LEGISLATIVE COUNCIL.

Tuesday, November 8, 1960.

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

ROAD TRAFFIC BOARD ACT.

His Excellency the Lieutenant-Governor, by message, intimated his assent to the Act.

QUESTIONS.

HEPATITIS.

The Hon. F. J. CONDON—Has the Minister of Health a reply to my question of last Wednesday regarding the number of hepatitis cases and whether any extra precautions are being taken by the Public Health Department to combat the spread of this disease?

The Hon. Sir LYELL McEWIN—I have not yet received a report, but I did see the Director-General of Health. I will get a report from him and see if there is anything further to communicate to the honourable member.

RAIL CAR COLLISION.

The Hon. G. O'H. GILES—Has the Minister of Railways yet received a report concerning the collision of two rail cars recently in the Adelaide hills?

The Hon. N. L. JUDE—I have received the following report from the Railways Commissioner:—

The collision was caused by a defect in two of the air brake cylinders of the "250" class car. This defect has been corrected, and all cars of this class have been rigidly inspected, which should ensure that no similar defects will recur. The fitting of a dual braking system has been completed on the "400" class suburban cars and one "250" class car. The fitting of the remaining "250" class cars will be completed as early as possible.

TRAMWAY BRIDGES OVER TORRENS.

The Hon. F. J. CONDON—It has been suggested that the two old tramway bridges crossing the Torrens at Hindmarsh should be reconstructed to take vehicular traffic. Has any proposal come before the Minister of Local Government, and if so will he give a considered reply?

The Hon. N. L. JUDE—No approach has been made yet, but I shall be happy to obtain a report for the honourable member and advise him accordingly.

NORTH ADELAIDE RAILWAY CROSSING.

The Hon. Sir ARTHUR RYMILL—I understand that it is likely in the near future that the Adelaide City Council and the Minister of Railways may be able to reach an agreement relating to the North Adelaide railway crossing. I believe that some joint project is mooted there between the council and the Railways Department. I have referred to this matter before: at the Park Terrace railway crossing at Bowden, where the traffic is enormous, there are not only warning lights but also stop signs, and every motor car must stop before crossing the rails. When the time arrives to consider the North Adelaide railway crossing, will the Minister also consider the other crossing referred to with a view to the removal of the stop signs and the possible use of gates, automatic or otherwise, to facilitate the flow of traffic? Further, I understand that a policeman is on duty at the Bowden railway crossing at afternoon peak periods to clear traffic from the roundabout at the Port Road intersection. In view of that, does the Minister think it necessary that something of the nature I have suggested should be done?

The Hon. N. L. JUDE—I am glad that the honourable member has drawn further attention to what is already known to be a traffic problem in regard to the North Adelaide and Bowden railway crossings and the roundabout on the Port Road. I assure him that the matter is receiving the close attention of the Traffic Engineer. I have no doubt that as regards the North Adelaide crossing an agreement or a satisfactory decision will be reached by the department as early as possible.

MARINO AND KINGSTON PARK SEWERAGE SCHEME.

The PRESIDENT laid on the table the report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence, on Marino and Kingston Park Sewerage Scheme.

LIQUEFIED PETROLEUM GAS BILL.

Read a third time and passed.

PUBLIC SERVICE SUPERANNUATION FUND (ARRANGEMENT) BILL.

Second reading.

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

That this Bill be now read a second time.

This is a simple Bill. Its only provision is to enable the Public Service Superannuation

Fund Board to arrange for the transfer of its assets and obligations to the South Australian Superannuation Fund Board, and to effect the repeal of the Public Service Superannuation Fund Acts of 1902, 1919 and 1953 when the arrangement is made.

When the current superannuation scheme came into force in 1926 contributors to the old voluntary fund, the Public Service Superannuation Fund, which was established nearly 60 years ago, were given the option of remaining in the fund or of receiving a cash payment, actuarily calculated, for the surrender of their rights. Most contributors elected to take the second option, but 33 subscribers of a total of approximately 1,600 elected to remain in the fund. The fund has been continued for the benefit of these subscribers and the existing annuitants. There are at present 43 annuitants in receipt of benefits. This fund was not subsidized by the Government and, over the years which have elapsed, surpluses disclosed by actuarial valuations have been distributed from time to time for the benefit of subscribers and annuitants.

The stage has now been reached where there are no longer any subscribers, and with only 43 annuitants the fund, whilst actuarily sound, has reached a size where economic administration becomes increasingly difficult with successive diminution in the number of annuitants. The liabilities of the fund have been valued by two different actuaries independently, the Public Actuary, Mr. A. W. Bowden, and an interstate actuary, Mr. O. Gawler, and the assets available to the fund are considered to be adequate to meet all its liabilities, so that, if an arrangement as provided in this Bill is authorized, there will be no financial burden on the South Australian Superannuation Fund or on Consolidated Revenue.

In these circumstances, it is proposed to merge the old fund with the larger fund and repeal the old Acts. Clause 2 empowers the two boards to make the necessary arrangement which, upon receiving the approval of the Governor and publication in the *Gazette*, will have the force of law. Clause 3 empowers the Governor to proclaim a day, after the arrangement has come into operation, for the repeal of the old Acts. Members will perhaps recall that a similar arrangement was made some years ago in respect of the old Public School Teachers' Superannuation Fund.

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

POLICE OFFENCES ACT AMENDMENT BILL (No. 2).

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.

Its object is to prohibit the sale and consumption of methylated spirits. Clause 3 inserts a new section in the Police Offences Act consisting of six subsections. The new subsection (1) will make it an offence to drink methylated spirits or any liquid containing methylated spirits, the penalty being the same as that already provided for drinking in public places. Subsections (2) and (3) reproduce subsections (2) and (3) respectively of section 9 of the principal Act relating to drinking in public places. Subsection (4) prohibits a person from supplying methylated spirits if he knows or has reason to suspect that the spirits are intended for drinking purposes. Subsection (5) prohibits the sale or supply of methylated spirits at any time between 6 p.m. on a Saturday and 9 a.m. on the following Monday, or at any time on a public holiday. There is, however, a proviso that a chemist may supply methylated spirits if he reasonably believes that it is intended for external medicinal use. Subsection (6) will define what is meant by methylated spirits.

From time to time requests have been made for the introduction of legislation to control the consumption of methylated spirits, and in particular by aborigines. It is for this reason that the Bill is introduced, and I believe that it is unnecessary for me to speak at length on the evils of the practice of drinking methylated spirits. The subsection which may need some explanation is subsection (5) placing an absolute ban on sales during week-ends and public holidays. Apparently some chemists have considerable trouble with persons seeking small quantities of methylated spirits after normal hotel trading hours under circumstances which make it quite apparent that it is required for drinking purposes. To leave to a chemist to refuse on the grounds that he has some suspicion that the liquid is required for drinking purposes is unsatisfactory, and the provision in the Bill will enable him to refuse and to state that the law prohibits him from supplying it at all. I believe that chemists will welcome a provision along the suggested lines as it will enable them the more easily to dispose of irate customers who tend to become argumentative.

The Bill is designed to overcome a difficult problem and is regarded as the best way to

deal with the matter. I commend it to members for their favourable consideration.

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

EARLY CLOSING ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from November 2. Page 1620.)

The Hon. F. J. CONDON (Leader of the Opposition)—The Bill contains 37 clauses, most of which are amendments to provisions in the principal Act. It could be a controversial measure and I believe that doubtful matters could be best explained in Committee. I shall not speak at length on the second reading, except to make one or two observations for consideration by the Minister of Labour and Industry. Section 4 of the principal Act is amended by deleting from paragraph (*b*) of the definition of "shop" the passage "of an undertaker", and there should be no objection to that amendment. Clause 4 provides for striking out the passage "industrial exhibition, agricultural, horticultural, or other similar shows so long as no goods other than goods of the prescribed kind are sold at that shop", and inserting in its place the passage "industrial, agricultural or horticultural exhibition or show, or at any other exhibition or show approved by the Minister". That amendment is designed to meet the position operating at the Royal Agricultural Show and at country shows, and no objection can be taken to that amendment.

Clause 6 amends section 8 of the principal Act and deals with shopping districts. This could be a contentious matter. Clause 8 repeals section 16 of the principal Act and clause 9 enacts new section 18a which provides for the power to redefine boundaries of shopping districts in certain cases. Clause 10 amends section 25a of the principal Act and deals with petitions and counter petitions regarding the extension of shopping hours. Inspectors and police officers are to be permitted to take interpreters to inquire into breaches, and clause 19 provides for an increase in penalty from £5 to £50. I have spoken before on the question of penalties, and some inquiry should be made into penalties under various Acts. A press report recently stated that a man was fined £1 in an Adelaide police court for parking his car in a prohibited area, or in default of payment seven days' imprisonment. That term of imprisonment in lieu of a fine of £1 was unreasonable, and that matter should be examined.

Clause 32 amends section 49 of the Act, and this is an important amendment. Paragraph (*a*) provides for the insertion of the words "and spare parts and accessories" after the word "lubricants" and paragraph (*b*) provides for the striking out of the word "Sunday" and inserting in lieu thereof the passage "Sundays and public holidays". Paragraph (*c*) provides for the insertion of the following new subsection (1a):—

> (1a) Subject to the other provisions of this section a licence so granted may, if it is so stated therein, authorize the holder of the licence to sell the motor spirit, lubricants, spare parts and accessories, or such of them as may be specified in the licence, in any one or more of the following ways:—
>
> (*a*) by means of coin-operated machines or self-service pumps;
>
> (*b*) in accordance with such roster system as the Minister determines;
>
> (*c*) in such other manner as the Minister thinks fit.

This provision merely extends the hours during which petrol may be served in the metropolitan area on Sundays and, although it is intended to establish a roster system, how can the Government tell three or four sellers that they are allowed to sell petrol on Sundays when the rest of the petrol sellers are not allowed to operate? That is likely to cause confusion and unless the Minister has a means of combating that situation the Council should examine it closely. The provision means increasing the working week of certain employees to seven days, and it could well mean that they may be called upon to work seven days a week. When introducing the legislation the Minister referred to industrial awards but what happens in the case of industrial awards? They provide for overtime and a worker may be called upon to work 50 or 60 hours a week on payment of the necessary award rates. Under those circumstances he may earn good money, but that fact is used against the worker when there is an application before the court. In that way the workers' wages may be reduced. A piece worker may make a good salary and he may be a good man in his job, but eventually the piece work rates will be reduced and this may open a way for advantage to be taken of that fact. The Council should closely examine this point.

Section 41 makes it an offence for a shopkeeper to require or permit an assistant to work for him or remain in the shop after closing time, but it is considered that the provisions contained in that section are no

longer needed because there is adequate safeguard in the appropriate award. Parliament must protect employees if the public is given an opportunity to purchase petrol and other necessities on Sundays. We should see that no advantage is taken of certain employees as a result of this legislation. I wish to guard against employees being required to work seven days a week even if they are paid overtime.

The Hon. N. L. Jude—They may be rostered off on Tuesday or Wednesday.

The Hon. F. J. CONDON—I do not know whether they will. If the Minister can explain how he can ask one employer to remain open on Sunday and close on another day, that will be satisfactory. How can a certain retailer be picked out and told that he is allowed to remain open on Sunday when his neighbour must remain closed? What is the position if three or four are allowed to remain open? Those points should be cleared up.

The Hon. C. D. Rowe—The associations have been consulted and the Government hopes to do it by mutual arrangement.

The Hon. F. J. CONDON—Some retailers are not members of associations and they may not be agreeable. The Minister may be able to make a satisfactory statement to throw some light on the subject, but I express my point of view. I hope the Council will give full consideration to this proposed legislation. Section 47 of the principal Act provides for the chief inspector to grant a licence permitting the sale of goods after normal closing time if the proceeds are to be devoted to any benevolent, charitable, religious or public purpose, or in aid of any friendly society. Under the provisions of this Bill it will not be necessary to obtain a licence in such cases. We should assist those who are doing much for benevolent institutions, societies and religious bodies when their whole purpose is charity. I agree with that provision and hope members will favourably consider it.

The Hon. A. C. HOOKINGS secured the adjournment of the debate.

EDUCATION ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from November 3. Page 1646.)

The Hon. K. E. J. BARDOLPH (Central No. 1)—I support the measure and pay a compliment to the South Australian Institute of Teachers and those employed in the teaching of our youth. We are deeply indebted to the teaching staff of all schools because they are moulding the youth of today into good citizens of tomorrow, and they have a valid claim to have their representations considered by the Government, which has apparently acceded to their request by bringing down this Bill. The most important phase of this Bill is the separation of the duties of the Salaries Board and the establishment of an appeals board. Other provisions in the Bill ably explained by the Attorney-General relate to transfers from the teaching profession to other positions in the Government service; long service leave; and taking into account years of service in the teaching profession when teachers are transferred to other sections of the public service. The setting up of the Appeals Board has received the benediction of the Institute of Teachers. Previously the Salaries Board was performing a dual function, which has now been divided into two specific duties. This division will create an atmosphere of harmony in the teaching profession. The Bill has no contentious clauses and I support the second reading.

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

TRAVELLING STOCK RESERVE: HUNDRED OF EBA.

Consideration of the following resolution received from the House of Assembly:—

That the portion of the travelling stock reserve north-west of sections 70, 81, and 82, hundred of Eba and south-west of the Morgan to Whyalla pipeline, as shown on the plan laid before Parliament on August 9, 1960, be resumed in terms of section 136 of the Pastoral Act, 1936-1959, for the purpose of being dealt with as Crown lands under the provisions of the Crown Lands Act, 1929-1957.

(Continued from November 3. Page 1650.)

The Hon. F. J. CONDON (Leader of the Opposition)—This deals with the resumption of an area containing 85 acres which is required for grazing purposes. The Stockowners' Association, Pastoral Board, Department of Lands and District Council of Morgan have no objection to the resumption of this land. One objection has been lodged by a private resident, but I understand that those responsible will endeavour to meet his objection. I support the motion.

Resolution agreed to.

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

In Committee.

(Continued from November 1. Page 1594.)

New clause 2a—"Exemptions from Act."

The Hon. C. D. ROWE (Attorney-General)—The effect of this new clause is to provide

that the provisions of the Act relating to the recovery of possession of premises are not to apply to any lease of premises, whether entered into before or after the passing of the Bill, to which subsection (2b) or (2c) of section 6 applies. Subsection (2b) provides that if a lease in writing is made for any specified term, however short, then the rent provided in the lease is not to be subject to control. Subsection (2c) provides that if under a lease for a term of not less than six months the rent is agreed in writing then the provisions of the Act relating to the controls of rent are not to apply to that lease or any holding over. The amendment means firstly that if a person rents a property for one day by means of a lease then the property is completely free from control as far as the Landlord and Tenant (Control of Rents) Act is concerned, and would provide a ready means for anyone who desires to do so to avoid the provisions of that Act. In other words it is another way of defeating one of the very purposes of the Act and I must ask the Committee to vote against this amendment.

Secondly, the amendment means that if any such lease comes to an end and any lease of the premises is entered into in the future, whether weekly or for any other period, the provisions are not to apply to such lease. My advice on the amendment is that if it were accepted it would mean the virtual end of rent control. The policy in the past has been that before a lease is freed from control as regards the recovery of possession the lease must be for a reasonable time, such as two years as is provided in section 6 (2d). When a tenant has no protection against eviction it is obvious he must pay whatever the landlord requires him to pay, and as I said before, this can apply to a lease for the shortest possible period. On the substantive ground the effect of the amendment would be to bring rent control to an end almost immediately, and no matter how short the period of lease, having entered into that lease the provisions relating to the control of rental of premises and recovery of possession are completely removed.

Another objection is that the amendment would apply to a lease already in existence and entered into subject to the existing provisions of the Act under which the tenant is entitled to protection against eviction. If this amendment is passed this protection would be removed overnight and in the case of another amendment the tenant would be immediately faced with a demand to pay increased rent under threat of a notice to quit, against which he would have no defence. I must ask the Committee to oppose these amendments, firstly on the ground that if it is going to be consistent it must oppose this amendment.

The Hon. Sir Frank Perry—Do not two people have to make a lease?

The Hon. C. D. ROWE—I agree, but the whole point is that if they do they should not be deprived of the protection offered by the Act at present. I think this is simply another endeavour to get rid of the provisions of the Act, and the Council, having already expressed its views on the second reading vote, I cannot see that it can alter them now, and for the reasons I have mentioned I must ask the Committee to oppose the amendment.

The Hon. F. J. POTTER—We should bear certain facts in mind in considering this amendment. Last week the Attorney-General said that the only reason the Government wished to continue with the controls imposed was the fact that the cost of living was affected.

The Hon. C. D. Rowe—I did not say that.

The Hon. F. J. POTTER—The Minister said that the cost of living was involved.

The Hon. C. D. Rowe—I did not say that that was the only reason.

The Hon. F. J. POTTER—The Minister said that rents formed part of the cost-of-living index and for that reason the controls were required. The C series index started about 1926 with the base figure of 100, and rent was a component. It was based on a brick house in the metropolitan area of four or five rooms. In 1939 controls were clamped down and since then few houses have been built for renting. Most of the houses concerned in the C series index in 1926 have since been sold to tenants. Before World War II trustee companies invested trust moneys in rental properties, but since the imposition of these controls have found they could get better returns for their money from Commonwealth bonds. Since the controls were imposed the variety of houses taken into account in the C series index has been whittled down and only a small sample is left. I am prepared to agree with the Minister that any lifting of controls on those houses would probably result in an increase in the C series index. In 1953 Parliament permitted people to contract out of the Act and anyone who obtained a lease was free from rental control, and a certain type of lease was free from all controls. When that happens, how is it possible for the C series index to be affected? Why cannot we as far as those houses are concerned

return to the situation existing before controls were imposed? If a person can be freed from rent control, why cannot we free him from recovery of possession sections as well? Under section 60a of the Act after the expiration of the term one has to give a tenant seven days' notice to quit and after that one has to wait three months to commence proceedings for the recovery of possession. My amendment is to provide that after the expiration of any lease removing the premises from the Act, one should have the right to recovery of possession of premises. Under the circumstances I consider that my amendment is fair and reasonable.

The Committee divided on new clause 2a:—

Ayes (7).—The Hons. Jessie M. Cooper, L. H. Densley, A. C. Hookings, A. J. Melrose, Sir Frank Perry, F. J. Potter (teller), and Sir Arthur Rymill.

Noes (12).—The Hons. K. E. J. Bardolph, S. C. Bevan, F. J. Condon, E. H. Edmonds, G. O'H. Giles, N. L. Jude, Sir Lyell McEwin, W. W. Robinson, C. D. Rowe (teller), A. J. Shard, C. R. Story and R. R. Wilson.

Majority of 5 for the Noes.

New clause thus negatived.

New clause 2aa.—"Amendment of section 40."

The Hon. F. J. POTTER—I move to insert the following new clause:—

2aa. Section 40 of the principal Act is amended by striking out the word "four" in subsection (1) thereof and inserting in lieu thereof the word "six".

It deals with the exemption of caravans let for holiday purposes. Section 40 of the principal Act provides that if any caravan is let for a period of not more than four weeks it shall be free from rent control. That contrasts with the limit for a dwellinghouse used for holiday purposes of eight weeks. I want to extend the time allowed for caravans from four to six weeks. In many local government and Tourist Bureau caravan parks a period of six weeks is invariably allowed. A publication issued by the Tourist Bureau refers to a limit of six weeks at a number of caravan parks. I am informed that in these parks the limit is allowed without any interference from Housing Trust inspectors. The practice has grown up over the years and I think the six-weekly period should be extended to private caravan parks, which in many instances provide better amenities than are provided in other parks.

The Hon. C. R. STORY—I support the amendment. I think the present period of four weeks is too restrictive. Many country people bring their caravans to the city or to the beaches. The husband often takes the car back to the country and the wife and family stay on in the caravan for a holiday. It seems wrong to limit one type of park to four weeks and another to six weeks.

The Hon. L. H. DENSLEY—I, too, support the amendment. We are getting down to such minor details in this matter that it is really beneath the dignity of Parliament to deal with them. Many families like to spend their holidays in a caravan. Sometimes the husband goes back home whilst the wife and family stay on for a holiday. If we whittle down the Act a little at a time we shall be rendering a service to the community.

The Hon. C. D. ROWE—It has never been my policy to oppose an amendment merely for the purpose of opposing it. I do not oppose an amendment unless there is something in it to oppose. I do not think there is any need to oppose this proposed new clause 2aa.

The Committee divided on new clause 2aa:

Ayes (15).—The Hons. Jessie M. Cooper, L. H. Densley, E. H. Edmonds, G. O'H. Giles, A. C. Hookings, N. L. Jude, Sir Lyell McEwin, A. J. Melrose, Sir Frank Perry, F. J. Potter (teller), W. W. Robinson, C. D. Rowe, Sir Arthur Rymill, C. R. Story and R. R. Wilson.

Noes (4).—The Hons. K. E. J. Bardolph, S. C. Bevan, F. J. Condon (teller) and A. J. Shard.

Majority of 11 for the Ayes.

New clause thus inserted.

New clause 2b—"Restriction on eviction."

The Hon. F. J. POTTER—I move to insert the following new clause:—

2b. Section 42 of the principal Act is amended by adding the following new subsection:—

(3a). In any legal proceedings taken by a lessor for the recovery by him of any premises to which this Act applies (or of any furniture or other goods leased therewith) on the ground prescribed in subsection (6) (*a*) of this section the provisions of Part VIII of the Local Courts Act relating to signing judgment and confession of judgment and such other provisions of the said Act as relate to rights, powers, duties and liabilities of parties to a personal action and of the Court and officers thereof, and to procedure so far as they are applicable shall apply *mutatis mutandis* to any such legal proceedings.

This relates to a new procedure. Section 42 of the principal Act deals with the prescribed grounds under which tenants may have notice to quit issued against them and the subsequent

proceedings. The first ground relates to where the lessee has failed to pay his rent. It is provided that if he has failed to pay for the prescribed period the notice shall be seven days where the occupation by the tenant does not exceed six months, 14 days where the occupation exceeds six months but not 12 months, and in other cases not less than 28 days.

Many landlords have made representations to me. A landlord may come and say, "My tenant is not paying his rent. What can I do about it?" As his legal adviser I say, "He does not have to pay for a certain period. How long has he been there?" and he may say "Twelve months or more". Then I tell him "He must not pay for 28 days to bring him under these provisions." When that period goes by and he still does not pay the client will come back and we will decide to give the tenant notice to quit, which is 14 days where the occupancy exceeds six months. If he has not paid at the end of the period a summons is issued against him. Twelve to 14 days must elapse after the service of the summons. It usually takes from a week to 10 days or even a fortnight to get the summons prepared, issued and served. Then the process continues and it is necessary to appear before the court to get a formal order for the possession of the house to be delivered to the landlord. We get to this position: the tenant begins to fall behind in his rent and eventually gets a week or 28 days behind, but before he can be got out of the house he may be three months behind. During that time the landlord has lost his rent. Before this Act came into operation it was possible, under Part X of the Local Courts Act, to issue a summons against a tenant who had failed to pay his rent. When the tenant failed to appear in answer to the summons—and 99 per cent of the people who do not pay their rent do not appear—judgment could be signed against the tenant for the rent and for possession of the premises. It was not necessary to go through this long and complicated procedure.

When a tenant has not paid his rent and when grounds exist for putting him out of the premises and he does not appear in answer to the summons it should be made possible for the plaintiff landlord to sign judgment both for the arrears of rent and for possession. My amendment has the effect that the landlord can sign judgment for the amount of money and judgment for possession. The wording of my proposed new clause 2b is based almost entirely on the section under Part X of the Local Courts Act and all it will do is provide a simple method for recovery of possession where a defaulting tenant has not appeared to a summons issued against him. I accordingly commend the amendment to the Committee and ask members to support it.

The Hon. C. D. ROWE—I ask the Committee to oppose the amendment. The effect of the new clause is to provide that in proceedings for the recovery of possession of premises on the ground that the tenant has failed to pay his rent the provisions of Part VIII of the Local Courts Act are to apply and that the other provisions of that Act as they relate to the rights, powers, duties and liabilities of parties to a personal action are to apply. Section 61 of the Landlord and Tenant Act provides:—

> An order for the recovery of possession of any premises to which this Act applies (or of any furniture or other goods leased therewith) or for the ejectment of a lessee therefor made by a court under this Part may be enforced in the same manner as a like order if made by that court otherwise than under this Part, might be enforced.

Therefore, it is unnecessary to incorporate a reference to Part VIII of the Local Courts Act as is provided in the new clause 2b. The other part of the new subsection relating to provisions of the Local Courts Act could be in conflict with some provisions of the Landlord and Tenant Act, as for example, section 52, which deals with the period of stays of execution and during which warrants for delivery and possession are to remain in force.

The procedure under the Local Courts Act dealing with cases under the Landlord and Tenant Act has been worked out in rules of court, very often over many years experience in settling the procedure under that Act. Therefore, I suggest that to enact a provision in the general terms of the proposed new clause would cause confusion and doubt as to which provision applied in particular proceedings. I recommend that the new clause be not accepted. This amendment relates more to procedure than to an alteration in the law, except with regard to the provision relating to what the landlord can do about recovery of possession of the premises where rent has not been paid and where judgment has been signed for rent not being paid. There are two courses open to the Committee. The first is whether it should alter the procedure worked out over the years and which has worked fairly well. If the Committee alters that procedure I think it will cause some confusion. The second is that this

amendment will, if I understand it correctly, allow possession of premises to be obtained more easily than is the case at present where rent is not paid. The Committee would not be doing what is in the best interests of everyone concerned if it accepted the amendment.

The Hon. Sir ARTHUR RYMILL—The Attorney-General gave a less convincing argument on this clause than on the proposed new clause 2a. I cannot understand his attitude when he talks of making premises more easily accessible to the landlord as being something terrible and something that should not be done. I emphasize that the landlord is in law the owner of the premises and if it were not for this Act, a war-time survival 15 years out of date, he would be able to use the premises as his own. The Act denies him the use of his premises and the Attorney-General says it would be a terrible thing if in any way he were able to get possession of his own premises more readily. I cannot for one second agree with that attitude of mind. The amendment relates purely to a procedural matter, but the Attorney-General seems to have overlooked one point, and that is that under the Local Courts Act there is power to set aside any judgment of this nature if any semblance of injustice is done. It is a power that is readily invoked under local court procedure and the Hon. Mr. Potter has no doubt had it done many times. I certainly have experienced that. The court has the power which is applicable to this Act and to other proceedings and if any injustice is or may have been done under this amendment the court may step in and review the judgment signed in manner set forth, set it aside, and have a proper hearing if that is requested. On the other hand, there are many cases of hardship on the landlord and understandably the landlord suffers hardship as well as the tenant, and possibly more often because we must go back to the fundamental point that he is the owner of the premises whether some members like it or not. This amendment is for the purpose of providing him with procedure that will enable him to obtain his rights more quickly. Surely the Attorney-General and the Government should not stand in his way. I have pointed out that there are safeguards and it is proper in any circumstances that the litigant should get his rights as speedily as possible, whether under this Act or any other Act. Any Government should stand for speedy restitution of rights, subject to justice being done. There are ample safeguards and even if something wrong is done it can be readily and speedily rectified by the court. The Government's opposition to this amendment is beyond my comprehension.

The Hon. F. J. POTTER—The Attorney-General fears that the amendment may be in conflict with section 61, but it has nothing to do with section 61 because that section deals with the enforcement of orders and my amendment deals with the obtaining of the order in the first place. There is no suggestion that I want to change any method of enforcement. My amendment provides that, instead of going to the court and having to obtain a hearing and paying a solicitor's fee and experiencing all the delays consequent on asking the court to set it down, it may be done in the same way as on a debt summons. In other words, the landlord may sign judgment for possession where the tenant has not paid the rent. Surely that is not an unreasonable provision.

The Hon. Sir FRANK PERRY—I become slightly confused when the lawyers in this Council are at cross purposes. Legislation has operated in this country for years to deal with people who do not pay their rent. That position can be adequately met under the Local Courts Act, which has apparently been re-drafted and made more simple to enable the owner of premises to take possession of his property if the tenant does not meet his obligations. Superimposed on that legislation we have this artificial type of legislation that was introduced during the war years and the Government for some reason or other does not feel disposed to strike it off the Statute Book. I cannot understand the Government's attitude because the procedures are laid down and they have served the country well. The Hon. Mr. Potter has moved his amendment because some people have suffered inconvenience and been deprived of their rights. The Attorney-General's reply, in my opinion, was not convincing. I support the amendment.

The Committee divided on new clause 2b:

Ayes (10).—The Hons.—Jessie M. Cooper, L. H. Densley, G. O'H. Giles, A. C. Hookings, A. J. Melrose, Sir Frank Perry, F. J. Potter (teller), W. W. Robinson, Sir Arthur Rymill and C. R. Story.

Noes (9).—The Hons.—K. E. J. Bardolph, S. C. Bevan, F. J. Condon, E. H. Edmonds, N. L. Jude, Sir Lyell McEwin, C. D. Rowe (teller), A. J. Shard and R. R. Wilson.

Majority of 1 for the Ayes.

New clause thus inserted.

New clause 2c—"Restriction on certain lettings of dwelling houses."

The Hon. F. J. POTTER—I move to insert the following new clause:—

2c. Section 55d of the principal Act is amended:—

(*a*) By adding after the word "not" in the first line of paragraph II of subsection (1) thereof the words "but subject to paragraph III hereof" and by adding after the word "shall" in the second line thereof the words "at any time before the expiration of the period of twelve months next succeeding the date on which the former lessee delivered up possession";

(*b*) By striking out all the words in paragraph III of subsection (1) beginning with the words "the lessor" in the fifth line thereof and inserting in lieu thereof the words "or if the former lessee fails to resume occupation of the dwellinghouse within the last-mentioned period of 14 days in accordance with notice of his intention so to do then the provisions of paragraph II hereof shall cease to apply and the lessor may let the dwellinghouse to any other person";

(*c*) By deleting paragraph IV of subsection (1) and by substituting the following new paragraphs therefor—

IV. If the lessor fails to give notice to the former lessee pursuant to paragraph I hereof and if the lessor within the period of twelve months next succeeding the date upon which the former lessee delivered up possession of the dwellinghouse lets the dwellinghouse to any person other than the former lessee then notwithstanding any other provisions of this Act the rent payable under the lease entered into with that other person and the terms and conditions of the lease shall during the said period of twelve months be the same as the rent and the terms and conditions under the lease between the lessor and the former lessee immediately prior to the time the former lessee delivered up possession of the dwellinghouse.

V. Any rent in excess of the rent provided to be paid by paragraph II or paragraph IV hereof shall notwithstanding any agreement to the contrary between the lessor and the former lessee or other lessee (as the case may be) be irrecoverable in respect of any period of occupation by the former lessee or other lessee (as the case may be) during the period of twelve months next succeeding the date when the former lessee delivered up possession of the dwellinghouse.

These amendments are not easily followed in print, and therefore I will explain what section 55d means. It deals with certain procedure that has to be followed if possession of a house is obtained on the ground that it is wanted for sale. As honourable members know, six month' notice to quit must be given to a tenant if the property is required for sale, and then if a court order is obtained and the tenant vacates the property, there are certain legal requirements binding upon the owner after possession is obtained. The important one is that if the owner having obtained possession of the property for sale, and having done some repairs to that property, does not within three months after obtaining possession or within three months after completing the repairs sell the property, then certain restrictions apply. These restrictions are set out in section 55d. Firstly, the owner must within seven days after the expiration of the period give the former lessee a chance to return to the premises at the same rental he was paying before the owner obtained possession. If the tenant does not return under the terms of the old letting, then the owner may let the property to someone else, but it must be let at the old rent or at a rent to be determined by the Housing Trust. There is no limit on these provisions at all at present and my amendment seeks to put a 12-month limit on these restrictions. All it does is to limit those restrictions of a person's right to re-let for a period of 12 months.

The Hon. Sir Frank Perry—Would the house be vacant during that period?

The Hon. F. J. POTTER—Yes. This amendment was drafted by me in consultation with four legal practitioners. The original draft amendment was prepared by one of these practitioners, and I considered it. I would like to see the period reduced to six months, but I have left it at 12 months. The provisions in paragraphs I to IV of section 55d are too restrictive and far reaching. Their general effect is that once possession has been obtained on the ground that the property is required for sale, if the owner for some reason does not sell he cannot re-let the property in the future at a greater rental than what was previously paid by the former lessee. He cannot, as other landlords can, remove the premises from rent control by entering into a lease in writing for a term of not less than six months. This surely is a harsh fetter on the landlord and is quite out of keeping with the Government's present policy which is to remove the restrictions on landlords gradually. There are often many reasons why a property is not sold, but no matter how valid they are, these restrictions apply, and I have endeavoured to alleviate the position by this amendment. I am not removing the restrictions but limiting

them to a period of 12 months from the date when the former lessee vacates the premises as the result of the notice, or 12 months from the date of the court order based on the notice.

If these amendments are inserted there will be no interference with the paragraph which provides that a former lessee may return under the old rental. If he does that, that is the end of it, as he must be accepted under his old tenancy, but in many cases the old tenant does not return. The object of the amendment is to provide a 12-month period after the tenant has left of his own volition or the landlord has obtained an order of the court for such conditions to apply. It is reasonable that the landlord should not be so fettered that he cannot even contract out of the Act, a right given to all other landlords. I know of cases where a house was obtained and much money spent on it, but was not sold, and has remained empty ever since because it could not be let at the former rent, because it would not return interest on the money spent.

The Hon. C. D. ROWE—I must ask the Committee to oppose the amendment. We are dealing with cases where the landlord gives notice to the tenant that he wants possession of the house for sale. The notice given must be for a period of six months, and a statutory declaration must be filed that the owner wants the house for sale and not for letting. Some years ago special provision was made that if a man wanted to realize on his asset he could do so by giving six months' notice. The only reason he should give that notice is that he wants to sell the premises. In effect, the honourable member says that the landlord, having said that he wanted to get the tenant out to enable him to sell the house, and having got him out he decides to change his mind and take in another tenant, and after 12 months he can charge that tenant what he likes.

The Hon. F. J. Potter—No. He would be free to negotiate.

The Hon. C. D. ROWE—That means he could get whatever rent he wanted by negotiation.

The Hon. Sir Arthur Rymill—He is still obliged to take the old tenant back.

The Hon. C. D. ROWE—Mr. Potter suggested that only about one tenant in ten goes back. The purpose of the provision is to enable a landlord to get the tenant out in order that the house can be sold. The honourable member mentioned instances where a landlord had got possession of his house and spent much money on repairs, and subsequently had not been able to sell or relet it. I believe the truth is that if a landlord spends a certain amount on repairs and improves the property an adjustment in the rent can be made by the proper authority. This amendment is on a different basis from the other amendment moved by the honourable member, and I ask the Committee to disagree with it.

The Committee divided on new clause 2c:

Ayes (7).—The Hons. Jessie M. Cooper, L. H. Densley, A. C. Hookings, A. J. Melrose, Sir Frank Perry, F. J. Potter (teller) and Sir Arthur Rymill.

Noes (12).—The Hons. K. E. J. Bardolph, S. C. Bevan, F. J. Condon, E. H. Edmonds, G. O'H. Giles, N. L. Jude, Sir Lyell McEwin, W. W. Robinson, C. D. Rowe (teller), A. J. Shard, C. R. Story and R. R. Wilson.

Majority of 5 for the Noes.

New clause thus negatived.

New clause 2d—"Provision as to holding over."

The Hon. F. J. POTTER—As this amendment was consequential to proposed new clause 2a, which has been defeated, I will not move it.

New clause 2e—"Exemptions from Act."

The Hon. F. J. POTTER—I move to insert the following new clause:—

2e. The principal Act is amended by adding the following new section:—

122a. Where at any time prior or subsequent to the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1960, the provisions of this Act did not or will not apply with respect to any premises or any lease thereof then the provisions of this Act shall not at any time after the passing of the said Landlord and Tenant (Control of Rents) Act Amendment Act, 1960, apply with respect to such premises or any lease thereof entered into after the passing of the said Amendment Act.

This amendment is self-explanatory. Where any premises are not now subject to control under the Act, they will not be subject to any control in future. The object of the amendment is to clear up what has been a legal difficulty. There has been much discussion among members of the profession as to what is the position in law after the expiration of a lease. If premises are now outside the operations of the Act, there is no reason why they should be brought under the Act later, and therefore there is no reason why we should not provide that any premises not now subject shall be subject to control in future. Where a house is not now subject to control why

can't it be stated in the Act, as a matter of principle if for no other reason, that in future it shall not be subject to control?

The Hon. C. D. ROWE—As I understand it, the basis of the amendment is that where a house is let on a long term lease for two years or more, and during that period is free from rent control and recovery of possession, at the expiration of the lease if the owner lets it on an oral lease for a period under two years it will not come back under the Act in the matters of rent control and recovery of possession. The policy of the Act is that where the parties enter into an agreement for two years we are not concerned with the provisions of the agreement, but where there are shorter tenancies some protection is provided for the tenant. The effect of the amendment will be to provide that where a person rents a house for two years, and there is no written lease at the end of the period, the house is freed from control and any rent can be charged. That is contrary to our policy in this matter and I suggest that if we are to keep the Act in line with what has been approved previously we must not accept the amendment. I was surprised to hear Mr. Potter suggest that the amendment would clear up something that was in the nature of an anomaly. It goes further than that and its acceptance would mean that many premises that now come back under control after a written lease for two years would cease to be under control. That is against the policy of the Act and I ask members to oppose it.

The Hon. Sir ARTHUR RYMILL—It is fantastic that a house should go out of control for two years and then because some formality has not been observed come back under control. The Attorney-General said that the Act contains a policy, but to me it has always been a patchwork quilt. There is no thread of policy in it. I cannot see that it is policy for a house that has been free of control for two years to come back under control. There is no logical reason for that and I support the amendment.

The Hon. Sir FRANK PERRY—The more this matter is discussed the more monstrous it seems to become. I thank Mr. Potter for drawing the attention of members to many points associated with the Act. It seems to me that the legislation is being strenuously held in existence for the purpose of embarrassing landlords, and I cannot understand why that should be so. In the matter under immediate review, the house has been free from control for two years and that could have no effect on the economy of the country. We are not being fair to people who have invested their money in property. These people are not allowed even the freedom that ownership should demand. This applies only in connection with house property because there is freedom in all other things. It must often happen that a landlord wishes that he did not own property. The discussion this afternoon has been a revelation to me of the Government's attitude towards the easing of hardships that are imposed on landlords. I often wonder why we have houses available at a rental of £6, £7 or £8 a week. The rents of those houses do not seem to be controlled yet because some landlords are law-abiding they are kept under control. After a period of two years the property of a landlord should be no longer controlled.

The Hon. C. D. ROWE—I want members to realize that I do not oppose amendments merely for the sake of opposing them. Wherever I have felt that another attitude should be adopted I have agreed to amendments, that is, when I have thought that they were in the interests of all concerned. At present when a person enters into a lease for two years the property is free from control under the Act. At the end of the period the landlord can let the house for another period of two years and it then does not come under control, but if he lets it for a short period we say that it is reasonable for the landlord to comply with the terms of the Act. The landlord has had freedom for two years, but without control he could let it for a short period and charge the tenant any high rent. We want to avoid the possibility of the landlord using a lease in order to get an exorbitant rent. If the amendment is carried rent control will end at the end of two years. This is another way to defeat the object of the legislation. I do not blame Mr. Potter for attempting to do these things but he should have been more explicit regarding their effect. Undoubtedly this amendment would bring the provisions of the Act to an end.

The Hon. L. H. DENSLEY—When a landlord has had a house out of control for two years and then wants to let it again at a rental increased by a few shillings it is considered that he should be under control. It is good to see people building houses, but I am a little sorry that some of the money being spent in that way is not devoted to other purposes. People are building the new houses because they know they are free from control under the Act. In any case a tenant would

not go into a house at an exorbitant rental after it had been freed from control.

The Hon. F. J. POTTER—The Attorney-General suggested that once a house was freed from control by means of a two-year lease that had expired, the owner could get a tenant in for a short period and dictate to him what rent he should pay. In most cases the situation works the other way and if there is to be any dictation as to what rent is to be paid it is often done to the tenant prior to him entering into a two-year lease. I know of cases where tenants have entered into a two-year lease at very high rentals and they have not been able to pay the rent and, after a certain time, the landlord has been forced to take a lower rent. The purpose of my amendment is that once the Act has been tossed overboard in relation to any particular premises because a two-year lease has been negotiated it should not be brought back under the Act again. Why can't that house be released for ever from control? To advocate what the Attorney-General is advocating is surely to advocate control for the sake of control.

The Hon. Sir FRANK PERRY—Values of properties and shares have risen considerably over the years and the cost of land is now as much as the land and the house cost in 1939. This Act does not allow any increment in value of property at all. It uses 1939 values and allows certain additional expenses, but provides for no increase in the value of the property. Owners of property may obtain a reasonable return by selling the property or by contracting for a two-year lease. However, if the lease is not continued the rent of the house is brought back under control. That is wrong and the Government wishes to keep these controls in perpetuity. I am opposed to that. The sooner we get rid of rent control the better it will be for us all. The sooner all classes of the community are placed on the same level the better it will be. I am disappointed at the way in which the Attorney-General has approached this clear cut issue. I hope the Committee will support the amendment.

The Hon. C. D. ROWE—In the first instance the honourable Sir Frank Perry has entirely omitted in his consideration the fact that from time to time increases in rent have been allowed as the circumstances warranted it, making a total increase of 40 per cent. In addition proper allowance may be made for amounts spent on additions, alterations or improvements where the tenant has the advantage of those. In addition the Act provides that the landlord may get his property if he wants to get the benefit of his investment on a vacant possession basis. Many landlords, because of the provisions of the Act, were not able to dispose of their properties as easily as they may have otherwise, so they held them for a few years and thereby obtained a better capital return than if they had sold earlier. The position is that adjustments have been made with regard to rent and also to enable an owner to realize on his investment, so I do not think the remarks of Sir Frank Perry were correct.

The matter we are discussing now is whether, after a house has been let in writing for a period of two years, it shall thereafter again be subject to control if in fact it is let on an oral basis for a shorter period. If the landlord lets the premises again under a further lease he is not subject to control and can get what rent he desires. If he does not do that he may allow the tenant to continue with the tenancy, under which he remains there for, say, a week or a fortnight at the existing rent, and then, if the new clause is inserted, the landlord may say "Henceforth your rent will be increased by 50 per cent." The tenant must pay that rent or get out. On the other hand the landlord, if he so desires, may get in a new tenant after the expiration of the lease under a weekly tenancy of, say, £5 a week and having had him there a fortnight he may say, "In future you will pay £8 a week." The tenant is then in the invidious position of either getting out of the house or paying the increased rent. That is what we wish to avoid and it is what will crop up if we agree to this amendment.

The amendment, if agreed to, virtually means that at the end of two years we shall have got right out of the provisions of the Act. That would be undesirable because houses are not in such plentiful supply that everyone can have a house. We hope that position will be rectified soon, but in the meantime we must have some control over houses, as we have over every other commodity in short supply. I press my opposition to this amendment and I do it sincerely.

The Committee divided on new clause 2e:—

Ayes (7).—The Hons. Jessie Cooper, L. H. Densley, A. C. Hookings, A. J. Melrose, Sir Frank Perry, F. J. Potter (teller) and Sir Arthur Rymill.

Noes (12).—The Hons. K. E. J. Bardolph, S. C. Bevan, F. J. Condon, E. H. Edmonds, G. O'H. Giles, N. L. Jude, Sir Lyell McEwin, W. W. Robinson, C. D. Rowe

(teller), A. J. Shard, C. R. Story and R. R. Wilson.

Majority of 5 for the Noes.

New clause thus negatived.

Clause 3 and title passed.

Bill reported with amendments and Committee's report adopted.

GARDEN SUBURB ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from November 3. Page 1651.)

The Hon. F. J. CONDON (Leader of the Opposition)—The Act was first introduced in 1918 and has had a fair run. The first important amendment is to section 15, and it empowers the Commissioner to sell vacant blocks in the suburb. Grass has grown on many blocks and some people have been fined for depositing rubbish on blocks. Some law should be passed to compel councils to clean up gutters and streets. For years it has been customary for ratepayers to do that job, but they get tired of it because each year rates are increased. High grass creates a fire hazard and causes a nuisance to people, so councils should be compelled to take action in this matter.

Another amendment will empower the Commissioner to exercise the functions of a mayor or town clerk, and it also provides that the Commissioner shall have the same powers as the chairman or secretary of the local board of health. This Bill was investigated by a Select Committee in another place, and the Parliamentary Draftsman and the Garden Suburb Commissioner tendered evidence. A member of the National Fitness Council opposed the clause dealing with the disposal of the reserves. The committee considered that adequate safeguards existed in the Bill, but recommended certain amendments, which were incorporated in the Bill. I support the second reading.

The Hon. Sir FRANK PERRY secured the adjournment of the debate.

ADJOURNMENT.

At 4.38 p.m. the Council adjourned until Wednesday, November 9, at 2.15 p.m.