LEGISLATIVE COUNCIL.

Wednesday, May 4, 1960.

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

QUESTIONS.

ELECTRICITY SUPPLY FOR MOORAK.

The Hon. L. H. DENSLEY—Has the Minister of Railways a reply to the question I asked on April 26 with reference to an electricity supply for Moorak?

The Hon. N. L. JUDE—The matter was referred to the chairman of the Electricity Trust and I have the following report from him:—

The Electricity Trust has been operating in the South-East for only four years and during that period has spent over £2,500,000 on electricity supply resulting in a six-fold increase in power generating capacity and providing supply to more than 2,000 additional consumers. There are many people in the area who are still without power and who are looking to the trust for supply, but obviously it is not possible to connect them all immediately. The trust has embarked on a programme of extensions which will make full use of its resources and which will provide an orderly development. To give an early supply to the Moorak butter factory would mean delaying the connection of other applicants who have equal or prior claims for consideration. The rate at which extensions can be made is largely determined by the amount of finance which the trust has available. As this is determined on a yearly basis, it is not possible to give a firm indication of when supply could be made available to Moorak until the actual available finance is known. The extension will be considered for inclusion in the 1960-61 programme but no firm commitment can be made until this is settled in detail.

SERVICE STATIONS' PRICES.

The Hon. S. C. BEVAN—Has the Attorney-General a reply to the question I asked last week relative to service stations' prices?

The Hon. C. D. ROWE—The Prices Commissioner, to whom these matters were referred has reported as follows:—

(*a*) It has been verified that no oil company in this State requires service stations under its control to stock specific brands of tyres, batteries and accessories. Service stations are free to stock all brands. However, there is no legislation which would prevent an oil company instructing the proprietor or a lessee of a service station to handle one brand of goods only.

(*b*) New trading conditions announced for the rubber industry concern tyres and tubes only. An orderly marketing scheme has been introduced to eliminate excessive discounting and unfair practices in the trade. It was first submitted by the rubber industry to the Prices Commissioner and thoroughly examined and amended by him before being put into effect.

The new conditions have been designed to—

(*a*) eliminate cut-throat trading at the expense of smaller resellers including garagemen.

(*b*) avoid the possibility of a price increase on tyres and tubes.

Some traders had been selling tyres and tubes at excessive discounts in order to attract business away from competitors. This had caused chaotic conditions in the industry and other traders were faced with either losing sales or meeting these discounts which, if they did, meant little if any profit. The new trading conditions would make it possible for all resellers, including service stations, to sell tyres on equal terms. Profit margins provided for under the scheme are substantially the same as previously, but if a trader continued to give discounts, his volume discount or rebate would be reduced. This would have the effect of reducing his margin. With regard to the cutting off of supplies, under no circumstances would manufacturers refuse to supply tyres to any trader. The Prices Commissioners of Queensland and New South Wales have also concurred in the scheme.

MAINTENANCE OF ROADS ADJACENT TO RAILWAY CROSSINGS.

The Hon. Sir ARTHUR RYMILL—Has the Minister concerned an answer to the question I asked on April 21 with reference to the maintenance of roads adjacent to railway crossings?

The Hon. N. L. JUDE—Yes. As I indicated in a partial answer at the time, the problem is one of dual control over railways and roads, but I have obtained a report from one of the commissioners, and I quote as follows:—

By arrangement between the two departments, the South Australian Railways Department supplies and maintains check rails, and the Highways and Local Government Department constructs and maintains the pavement adjoining and between the rails. The crossings on Anzac Highway and Hackham are both on roads maintained by this department, and repairs are effected as soon as considered necessary.

As, however, the honourable member contends that these two particular crossings need attention I have asked the Commissioner of Highways to have them investigated forthwith.

LIGHTING OF ANZAC HIGHWAY CROSSINGS.

The Hon. G. O'H. GILES—I ask leave to make a brief statement prior to asking a question.

Leave granted.

The Hon. G. O'H. GILES—Allowing for the fact that probably taxi drivers are the most readily tapped source of sampling as regards

people that drive vehicles on Anzac Highway late at night, I believe that a big majority of them consider that the crossings, apart from the South Road crossing, are the most poorly lit and most dangerous in the metropolitan area. Can the Minister of Roads inform me whether anything can be done to remedy the poor lighting at crossings south of the South Road crossing on Anzac Highway?

The Hon. N. L. JUDE—The matter is already under immediate consideration of the Highways Department, but involves reference to the three councils concerned with that portion of the road.

SOUTH-EASTERN TRAIN SERVICE.

The Hon. L. H. DENSLEY—I ask leave to make a brief statement prior to asking a question.

Leave granted.

The Hon. L. H. DENSLEY—The train that left Adelaide at 11.20 a.m. on the day before Good Friday arrived at Reedy Creek at 10.40 p.m.—over three hours late. The trip from Naracoorte to Reedy Creek was done in the dark and the train carried a large number of students. The parents of those children have complained about the matter in the past. Can something be done in future to provide better supervision of the children?

The Hon. N. L. JUDE—The position is that the services on the occasion of week-end holidays and when children are going to and returning from school leaves much to be desired. The department is well aware of the position and honourable members will agree with me that it is absolutely impossible for the Railways Department to maintain what is virtually a fourfold requirement on passenger transport on such occasions if it does not use those particular carriages for many months in between those occasions. That position applies generally and it is not restricted to the specific route referred to by the honourable member. This is a problem that occurs throughout the State when we are using practically every dog box left in service to cope with the extraordinary demand. I shall investigate the specific nature of the question regarding the lighting on the train, and I shall get a report for the honourable member.

HIRE-PURCHASE AGREEMENTS BILL.

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

That the Hire-Purchase Agreements Bill, 1959, be restored to the Notice Paper as a lapsed Bill pursuant to section 57 of the Constitution Act, 1934-1959.

Motion carried.

JUSTICES ACT AMENDMENT BILL.

The Hon. C. D. ROWE (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Justices Act, 1921-1957.

Read a first time.

JOINT COMMITTEE ON SUBORDINATE LEGISLATION.

The House of Assembly intimated that it had appointed Mr. J. J. Jennings to fill the vacancy on the committee caused by the resignation of Mr. J. S. Clark.

JOINT COMMITTEE ON CONSOLIDATION BILLS.

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

The Hon. Sir LYELL McEWIN moved—

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

Motion carried.

SUPPLY BILL (No. 1).

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

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

That this Bill be now read a second time.

As honourable members know, it is customary to introduce a Bill of this kind at the beginning of a session. The only difference on this occasion is that the Bill provides for a larger amount than the usual supply that is necessary, the reason being that supply is required to carry over an adjournment of possibly six weeks into the next financial year. The amount requested in the Bill is £18,000,000, instead of the £9,000,000 passed in the corresponding Bill last session. The only other provision of the Bill covers any increases in salaries and wages. Honourable members are aware that the amount provided in a Supply Bill is governed by the expenditure of the previous year. Clause 3 provides for the payment of wages and salaries that may be authorized by a court or any other body empowered to fix or prescribe salaries or wages. There is nothing unusual in the Bill and I submit it for the consideration of the House.

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

JOINT HOUSE COMMITTEE.

The House of Assembly intimated that it had appointed Mr. Heaslip to be one of its representatives on the committee in place of the late Mr. G. Hambour.

METROPOLITAN TRANSPORT ADVISORY COUNCIL ACT AMENDMENT BILL.

Read a third time and passed.

COMPULSORY ACQUISITION OF LAND ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from May 3. Page 358.)

The Hon. Sir ARTHUR RYMILL (Central No. 2)—When speaking on the second reading of another Bill yesterday, I mentioned that it was comparatively short, as most Bills have been this session. This one is also a short Bill, but it is of very great importance, particularly to this Chamber, which regards itself, among other things, as the custodian of the rights of landowners. The Hon. Sir Frank Perry very properly referred to this aspect, and I know from his well-considered words and from the attitude of other honourable members how carefully they have been devoting themselves to this Bill. I should like to debate it in the light of the fundamental legal principle which I think is involved. Practising lawyers, particularly solicitors, have come across this principle particularly in relation to land settlements, the principle being that one cannot have both the land and the purchase price of the land; or to put it another way as it more properly relates to this Bill, one cannot have the rent of the property and also interest on one's money.

I understand, from the point of view of the legal profession, that it was thought for many years that the Compulsory Acquisition of Land Act lined up with that legal principle and that one could not have and continue to enjoy the possession of one's property and have interest on the purchase price ultimately determined, because it is generally determined after a considerable lapse of time and after one has been enjoying possession for some time. One could not have these two things at the same time. I understand from my legal friends that in 1950 the Full Court of South Australia decided in an action by the Minister of Education against one, Bosworth, that that was not the case under the Compulsory Acquisition of Land Act. As I understand it, that decision was not arrived at by resort to the general principles of law, but by a construction of the verbiage of the Compulsory Acquisition of Land Act itself; and now 10 years later this amending Bill apparently seeks to remedy that situation, as I see it, bringing the provisions of the Act into line with the ordinary concepts of law. I have given this Bill much consideration and have had some experience with the Adelaide City Council of the acquisition of land, so I know a little about the subject. Having given the Bill much consideration, I consider it is fair to the landowner. I should like to make it clear that although I am a member of the Adelaide City Council, which is the biggest land-acquiring council in South Australia in the interest of the public weal, if I did not think that this Bill was fair or if I thought that it infringed the rights of property owners, I should certainly vote against it. I have carefully studied it and consider that it lines up with the rest of our law as we know it today, and in addition it is fair to the owner.

I should like to enlarge on those aspects, but before doing so I point out that of course the acquisitions by the Adelaide City Council I have mentioned are not for its own benefit, because it costs the council much money, but for the benefit of the citizens. It is done in the interests not only of the citizens of Adelaide who have provided the money, but for the welfare of all those using the city, and I imagine that by far the majority of users of the city are not the people who pay for it at all, but residents of suburban areas, and even of those areas such as the Hon. Mr. Densley represents. The same principle applies to the acquisition of land by all public authorities. Although they do it for their own uses, it is done also for the benefit of those who benefit by their operations. I consider that this Bill must be considered in that light. I do not think any of us likes compulsory acquisition, and that applies to members in both Houses. A man owns his property to occupy and enjoy it, and although under the law there is no absolute ownership of land, one still has an interest in the land even if one has the fee simple and in British communities we regard it as being the equivalent to ownership and we naturally do not like its being wrested from us and that is why it behoves this Council to scrutinize such legislation very carefully.

I should like to enlarge on one or two of the technical aspects of acquisition that have been dealt with, because I think they are of very great importance in considering this Bill. The question has been raised as to when the acquiring authority is entitled to come into possession of the land, and that is a very

important aspect; that is if one is going to be asked to pay interest on one's money 12 months after the notice of claim has been filed by the owner of the land. I understand that the mechanics of the Bill are that the acquiring authority gives notice of acquisition and within 14 days of that notice the owner is supposed to give a notice of claim, that is, claim for the money involved; and 12 months after that notice of claim is the date on which compulsorily and arbitrarily interest starts to apply on the purchase price. Although it may not be fixed for years afterwards, it still relates back to that date. The question of possession is very important, because once the acquiring authority has possession of the land it is obvious that he should pay as soon as possible for the land and also be obliged to pay interest in full, at least for that time.

In view of these arbitrary rules, one has to contemplate the position in regard to possession, because it is difficult in many instances for the acquiring authority to get possession of a property, although under the law as it stands he may be paying interest for it in the meantime. The owner remains in possession, enjoys the use of the property, and if that involves payment of interest on top of that, it means in effect he is getting a double dose of payment. There are provisions in sections 67 and 69 of the Compulsory Acquisition of Land Act that enable the acquiring authority to take possession of the land, but whether the acquiring authority can take what I might call premature possession—that is possession before various technical aspects have been ironed out—that still remains a matter on which some lawyers think one way and some think the other way, and I am informed it has not been decided.

Then a difficulty arises—as it often does with local governing bodies acquiring land for the purpose of road widening—when they acquire only portion of a property. A very good example of this is the present pending acquisition of a portion of G. & R. Wills & Company's property in Gawler Place. I believe that the Adelaide City Council is in the throes of acquiring the front 30ft. of that building, which consists of four or five storeys. People might say that to protect its interests the City Council could go into that portion of the building and take possession because it is forced to pay interest on the money, but how could it do that? It is a very substantial building and the council is proposing to acquire only the front 30ft. Does it knock out the front and leave the building gaping towards the west, open to the rain, or what does it do? It is completely impracticable for the council to take possession of that portion of the property.

The Hon. Sir Frank Perry—It should be easy to make an arrangement with the proprietors.

The Hon. Sir ARTHUR RYMILL—In theory it may be, but the matter has been canvassed very thoroughly for several years and still no arrangement has been made. I would think that in most cases it is quite impossible to reach an arrangement such as Sir Frank Perry mentions within the 12 months allowed before the payment of interest applies. Instances have been known where owners have deliberately delayed settlement although contending that they want it—by throwing various little spanners into the works in order to protract negotiations over a number of years because it suits them to do so; they want to continue in their properties for as long as they possibly can and, to boot, they obtain five per cent interest on the purchase money for the whole of that time in addition to having full enjoyment of the property. That sort of thing is by no means unknown and it leads me to my next point, which is this: I consider that, although it has been suggested that this amendment may detract from the rights of the owner, it will in fact help him. Experience tells us that nearly all owners, particularly owners of trading properties, want to keep their properties for as long as possible, for several reasons; one is to continue their trading and the second is that it gives them time to acquire another property in the near vicinity where they can continue to carry on their business. In any event, whatever the advantages, experience has proved that most people who have been associated with land acquisition find that the owner wants to stay on the land for as long as he can.

In view of the decision in the Bosworth case and other comparatively recent cases, unless this Bill is passed it is quite obvious that certain acquiring authorities will have to harden their attitude to building owners because they have to do the proper thing for the people they represent, and they no doubt will say that it is an imposition that they should have to pay interest on something they haven't got. I feel sure I am right in saying that if this Bill does not go through it will mean building owners being pushed out more quickly than they are at the moment for the economic benefit of the acquiring authority, and consequently they will be worse off than

some members think they may be by hardships inflicted by this Bill. The Compulsory Acquisition of Land Act applies not only to the City of Adelaide and to the South Australian Government but to practically all acquiring authorities in South Australia. Most of the Acts under which semi-governmental bodies work incorporate the provisions of the Compulsory Acquisition of Lands Act within their own Acts, and thus this machinery is regulated in practically every instance by the Act we are considering.

I now turn to the provisions of the Bill. Clause 3 (2) is the one which says that if a person receives rent when he is going to receive interest as well on the purchase price, this rent shall be set off against the interest, and subclause (4) provides that, if the rents are greater than the interest, he is entitled to keep the remainder of the rent. I think that is quite fair. It is in his favour and that is proper because, in assessing compensation, Governments and Courts always lean to the rights of the building owner—and I don't think there can be any quarrel with that. Subclause (3) relates to the owner remaining in possession of his own property and using it himself, and apparently some members have experienced more difficulty with this provision than with others. I feel that those two provisions are interdependent, and if we reject subclause (3) we will render the Bill nugatory because, although the legislation would apply to owners who lease their buildings it would not apply to owners who retain buildings for their own use, and thus there would be no logic in the whole matter. In many cases of acquisition the owners do use the buildings themselves and if they do not have to contribute or make recompense in the same sort of way as those who lease their buildings the Act would be completely inconsistent. Subclause (3) provides that the rental value of the building, where an owner keeps it himself, shall be assessed and 75 per cent shall be set off against the interest, but if the rental value is greater than 75 per cent of the interest the owner does not have to pay any more than the 75 per cent—and this is compatible with subclause (2).

The Hon. Sir Frank Perry—How are they assessed?

The Hon. Sir ARTHUR RYMILL—Presumably by competent assessors, and the honourable member has hit upon the point I was about to make, for I can see why he and others have been worried about this. When we get into the realms of theory—where valuations are—rather than the practical—where actual rents are—naturally we are dealing with something that is subject to the human frailties of valuations. However, this method is inescapable because it is part of the law and custom of the land and I do not see how we can get away from it. I do not like it any more than the Hon. Sir Frank Perry does because it can be fallacious, but there is no substitute for it. There must be some way of assessing the value of the land to the owner, and if that is not the way to do it I suggest, with respect to honourable members, that the method of attack is not to reject this clause, which would be incompatible with the rest of the Act, but to amend it so that it does improve the method of assessment if that is possible. I think it is quite all right as it is drawn and, as all honourable members know, these Bills are open to amendment in the light of experience. Many Bills are tried from one session to the next and certain defects are sometimes found in them, and in those circumstances they can be amended. If this Bill is not workable—I think it is, but we can only tell in the light of the application of time—then it is capable of amendment.

I have studied this legislation carefully because I have no doubt that it is the duty of us all to do so on such an important Bill, and I feel completely satisfied with the proposed amendment and believe it is fair to all concerned. For those reasons I support the Bill.

The Hon. L. H. DENSLEY secured the adjournment of the debate.

HEALTH ACT AMENDMENT BILL.

(Second reading debate adjourned on May 3. Page 358.)

Bill read a second time and taken through Committee without amendment; Committee's report adopted.

LAND AGENTS ACT AMENDMENT BILL.

(Second reading debate adjourned on May 3. Page 359.)

Bill read a second time and taken through Committee without amendment. Committee's report adopted.

ADJOURNMENT.

At 3.02 p.m. the Council adjourned until Thursday, May 5, at 2.15 p.m.