the clause I want something more definite embodied, because I want those who use hire-purchase to be protected. I am not doubting the Minister's veracity, but he is not the Government, which finally determines the position.

The Committee divided on the clause:—

Ayes (13).—The Hons. Jessie M. Cooper, L. H. Densley, E. H. Edmonds, G. O'H. Giles, A. C. Hookings, N. L. Jude, Sir Lyell McEwin, Sir Frank Perry, F. J. Potter, W. W. Robinson, C. D. Rowe (teller), Sir Arthur Rymill and R. R. Wilson.

Noes (3).—The Hons. K. E. J. Bardolph (teller), F. J. Condon, and A. J. Shard.

Majority of 10 for the Ayes.

Clause thus passed.

Clause 6.

The Hon. Sir ARTHUR RYMILL—Mr. Chairman—

The Hon. F. J. CONDON—I object. The honourable member is not speaking from his own seat.

The CHAIRMAN—The honourable member can speak from where he likes. He has a right to speak from anywhere unless the person in whose seat he is objects.

The Hon. F. J. CONDON—The honourable member has no right to interject or speak from any other seat. You stopped me from doing it, Mr. Chairman, so stop him.

The CHAIRMAN—The honourable member can come up and address the Council from the table if he likes.

The Hon. F. J. CONDON—Have I the right to speak from a Minister's seat?

The CHAIRMAN—Yes.

The Hon. F. J. CONDON—Can I at any time I like speak from a Minister's seat?

The CHAIRMAN—If the Minister does not object, yes.

The Hon. Sir ARTHUR RYMILL—In case there was any doubt about the matter, of which I had none, I thank Mr. Condon for giving me the opportunity to resume my own seat. I now move:

That it be a suggestion to the House of Assembly that clause 6 be amended by substituting the figures "£25" for the figures "£100" after "every" in line 14 of paragraph (*a*) and by substituting "5s." in the following line for the figure "£1."

I should like to make it crystal clear to honourable members that this does not alter the amount of duty imposed. It alters the graduation of the scale by which duty is assessed. The duty will still remain at £1 for every £100, but it will be in steps of £25 at 5s. instead of £100 at £1. It is exactly the same position as in the New South Wales Stamp Duties Act, although that is a more gradually graduated scale up to £100. It goes up at the rate of 2s. until it reaches £1 at £100 as ours also does, but it goes up in steps of 5s. In New South Wales for every £25 or fraction thereof it is 5s., which is exactly the same as in our Bill, except that it takes a leap in hundreds instead of in what I think should be in £25, consistently with the graduation up to £100. The values of the units being dealt with are low. Our Bill follows the scale for conveyances on land which ranges anything up to hundreds of thousands of pounds. This is for hire-purchase goods which I should think would range from something like £10 up to £250 in the main, except that for motor cars it would be somewhat more. If one buys goods valued at £100, the stamp duty is £1 or if the hire-purchase agreement is for an amount over £100 one has to pay an additional £1. Under my suggested amendment it would be only an extra 5s. From £100 to £125 instead of paying £2 one would pay £1 5s; from £125 to £150, £1 10s.; from £150 to £175, £1 15s.; from £175 to £200, £2. The duty payable on an amount from £175 to £200 would be the same as in the table of the Bill as at present drawn. I think this is a proper refinement to the Bill, because it brings it back to the ratio of the kind of goods we are dealing with rather than with the analogy of land, which is of so much greater value.

The Hon. C. D. ROWE—I ask the Committee to reject the amendment. Much consideration was given to the Bill before its introduction. The effect of the amendment will be to reduce the amount of taxation collected under this measure. We have tried to make it as fair as we can to everyone in all circumstances, and have made a concession with regard to agreements involving less than £100. In the circumstances I feel it cannot reasonably be said that the incidence will be unreasonable, and therefore I ask the Committee to accept the Bill as it stands.

The Hon. Sir ARTHUR RYMILL—I should hardly call what is proposed for amounts under £100 a concession. I do not think that the Minister would suggest that goods of the value of £5 should be charged a rate of £1. If one has a mortgage of £100, it costs 2s. 6d. and for a mortgage of £1,000 the cost is 25s., and yet on a hire-purchase agreement of £100 it is £1, the same as for a mortgage of £800.

The Hon. F. J. CONDON—I am sure that Mr. Melrose could not object to my speaking from his seat, because he is not present. I oppose the amendment because I think it is foreign to the Bill. I will vote for the clause

because I do not think the amendment is a fair one. It would wreck the Bill.

Amendment negatived; clause passed.

Title passed.

Bill read a third time and passed.

BIRTHS AND DEATHS REGISTRATION ACT AMENDMENT BILL.

Returned from the House of Assembly with the following amendments:

No. 1. Page 4, line 12 (clause 13)—Add after "amended" the passage "by striking out the words 'the last preceding section' in subsection (1) thereof and inserting in lieu thereof the passage 'section 32 of this Act' and"

No. 2. Page 4—After clause 13, add a new clause as follows:—

14. *Amendment of principal Act, s.34—Non-application to cremations.*—Section 34 of the principal Act is amended by striking out the words "the two preceding sections" in line one thereof and inserting in lieu thereof the passage "sections 32, 32a and 33 of this Act."

Consideration in Committee.

The Hon. Sir LYELL McEWIN (Chief Secretary)—These amendments, which are purely consequential, had been overlooked when the Bill was drafted and arise from the insertion (by clause 12 of the Bill) of the new section 32a after section 32 of the principal Act. The amendments merely specify the relevant sections previously referred to as "the last preceding section" in subsection (1) of section 33 and "the two preceding sections" in section 34 of the principal Act. I move that they be agreed to.

Amendments agreed to.

MOTOR VEHICLES BILL.

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

HEALTH ACT AMENDMENT BILL.

Returned from the House of Assembly without amendment.

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT BILL.

The House of Assembly intimated that it had agreed to the Legislative Council's amendments No. 2 to 5, and agreed to amendment No. 1 with the following amendment.—

Leave out paragraph (*b*).

Consideration in Committee.

The Hon. C. D. ROWE (Attorney-General)—As the House will remember, certain amendments, I think five in all, were made by this House and sent to the House of Assembly, which accepted all those amendments except paragraph (*b*) of new clause 2a. Due, I think, to some inadvertence on my part, the amendment made by this House in this respect slipped through with the previous one, and was never considered by this House. The effect of it is that if this amendment is approved, any house in respect of which a lease is entered into for six months will, at the end of that period, become completely free from all the provisions of the Act, both regarding rent control and eviction control.

The Hon. F. J. Potter—Not for all time.

The Hon. C. D. ROWE—Yes, I understand so. It seems that if this amendment is approved it will mean that by a simple process of entering into a lease for six months the whole intention of the Act may be defeated, and instead of voting the Bill out immediately, as some members would wish to do, the process would be staggered over a period sufficient to allow people to get these agreements of six months put into effect. In all the circumstances, I suggest this House does not press this amendment.

The Hon. F. J. POTTER—I agree with what the Minister said concerning the situation that occurred when this matter was originally before the House, namely, that there was no debate on this particular matter, but I cannot agree with the interpretation he is now putting upon the matter. Under the terms of the existing legislation, any lease in writing for a period of six months is exempt from rent control.

The Hon. C. D. Rowe—For the term of the lease.

The Hon. F. J. POTTER—Yes, and longer. However, there is no exemption at all regarding eviction. If a lease for six months is entered into free from rent control, at the end of the six months there is no law under which a tenant can then be compelled to give up possession of the dwelling house because the landlord has no protection to enable him to obtain possession under those circumstances. The reason for this amendment was to make it possible for possession of a dwellinghouse to be obtained at the end of these six months' tenancies which at the moment completely releases premises from the operation of rent control.

The Hon. S. C. BEVAN—When this Bill was before the Committee previously only the first part was debated, not this part. I agree with the Attorney-General that once a

lease has been entered into for a period of six months it removes the premises from rent control altogether. Mr. Potter said the landlord had no redress under the Act, but he could engage a bailiff. What I am saying will be the correct position if this amendment is insisted on and remains in the Bill. It was put in for that specific purpose; only to nullify the Act. I hope the House will not persist with the amendment.

Amendment agreed to.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 2).

Returned from the House of Assembly with the following amendments:—

No. 1. Page 6, lines 25 and 26 (clause 18)—Leave out the words "either—(*a*) be approved by the Governor; or (*b*)."

No. 2. Page 6, line 27 (clause 18)—Before "Parliament" insert "both Houses of."

No. 3. Page 6, line 29 (clause 18)—After "resolution" insert "within fourteen sitting days of such House after such lease has been laid before it."

No. 4. Page 6, line 27 (clause 18)—Leave out the words ", if so laid,".

Consideration in Committee.

The Hon. N. L. JUDE (Minister of Local Government)—Honourable members will recall when the clause relating to the east park lands was considered in Committee members of the Labor Party particularly were much against leases of specified park lands. I emphasize that they were safeguarded by the requirement that they often refer to in other debates—the lease being laid before Parliament. In this way members would be given a chance to disallow it. I refer to clause 18 on page 6, line 26. Another place has seen fit to strike out one part and to make the provision read: "be laid before both Houses of Parliament and shall not be executed if either House of Parliament by resolution within 14 sitting days of such House after such lease has been laid before it disapproves of any term or condition thereof." It will be realized it is taken out of the hands of the Government and put into the hands of both Houses. I therefore ask honourable members to accept the amendments inserted by another place.

The Hon. Sir ARTHUR RYMILL—I see no objection to the amendments, but I think this verbiage is quite unnecessary. If the Assembly had struck out paragraph (*a*) it would have been sufficient.

Amendments agreed to.

ROAD TRAFFIC ACT AMENDMENT BILL.

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

PROROGATION SPEECHES.

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

That the Council at its rising do adjourn until Tuesday, January 5, 1960.

That motion indicates to honourable members that we have reached the end of another session, a session which has had its own particular circumstances. If I consider the permanent members of this Council I may refer first to you, Mr. President, for you have presided over us again in the same efficient manner as you have for so long. By your good natured approach to the problems which have occasionally occurred you have maintained a happy atmosphere in this Chamber. There have been a number of new features this session. Mr. Condon, the Leader of the Opposition, has had a trio of celebrations which culminated today in his birthday. I am sure that we all, particularly those who have worked with him for so long, wish him many happy returns. We also have a new Leader of the Liberal Party in Sir Frank Perry. He has had a busy session and I am sure we have all appreciated his approach to his new responsibilities, and I certainly have appreciated his co-operation. This makes for the happy working of the Council. I also appreciate the attention given to the business of the House at all times by other members.

Another new feature is that we have had a rather unusual influx of new members this year. Perhaps when they entered the Council they thought that things were easy, but have learned that they are not so easy. At least they have had the benefit of a session's experience and are becoming acclimatized to the atmosphere of the Council. Members have appreciated their interest and attention to the business of the House. They have added to the debating strength and I wish them every success in the future. Another new feature is that we have had a new Parliamentary Draftsman and Assistant Parliamentary Draftsman. I am sure that it would not be considered that I was detracting from their merit if I said that we miss the old associations, particularly of Sir Edgar Bean. In the new Parliamentary Draftsman, Dr. Wynes, and the Assistant Parliamentary Draftsman, Mr. Ludovici, we have two very competent men who have applied

themselves assiduously to their task and given satisfaction under difficult circumstances. We appreciate their assistance.

The Council could not be better served than it is by its Clerk and Black Rod. We are proud of them, and have learned to appreciate the assistance they give at all times. Only a couple of weeks ago I had a sudden call upon my time, and did not have a Notice Paper. For some reason it had not been sent to my home, so I rang the Clerk, who left his home and came to the House, picked up the Notice Paper and brought it to my home, something that was completely unexpected. That indicates the type of service we get from our officers. The Parliamentary Library staff, the *Hansard* staff, the Chamber staff and the catering staff all play their part in the smooth working of the House and on behalf of honourable members I thank them. I wish all members the compliments of the season and trust that they will have a happy Christmas and a happy respite from their Parliamentary labors, which are always more strenuous towards the end of the session. I trust that we may all meet hale and hearty when it is necessary for Parliament to be called together again.

The Hon. Sir FRANK PERRY (Central No. 2)—I join with the Chief Secretary in congratulating you, Mr. President, on the way you have controlled the Council. Several points of order were raised during the session and I do not think on any occasion were you at fault in your decisions. You have conducted the business of the House to the satisfaction of all concerned, and I hope that you will long continue to preside over this Chamber. I also extend congratulations to the Ministers, who have handled their business well and have always been courteous. In this Council members are often dependent on the advice of the Ministers on the floor of the Chamber, and at all times they have been courteous and obliging.

I pay a tribute to Mr. Condon, who celebrates his 75th birthday today. He has an excellent record over the years. Age brings experience and Mr. Condon has had great experience in public affairs. I hope he will share many more years with us. I faced this year with much apprehension as to what would happen in the absence of such a distinguished Draftsman as Sir Edgar Bean. However, we have been well served by our two new Draftsmen. Tonight we heard adverse criticism of the drafting of certain Bills, but they were not the product of our Draftsmen, for they came from another source. I do not know whether Sir Arthur Rymill knew that when he made his criticism.

The Hon. Sir Arthur Rymill—I was criticizing not the draftsmanship but the complicated amendment.

The Hon. Sir FRANK PERRY—If anybody cannot make it clear to a lawyer, I am afraid it cannot be clear to the average layman. We have had courteous treatment by the Parliamentary Draftsman. To our officers, including the *Hansard* reporting staff, we extend our thanks for the work they have done so well. They do not desire our thanks: they get their satisfaction from doing their job. I appreciate all they have done to make our work easier. On behalf of the members of the Liberal Party in this House, I join with the Minister in thanking everybody for the courtesy that we have at all times received during this session.

The Hon. F. J. CONDON (Central No. 1) First of all, I want to thank my colleagues for their loyalty to me during this session. They are good debaters and stern fighters. I thank Mr. Bardolph, Mr. Bevan, and Mr. Shard for their loyalty to me. Coming to you, Mr. President, being one of the old school I can only say this, that you stand today where you have always stood, a man of fairness and ability. I do not think I could ever meet a better President. I thank you for the leniency that you have always extended to me.

I come now to the members of the Ministry. They have a hard job in carrying out their duties. They have made only one mistake during this session. I want to pay a sincere compliment to the Chief Secretary, the Attorney-General and the Minister of Local Government. I made a certain remark the other evening and I want to take this opportunity of saying that I regret having made it. I say now that I regard the Hon. Norman Jude as one of the most capable of Ministers. I say that in all sincerity. At times we say things we should not say. I thank my honourable friend on my right, Sir Frank Perry, who has always been fair, reasonable and courteous. I appreciate that. As I look around this Chamber, I realize that I could not have better people to be associated with in Parliamentary matters than the members of this House. One man I cannot omit mentioning is the Hon. Mr. Densley. He is an efficient Whip, is always courteous, and his speeches are worth listening to. I appreciate his assistance to me.

This is a great debating Council. Sometimes people do not recognize that. Many matters are initiated here by way of question and speech that are never reported in the press but, when they get to another place they often get half a column. That is a serious state of affairs. Somebody may ask, "Do you believe in the Legislative Council?" My answer is "Yes, as long as the Constitution provides for it." Today people are belittling this Council because in many ways they ignore it. During this session, four new members have taken their places in this Chamber. We cannot say that they have not pulled their weight. Their contributions have been a great help. What I like about them is that they speak only when they think it is necessary to do so, and then they speak on subjects about which they know something. I pay a tribute to them. Sometimes people come here and say they are going to turn the place upside down, but they can never do that. When you come here, you have to realize you must respect other people's opinions. The moment you deny other people their opinion, you are not worth knowing.

I thank the officers of this Council and support all that has been said about them. I thank the *Hansard* staff, too. I trust that we shall all be here again next year to express our good feelings and good wishes to one another. I want you to accept my remarks in the spirit that I love you all.

The PRESIDENT—On behalf of all the officers and staff who cannot say "Thank you" I say "Thank you" to the Chief Secretary, Sir Frank Perry and Mr. Condon. I also thank them most sincerely for their kindly references to myself. This year my job was very easy until the last few days, mainly because, as I have told you before, it is the members of the House that make a House, and it is the House's reputation, not the President's, that matters. This House of the South Australian Parliament has built up over a long period of time a reputation for doing its job properly and decently. As some members might say, "I am not going to talk politics," but they will still be doing that in another hundred years' time. It does not matter so much whether one agrees with what it does: the House has a good reputation and it lives up to it. I know that, as long as present members remain members, the reputation of the House will be as high as it has been for a long time.

The two people with whom I am in touch more than I am with any honourable member here are the two Clerks at the table. I must publicly thank them for the help they have given me on every occasion. In addition to their usual jobs this year, they have had the organizing of several visits by overseas Parliamentarians and others. That work was not easy and we congratulate the Clerks on the way in which the job was carried out. How it was appreciated by the visitors I well know from the letters I have received saying, "Thank you."

As regards the messengers, I do not think we have ever had a more active lot in our time. They have been obliging and quick. I am very proud of all the staff of the Legislative Council, and hope they will be able to keep going at any rate as long as I am here, because they are doing their job so well.

I cannot say that the legislation this session has been interesting, because it has not; it has been mighty dull. Only in the last few days did we get any spark at all into the proceedings. When Mr. Condon starts rising on points of order, we know he is in good form and that he is only trying to liven things up a bit. I never object to anybody saying that my ruling should be disagreed with or that it is wrong, because often it is, but the Standing Orders are there to help and not to hinder. I administer them in the way I think they will help the House rather than observe the exact letter of the law.

Another session has ended. For some of you it is the first; for some, like myself, it is getting pretty close to the last. However, as I have said before, the House has worked well together in the past and I hope that, when the House meets again—which I can assure honourable members will not be on the date to which the Chief Secretary moved the adjournment, January 5—I shall see you all in your seats prepared to carry on the work that you are doing so well.

Motion carried.

PROROGATION.

At 12.05 a.m. on Friday, December 4, the Council adjourned until Tuesday, January 5, 1960, at 2.15 p.m.

Honourable members rose in their places and sang the first verse of the National Anthem.