LEGISLATIVE COUNCIL.

Thursday, October 11, 1962.

The PRESIDENT (Hon. L. H. Densley) took the Chair at 2.15 p.m. and read prayers.

ASSENT TO BILLS.

His Excellency the Governor's Deputy, by message, intimated the Governor's assent to the following Bills:

Bulk Handling of Grain Act Amendment,
Oriental Fruit Moth Control.

QUESTIONS.

CHRISTMAS SHOPPING.

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

Leave granted.

The Hon. S. C. BEVAN: On July 24 I asked the Minister of Labour and Industry a question relating to the suspension of the Early Closing Act to provide a late shopping night prior to the Christmas period. My question was:

In previous years the operation of the Early Closing Act has been suspended to enable shops to remain open until 9 p.m. on Christmas Eve. This year Christmas Eve will be on Monday, December 24, and the previous Friday will be December 21. Can the Minister of Labour and Industry say whether representations have been made to him for the suspension of the Early Closing Act this year and, if so, in respect of which night was the application made? Does he intend to suspend the Act and, if so, on which night will the suspension take place?

The Minister of Labour and Industry replied:

I was asked to consider whether the operation of the Early Closing Act should be suspended on Friday night, December 21. Cabinet considered that request and the operation of the Act will be suspended on that night until 9 p.m. I specifically asked the people making the request whether they intended to ask for the suspension of the Act on Christmas Eve, but they did not. Even if such a request had been made, it would not be the wish of the Government for such a suspension to operate.

Recently a question was asked of the Premier on this matter and he replied in a way contrary to the answer given by the Minister, and, I take it, contrary to the opinion expressed by Cabinet at the time. I quote the following from the Premier's remarks:

Before a proclamation was issued the Government inquired widely as to which day was desired as the late shopping day. All the retailers concerned replied that they desired to have the late shopping night on a Friday, and a proclamation giving effect to that was made. Christmas Day this year falls on a Tuesday, and it was the previous Friday night that was asked for by the various retail organizations. Since the proclamation was made, Port Augusta and Burra have requested that the late shopping night be on the Monday. The Government has no views on which night it should be, but it would oppose having two late shopping nights in one centre because that would be unfair to the employees. It is intended to make a supplementary proclamation in respect of Monday night where that is desired, but that can only be on condition that the same centre does not also have a shopping night on the Friday.

The Hon. C. R. STORY: Mr. President, I rise on a point of order. I would like to know what the honourable member is referring to, because I think he is reading a copy of the record from another place.

The PRESIDENT: The honourable member must not read from a *Hansard* pull from another place.

The Hon. S. C. BEVAN: Thank you, Mr. President, I had finished giving the quotation when the honourable member took the point. Can the Minister say whether there has been an alteration in the policy previously enunciated in relation to the late shopping night, and does it mean that retailers can open on either night in any area if they so desire because of the supplementary proclamation?

The Hon. C. D. ROWE: In his explanation the honourable member has set out the facts as they are up to the present. The position was that after the proclamation had been made providing for a late shopping night on the Friday a request was received from two country shopping districts, Burra and Port Augusta, asking that a late shopping night be available on the Monday, Christmas Eve. It is the Government's view that two nights should not be allowed, but it does feel that an alternative should be offered to country areas if they so wish it and apply to the Minister. It is proposed to issue another proclamation so that the Minister, if he sees fit, may agree to Monday night as an alternative to Friday night, but the request for the metropolitan area was specifically for the Friday night, and it is not intended to alter our decision for that area. It will be altered for country areas where requests are made from shopping areas.

ADELAIDE OVAL.

The Hon. K. E. J. BARDOLPH: Prior to his departure for Spain, I asked the Minister of Local Government a series of questions about the lease between the Adelaide City Council and the South Australian Cricket Association, and whether Parliament would be

approached before the Government consented to the lease. The Minister said that the lease was in the hands of the Government, but had been sent back to the council. Has the Attorney-General a reply to my previous question on this matter?

The Hon. C. D. ROWE: I regret that I have not seen a copy of that reply but I undertake to follow up the matter and let the honourable member have the information he seeks as soon as possible.

BANK CHARGES.

The Hon. Sir ARTHUR RYMILL: In this morning's press appeared a report of a question asked in another place relating to bank charges, and the answer given was not satisfactory from my point of view. Will the Chief Secretary confirm to this Chamber, by inquiry if necessary, whether the statement is correct, that when pensioners' cheques are cashed by storekeepers, hotelkeepers or others and then paid into the banks, provided that an indication is made that they are in that category, the banks will be making no charge?

The Hon. Sir LYELL McEWIN: I shall be happy to make inquiries regarding what I understand was a statement made in another place and reported in the press.

PERSONAL EXPLANATION: ABATTOIRS BILL.

The Hon. S. C. BEVAN: In the debate yesterday in this Chamber on the Metropolitan and Export Abattoirs Act Amendment Bill I was reported in this morning's *Advertiser* as follows:

Mr. Bevan said that the present abattoirs was quite inadequate and would be for a considerable number of years.

The actual words I used are contained in the *Hansard* proof. I congratulate the *Hansard* staff on reporting the whole of my speech correctly, as it may have been a little difficult. What I actually said was:

The present abattoirs is adequate and will be adequate for many years to meet all the demands made by the metropolitan area.

I hope that the *Advertiser* will correct the report.

INSTITUTE OF MEDICAL AND VETERINARY SCIENCE ACT AMENDMENT BILL.

Returned from the House of Assembly without amendment.

METROPOLITAN AND EXPORT ABATTOIRS ACT AMENDMENT BILL.

In Committee.

(Continued from October 10. Page 1361.)

Clause 3—"Licence to slaughter elsewhere than at abattoirs of board."

The Hon. A. J. SHARD (Leader of the Opposition): I move:

After "slaughter" in new section 70a(1) to strike out "elsewhere than at the abattoirs of the board" and insert "anywhere outside the metropolitan area".

This will mean that if a licence is granted to people to operate other than at the Metropolitan Abattoirs, the establishment must be outside the metropolitan area. The proposed new section 70a(1) would then read:

Notwithstanding any other provision of this Act the Minister, if he is of the opinion that in the interests of the public it is expedient so to do, may grant a licence for such period as he shall think fit to any person to slaughter anywhere outside the metropolitan area.

In my opinion the Bill was introduced for no other purpose than to prevent strikes or direct action at the Metropolitan Abattoirs; and to make an industrial dispute at the abattoirs an excuse for permitting a private company to commence an abattoirs within the metropolitan area. The Opposition has been charged with opposing the Bill in its entirety, but that is not correct. The Attorney-General is reported in today's press as having spoken at a meeting at Balaklava: if the press report is correct, what he is alleged to have said is not correct. The report was as follows:

The Government wanted to see private abattoirs established or existing works used for further slaughtering, the Attorney-General, Mr. Rowe, said at Balaklava. He was opening the L.C.L. by-election campaign for the Midland seat of the Legislative Council. L.C.L. candidate is Mr. L. R. Hart and his A.L.P. opponent is Mr. D. S. MacLeod. Mr. Rowe said the Government had introduced a Bill into Parliament to give Ministerial power to grant licences for establishment of an abattoirs. The Bill also gave power for any existing works to kill for local consumption and for export. The Opposition had opposed this, claimed Mr. Rowe.

If that is not wholly untrue, it is partly so. The only part of the Bill we have opposed is the provision for the establishment of another abattoirs in the metropolitan area.

The Hon. Sir Lyell McEwin: You oppose the Bill?

The Hon. A. J. SHARD: Yes, for that purpose. The principal Act gives the Government all the necessary authority to provide exactly what this Bill provides outside the metropolitan area.

The Hon. C. R. Story: If you had the numbers you would throw it out.

The Hon. A. J. SHARD: It has been said in another place that if our amendment succeeded it would take 99 per cent out of the Bill.

The Hon. C. D. Rowe: I think that is true.

The Hon. A. J. SHARD: If we delete the metropolitan area from the clause there is no need for the Bill as the principal Act gives the necessary authority for everything else.

The Hon. Sir Arthur Rymill: You are not opposing the Bill, but you are trying to knock it out by another method.

The Hon. A. J. SHARD: If the Government took the action we believe to be correct there would be no need for the Bill, because under the provisions of the present Act licences can be granted outside the metropolitan area.

The Hon. Sir Lyell McEwin: For the metropolitan supply?

The Hon. A. J. SHARD: Yes, with the 10 per cent limitation. The present Act can do all that this Bill provides outside the metropolitan area. Another article in the same newspaper states that 12 groups are seeking abattoirs licences and that William Angliss & Company already owns land at Dry Creek not far from the present abattoirs. Time will prove whether we are right or wrong in what we have been saying about that company. The sole purpose of this Bill is to give William Angliss & Company the right to establish an abattoirs at Dry Creek. That is obvious, but the Government states that this Bill has been introduced to extend works outside the metropolitan area. Without a doubt it is a question of bringing the company into the metropolitan area as opposition to the Metropolitan Abattoirs which has existed for a number of years. There is no necessity for two abattoirs in the metropolitan area, except, possibly, during the glut season of about 12 weeks. The Metropolitan and Export Abattoirs Board can slaughter and prepare all meat for consumption within the metropolitan area without working overtime during the year, with the exception of the glut season.

The Hon. C. R. Story: I seem to remember that country abattoirs had to come into the metropolitan area to assist not so long ago.

The Hon. A. J. SHARD: There are exceptions, but when things are normal the position as I stated is true. There have been industrial troubles and the time the honourable member refers to is the time of industrial trouble at the abattoirs.

The Hon. C. R. Story: The sheep don't know that.

The Hon. A. J. SHARD: The sheep may have a better mental capacity than the honourable member has if he takes that line of argument, because what he said is not true and he knows it. The only time the metropolitan area has had any trouble in getting a full supply of meat has been at a time of industrial trouble.

The Hon. C. D. Rowe: That costs the farmers much money.

The Hon. A. J. SHARD: I am not arguing that. My friend is talking in another way and he is trying to mislead this Council, which has become a habit of his. While I am here and I know the facts—

The Hon. C. R. STORY: Mr. Chairman, I take exception to the honourable member's remarks because I do not think I have tried to mislead the Council at any stage and I take exception to the inference which the honourable member casts upon my character.

The CHAIRMAN: The honourable member must not make reflections on another honourable member.

The Hon. A. J. SHARD: If it hurts the honourable member's feelings, I will not proceed, but three times last week he did the same thing.

The Hon. C. R. STORY: I am not satisfied with that. I ask for a withdrawal. The honourable member cannot prove—nor is it true—what he has said about me, and I take great exception to it.

The CHAIRMAN: I ask the honourable member to withdraw.

The Hon. A. J. SHARD: If it will suit my honourable friend, it is all right with me.

The Hon. C. R. STORY: Mr. Chairman, I appeal to you for an unconditional withdrawal or else that you deal with the honourable member, because I do not want a withdrawal conditional upon anything. He either withdraws it or stands by his word.

The CHAIRMAN: The Hon. Mr. Shard is quite in order in withdrawing it if the Hon. Mr. Story takes exception to the statement he has made.

The Hon. A. J. SHARD: I have said that. Out of respect to you, Sir—

The Hon. C. R. STORY: The honourable member persists in saying, "in deference to you, Mr. Chairman", or, "if it pleases the honourable member", but that is not withdrawing completely the matter which the honourable member raised. Either the honourable member will withdraw completely without any inference or additives, or else I will be forced to take further steps in the matter.

The CHAIRMAN: The honourable member said that if you objected to the phrase he would withdraw it and I understood that he did.

The Hon. A. J. SHARD: That is what I have done.

The CHAIRMAN: Do not debate it.

The Hon. A. J. SHARD: I do not want to debate it, but I will put it in my waistcoat pocket. I said that the abattoirs working under normal conditions on a five-day week in ordinary times and not by working at full capacity could supply all the meat required within the metropolitan area.

The Hon. Sir Arthur Rymill: What about the export season?

The Hon. A. J. SHARD: I am talking about normal times. Before the hullabaloo started I said that there was no necessity for two abattoirs in the metropolitan area except during the glut season. I was challenged that the work could not be done. I agree that during the glut season all the work could not be done at one abattoirs.

The Hon. G. O'H. Giles: That is exactly what we are saying.

The Hon. A. J. SHARD: We are inclined to agree with you on that, but an additional abattoirs should not be placed in the metropolitan area. It should be established at the point of production and somewhere near a port where the produce can be readily exported.

The Hon. G. O'H. Giles: Are you in favour of establishing one at Penola?

The Hon. A. J. SHARD: I am not married to Penola but an abattoirs in the South-East would be advantageous. I have been informed that possibly Naracoorte would be more suitable.

The Hon. W. W. Robinson: Would that cater for stock coming from the north?

The Hon. S. C. Bevan: Why not put one in the north?

The Hon. A. J. SHARD: You cannot put them everywhere. One in the north or one in the South-East would be better than two in the metropolitan area.

The Hon. W. W. Robinson: That is a matter of opinion.

The Hon. A. J. SHARD: I have not yet read the Chief Secretary's reply that he made yesterday in the second reading debate. The fourth chain required 27 men to work it. Therefore, we were both right.

The Hon. Sir Lyell McEwin: I heard you say "partly right" a while ago.

The Hon. A. J. SHARD: You were partly right, too. I hasten to explain exactly what the position was so that it may be put on a sound basis. Only 27 men were needed to work the fourth chain, but to get the stock to the chain and in the clearing up process I believe another 38 men were needed.

The Hon. Sir Lyell McEwin: I gave you the figures.

The Hon. A. J. SHARD: I believe 65 is correct. The 27 men on the chain are known as cutters. The others comprise unskilled labour that could have been readily available. That is the position, and if we were at cross purposes I wish to be the first to correct the position. Therefore, we are not disputing what the Chief Secretary said yesterday. I refer honourable members to page 1024 of *Hansard*, which carries a question and answer relating to the overtime ban at the abattoirs. That proves to the hilt the statement in my second reading speech that the Abattoirs Board never intended to use the fourth chain in normal working time this season. The reply to that question was that the board used that chain in overtime when things were running properly. I understand that the slaughtermen usually engaged on slaughtering pigs, cattle and calves come on to that chain during weekends and assist considerably. That is the usual practice.

Things are often not as bad as they appear to be when the full facts are obtained. At no time this year has the board approached the union to have that fourth chain in operation in ordinary time, and that chain could handle 10,800 lambs each week on a normal 5-day basis. It was never the intention of the board to use that chain in those circumstances. Another point put forward by the Chief Secretary yesterday, and on which I wish to make my position clear, is that he claimed that I said this Bill was introduced to weaken the industrial conditions of members of the Meat Industry Employees' Union at the abattoirs. I do not think any of my colleagues said that and I certainly did not say at any time that it was introduced to take away the conditions of the men at the Metropolitan Abattoirs. The Chief Secretary said that we said it would take away their conditions. I know that I did not say that and, speaking from memory, I do not think any of my colleagues said it.

The Hon. K. E. J. Bardolph: No, we did not say it.

The Hon. A. J. SHARD: What we did say was that it was to weaken the industrial strength of the men at the abattoirs in future years.

The Hon. Sir Lyell McEwin: All words.

The Hon. A. J. SHARD: It is not a matter of words; it is a matter of fact, and that is quite different from saying that the Bill was introduced to take away the working conditions of the men.

The Hon. Sir Lyell McEwin: Who used those words?

The Hon. A. J. SHARD: If I remember correctly, the Minister did, yesterday. I have not checked that yet, but I made a note on my pad at the time—"industrial strength not industrial conditions"; and I am sure that *Hansard* would correctly record what was said. I believe that if a big company were permitted to establish itself within the metropolitan area that would have a bad effect on the whole industry from the meat employees down. It would be bad for the consumers, and particularly for the small exporters, and finally for the producers. We are chided about the abattoirs being socialistic, but it is nowhere near as vicious as a monopoly attempting to make increased profits. If what I fear should happen, within a few years we shall have a far bigger and much worse monopoly in this State than the Metropolitan and Export Abattoirs Board, as at present constituted, could ever be. I have been informed that the particular company we have discussed and another company have already brought about the results of which I am so fearful. Small slaughterhouses and meat concerns in Victoria have been forced to close down because they cannot compete with this company.

The Hon. W. W. Robinson: Another concern has opened up there and it has achieved very successful results so far.

The Hon. A. J. SHARD: I know that two concerns in different parts of Victoria have had to close.

The Hon. W. W. Robinson: That is going back over a period of 25 years.

The Hon. Sir Lyell McEwin: Canning works have been closed, too.

The Hon. A. J. SHARD: That is the position as I see it, and I do not wish to labour the position any further. The Government has made up its mind and despite good advice it receives from my Party it will ignore it. This Bill will be passed for the sole purpose of allowing another abattoirs to be built in the metropolitan area, and time alone will tell whether the Government's point of view was right or whether our viewpoint was right. However, I appeal to Council members, if they believe in assisting decentralization for the benefit of the people they are trying to help, to accept the amendment moved by me. Let us have any future abattoirs outside the metropolitan area.

The Hon. S. C. BEVAN: I support the amendment and I wish to refrain from repeating anything I said yesterday. If the amendment is supported it will result in the establishment of an abattoirs outside the metropolitan area but not inside the metropolitan area. The further we go with this question the more obvious it becomes that the object of the Bill is to establish another abattoirs in the metropolitan area, irrespective of the effect that will have. Yesterday I said that William Angliss & Company had a block of land at Dry Creek for the purpose of establishing an abattoirs, and in an interjection one member said that the firm had two blocks, and Kingston was mentioned. It has made its position clear, for in today's *News* it is reported that it has applied to the Minister to establish works on its Dry Creek land. There is no need for an additional abattoirs in the metropolitan area. The present works are adequate to meet the position for many years. It will be able to supply all the meat needed in the metropolitan area, that is, with supplies that other firms are allowed to bring in.

The Attorney-General said it takes time to train men for meatworks, and another member said that skilled men were not available. The latter statement was supported by other members, and we on this side support it, but if skilled men are not available now how will additional skilled men be obtained for another abattoirs? It would offer an inducement to the men at the Metropolitan Abattoirs, and it would have to work on a 12 monthly basis, not for a short period. Skilled workmen would go from the Metropolitan Abattoirs, which has been assisted by the taxpayers' money, and eventually it would close, and the service now provided would then be under the control of a private undertaking. This is not only my opinion, for a similar opinion has been expressed in a letter I have received. As I do not like giving names at any time, I will not give the name of the person who sent the letter to me. It states:

As a grazier and lamb raiser, and an exporter very conversant with the abattoirs operations, I wish to oppose the Abattoirs Bill

now before the House, for the following reasons: The establishment of private works cannot benefit the producer or the consumer, nor can it increase meat exports. The present works at Gepps Cross and Port Lincoln, if efficiently managed, are adequate to deal with all export and local meat requirements, and as a public utility are equipped and staffed to treat large numbers of stock at any time. The capital investment in these works must be in the region of £10,000,000, and the operating cost to give continuous service and maintenance is enormous. Therefore, in the interests of the State, these works should be protected and kept to full working capacity by keeping up the supply of livestock for treatment. If private works were established by large export organizations for their own requirements, a great proportion of slaughtering would be taken from the Government works, which would still need to be carried on at enormous cost for smaller turnover. The result would be higher treatment charges to local butchers and those exporters who continued to use the Government facilities, thereby increasing the cost of meat to the consumer and reducing the return to the producer.

Private works can make a convenience of Government works but not vice-versa, as they cannot kill for others; therefore, as private works are not restricted in numbers of export stock that they can treat, chaotic conditions would ensue, as it would be impossible to forecast the number of stock to be treated from markets at Gepps Cross and the country, and the estimation of labour requirements would be a serious problem, resulting in many wasted man-hours, as the present works would always need to be fully staffed to meet any emergency. Staff for private works would be recruited from the Government works by inducement of higher wages, and the services of experienced men would be lost as private employers are under no restrictions regarding higher rates of pay. Additional meat inspectors, State and Commonwealth, would be required, and some organization set up to police the proposed 10 per cent of reject meat, allowed into the metropolitan area, all adding to the cost of meat. With efficient management and a competent board of three experienced members, the present works would be adequate for the State, and the intrusion of private enterprise is not required and should not be permitted.

The Hon. Sir ARTHUR RYMILL: Mr. Chairman, on a point of order, under Standing Order No. 459 I ask that the letter be laid on the table.

The CHAIRMAN: Will the honourable member lay the letter on the table, according to the Standing Order?

The Hon. S. C. BEVAN: That is an opinion expressed by a grazier and a lamb producer.

The CHAIRMAN: Will the honourable member bring the letter to the table?

The Hon. S. C. BEVAN: Yes. I appreciate that the opinion in the letter is only one man's opinion, and that other people have given other opinions. I feel it would be detrimental to the present works if the Bill were passed as introduced and another abattoirs established. Two abattoirs in the metropolitan area could not function because of the shortage of skilled men. I repeat that it would be detrimental to the Metropolitan Abattoirs if another abattoirs were established, and that such a move would result in the closing of the present abattoirs. Members should seriously consider this matter. It would be better for the primary producers to have abattoirs not far from their properties where their stock could be taken for slaughtering.

The Hon. A. F. KNEEBONE: I support the amendment because the establishment of another abattoirs in the metropolitan area would result in limiting and possibly excluding the establishment of abattoirs outside the metropolitan area. Because the Labor Party believes in decentralization I must support the amendment. I think that the action taken to provide other abattoirs in the metropolitan area will react strongly against decentralization. I, too, was misquoted yesterday by the Hon. Mr. Giles when he said that I had said that the men at the abattoirs had taken direct action. I did not make any such statement. What I said was recorded correctly in *Hansard*, as follows:

> In the case under review, the men did not take extreme action (which they could have taken) which, unfortunately, some workers had taken in the past.

I said that they could have stopped completely, but they did not do that, but put a ban on overtime.

The Hon. G. O'H. Giles: I did not mean that, but that extreme action was just one step away.

The Hon. A. F. KNEEBONE: There are some employees at the abattoirs who get two weeks' sick leave and others three weeks.

The Hon. F. J. Potter: All paid for.

The Hon. A. F. KNEEBONE: Yes. The men who do the extremely hard work and are open to infection get only one week, whereas those in the office and other officials are not open to as much infection as those on the chains.

The Hon. F. J. Potter: The men get paid for sick leave whether they are sick or not.

The Hon. K. E. J. BARDOLPH: I support the amendment. It appears to me that the Government, in most indecent haste, is attempting to pass this measure without its being

given full consideration, and without considering the disabilities that could accrue to primary producers which it pretends to protect. My statement is confirmed by a paragraph in tonight's *News* to the effect that the Government has already set up a committee in anticipation of the measure being passed and that it will accept applications for licences. In all the years I have been in Parliament I have never heard of such a step being taken by any Government in connection with a public utility in which more than £1,000,000 has been invested by the Government and the public. It appears that the Government is in the last term of its political existence and that it is desirous, as is the Menzies Government—

The CHAIRMAN: I ask the honourable member to speak to the amendment.

The Hon. K. E. J. BARDOLPH: I am merely making an analogy.

The CHAIRMAN: It has nothing to do with this Bill.

The Hon. K. E. J. BARDOLPH: I will make an analogy between another Government—

The CHAIRMAN: That is not concerned with the Metropolitan Abattoirs.

The Hon. K. E. J. BARDOLPH: I want to connect it up by saying that another Government of the same political complexion as the State Government—

The CHAIRMAN: Order! The honourable member must refer to the words in the clause.

The Hon. K. E. J. BARDOLPH: With great respect, Mr. Chairman, I do not think that I am transgressing any of the Standing Orders by drawing an analogy with another Government in order to fortify an argument.

The CHAIRMAN: The honourable member knows perfectly well that the Government is not running the abattoirs.

The Hon. K. E. J. BARDOLPH: Perhaps I may say that another Government of similar political complexion had no qualms in disposing of public utilities, of which they were the custodians on behalf of the taxpayers. I instance the Commonwealth Oil Refinery and the crippling to a great extent of Trans-Australia Airlines. Only last week the T.A.A. organization—

The CHAIRMAN: I must point out that this is quite irrelevant. If the honourable member wants to speak to the clause and the amendment, he may do so.

The Hon. K. E. J. BARDOLPH: I am using my argument in connection with the amendment—

The CHAIRMAN: This is not a second reading speech.

The Hon. K. E. J. BARDOLPH: I understand that in Committee there is no curb on a member saying what he wants to say in relation to any paragraph in a Bill.

The CHAIRMAN: Unless it is relevant—

The Hon. K. E. J. BARDOLPH: I consider that my remarks are relevant.

The Hon. Sir Lyell McEwin: Are you arguing with the Chair?

The CHAIRMAN: I draw the honourable member's attention to the following Standing Order:

When the Chairman shall have directed a member who persists in continued irrelevance, prolixity, or tedious repetition to discontinue his speech, the member named shall not be again heard during the discussion of the question then before the Chair.

The Hon. K. E. J. BARDOLPH: On a point of order, Mr. Chairman, and with great respect, I do not consider—

The CHAIRMAN: Order! I have ruled in that regard. If the honourable member wants to speak on a point of order, he may do so.

The Hon. K. E. J. BARDOLPH: My point of order is that I do not consider that I have carried out a policy of redundancy or repetition.

The CHAIRMAN: That is quite irrelevant.

The Hon. K. E. J. BARDOLPH: The Hon. Mr. Shard has moved—

The CHAIRMAN: Order!

The Hon. K. E. J. BARDOLPH: Am I prohibited from continuing my support of the amendment?

The CHAIRMAN: Yes, because of continued irrelevance.

The Hon. K. E. J. BARDOLPH: I desire to move to disagree with your ruling.

The CHAIRMAN: Will the honourable member bring up his disagreement in writing?

The President resumed the Chair.

The PRESIDENT: I have to report that the Hon. Mr. Bardolph has objected to the ruling given by myself as Chairman of Committees. I rule that the ruling of the Chairman is correct.

The Hon. K. E. J. BARDOLPH: I now respectfully move:

That the President's ruling be disagreed with.

I put that in writing also. This is the first occasion that I have known the procedure adopted this afternoon to be adopted. I have been in this Chamber for many years. I have never clashed with the Chairman and I have never moved to disagree with the Chairman's or the President's ruling before.

The Hon. Sir Lyell McEwin: You have a short memory.

The Hon. K. E. J. BARDOLPH: I did not know there were so many parrots in this place.

The PRESIDENT: Order!

The Hon. K. E. J. BARDOLPH: I did not think that I would be debarred from extending an argument that I proposed placing before this Chamber for the purpose of providing members with the views held by my Party in connection with most important legislation affecting a section of the workers of this community. I submit that if Standing Orders are going to be rigidly enforced—and I do not agree that Standing Orders quoted concerned the statements I was making—then I for one will assist the Chairman to enforce them as rigidly as the literal meaning of those Standing Orders. I have nothing further to say other than that we claim to be representatives in a free institution; we claim to uphold the principles of democracy; and freedom of speech, freedom of association, and freedom of thought are the main ingredients of democracy. Once those freedoms are taken away then we are paving the way and opening up an avenue for a totalitarian State which I agree, with other members of this Chamber, is undesirable. I leave the issue with you, Sir, and with this Chamber. I know it is most difficult to upset a Chairman's or President's ruling, but I am still convinced that I have been debarred from freely expressing my views in the Parliament of South Australia on this issue.

The PRESIDENT: Is the motion seconded?

The Hon. A. J. SHARD: Yes.

The Hon. Sir LYELL McEWIN: Mr. President, I am sure that everyone regrets that any honourable member has found it necessary to move disagreement with your ruling. Sir, I have had no reason to—

The PRESIDENT: Order! It is the pleasure of the Council that it deal forthwith with the motion that the ruling of the President be disagreed with?

The Hon. Sir Lyell McEwin: Yes.

Motion negatived.

In Committee.

The Committee divided on the Hon. A. J. Shard's amendment:

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

Noes (10).—The Hons. M. B. Dawkins, G. O'H. Giles, G. J. Gilfillan, Sir Lyell McEwin (teller), F. J. Potter, W. W. Robinson, C. D. Rowe, Sir Arthur Rymill, C. R. Story, and R. R. Wilson.

Majority of 6 for the Noes.

Amendment thus negatived; clause passed.

Clause 4 and title passed.

Bill reported without amendment. Committee's report adopted.

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

That Standing Orders be so far suspended as to enable the Bill to pass through its remaining stages without delay.

The Hon. A. J. SHARD (Leader of the Opposition): No.

The Council divided on the motion:

Ayes (10).—The Hons. M. B. Dawkins, G. O'H. Giles, G. J. Gilfillan, Sir Lyell McEwin (teller), F. J. Potter, 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, A. F. Kneebone, and A. J. Shard (teller).

The PRESIDENT: The motion has been carried by an absolute majority.

The Hon. A. J. SHARD: On a point of order, Mr. President, I do not know the exact position, but I understand that such a motion has to be carried by a constitutional majority. Do 10 members comprise a constitutional majority in this Council? I believe that a constitutional majority is half of the number of members of the Council, plus one.

The PRESIDENT: The number of members of the Council is 19 at the present time, and there are sufficient members present to take a vote on this matter, and 10 is a constitutional majority in a Council of 19 members.

The Hon. K. E. J. BARDOLPH: Mr. President, I raise a point of order on your statement dealing with a constitutional majority. If you rule that there are 19 members in this Council, that is adopting the datum that you are taking the majority of the present members of the Council. A constitutional majority is a majority of the members who constitute this Council, which is 20 under the Constitution Act. I ask you, Sir, to review the hasty decision you have given, because it could go down in the annals of this Parliament as a decision given by the President, and it could be used for purposes other than that for which it is now used, to the detriment of carrying on constitutional government. I submit, with great respect, that the number you say is a constitutional majority is not one according to the Constitution of the State.

The PRESIDENT: I am advised that the constitutional majority of the Council, of which there are 20 members, would be 11, and I must therefore rule accordingly.

The Hon. Sir ARTHUR RYMILL: I point out, Mr. President, that you also are one of the members of the Council.

The PRESIDENT: As there was no equality of votes the vote of the President was not recorded; therefore, there was not an absolute majority for the motion.

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

That the third reading be made an Order of the Day for Tuesday, October 16.

Motion carried.

APPROPRIATION BILL (No. 2.)

Adjourned debate on second reading.

(Continued from October 10. Page 1368.)

The Hon. F. J. POTTER (Central No. 2): I support the second reading of this Bill, which covers the Estimates of Expenditure for the year ending June 30, 1963. I will not speak at length because, as has been pointed out recently, this Chamber has no power to alter a money Bill, but several matters arise on which I want to make some comments. It is obvious to all who read the second reading explanation of the Bill that there were two great imponderables in drawing up the Budget. First, there was the question of the cost of pumping River Murray water to the metropolitan area, and the Hon. Mr. Shard mentioned this matter. The second was the difficulty the Government had in estimating the cost of salaries and wages for the year. At present claims are before the Arbitration Commission for increased wages for railway workers. In the last financial year there was a large increase in the salaries paid to teachers, and I forecast that before long, because of matters I shall refer to later, additional increases will be necessary. In addition, most of the work to be done by the Public Service Arbitrator, who was appointed last session, has not reached him, and in the judgments he has handed down in the three or four limited issues placed before him he has granted increases to the applicants. He is now dealing with extensive claims for salary increases, and it seems that if he applies the same method of approach to them there will be a substantial salary increase for public servants.

In an earlier Address in Reply debate I said that it was fantastic that the Government had to cope with decisions made by industrial tribunals in other States, over which it had no control. If our Public Service Arbitrator grants increases it can be said that, under the Act, he was appointed to consider claims, and we must accept his decisions, but our Government must abide by awards made by industrial tribunals of the Commonwealth and other States over which it has no control. One wonders how long this state of affairs must go on.

In the estimates for the Education Department there is a grant of £20,000 to the Adelaide University Council. The Treasurer said it is made available to help students who are at a financial disadvantage in the payment of fees, and to deal with hardship cases where no reimbursement through scholarships is made. I commend the Government for making this grant. Much publicity has been given to the increases in the fees of students attending the university. Press reports have said that the increases are up to 60 per cent, but that is far from the true position. When we compare the fees for 1963 with the present fees we find that the general increase is about 33⅓ per cent, not 60 per cent. Our university has imposed some of the lowest fees of all universities in Australia. The imposition of this 33⅓ per cent increase will only bring the fees paid in South Australia somewhere near the level of those paid in other States. It is unfortunate that the fees the university exacts from its students have some appreciable effect upon the grant it receives from the Commonwealth Universities Commission. It is important that we should be assured that we receive the best possible treatment from the commission and the Commonwealth Government in reimbursement for a great proportion of the expenditure incurred by the university.

From time to time we have heard statements from Opposition members in this Chamber (and they make such statements only when they feel that they cannot justifiably criticize the Government) accusing it of being of the same political complexion as the Menzies Government. Some of the things that the New South Wales Labor Government has been responsible for have been among the major reasons why we have had severe inflation in this country for the past few years. The latest effort of that Government was associated with an award made by a Conciliation Commissioner appointed by the New South Wales Industrial Commission, set up by a Labor Government.

The Hon. A. F. Kneebone: Are you telling us that the Commonwealth Arbitration Commission is an offshoot of the Commonwealth Government also?

The Hon. F. J. POTTER: This commission investigated the salaries of professors, lecturers and other teaching personnel at the

Sydney University. The decision, given on September 25, increased the salaries of the professors by £900 a year to £5,150. What a fantastic position we are getting into when we have, in a State controlled by a Labor Government, a Conciliation Commissioner investigating the terms and conditions of employment of university professors and increasing their salaries by about £1,000 more than the average salary of professors in other States.

The Hon. A. J. Shard: I thought that your Party believed in tribunals doing such things?

The Hon. F. J. POTTER: It is fantastic when we get that kind of thing in autonomous bodies like universities—having a commissioner assessing the work of individual professors and granting increases of that proportion. The next thing will be that the Commonwealth Government will have to take a lead from the example in New South Wales. I already notice that the Commonwealth Public Service Arbitrator has apparently followed the lead given by this particular judgment, and only last week announced a large-scale increase for members of the legal profession employed by the Commonwealth Government. Next, other State university staffs who miss out will want the high salaries paid in New South Wales. Even if they are justified, how is it expected that the increased costs will be met unless fees are raised, or, alternatively, further increases in the grants are made by the Commonwealth or State Governments? It means that taxpayers must pay for these increases. This is a pattern of what we have seen in New South Wales all along the line. We know that by precipitate action forced on the Commonwealth Arbitration Court by the New South Wales Government the 40-hour week was granted, and that Government still persists in favouring quarterly adjustments to the basic wage. New South Wales also introduced the principle of equal pay for equal work, which helps only single women at the expense of the family man. What the New South Wales Labor Government has done is what a Labor Government in this State would do if it got into power. As another honourable member said (I think it was Sir Arthur Rymill), it would inevitably lead to higher taxation. We often hear the expression by members opposite of "political complexion", in relation to the South Australian and Commonwealth Governments. If we compare the record of the South Australian Government with that of the New South Wales Government, I am sure that the record of our Government and also of the Commonwealth Government would compare more than favourably with that of the New South Wales Administration.

The increase in the fees of the Adelaide University is not as high as has been represented. This increase is necessary because of greatly increased costs at the university and if we have the same kind of increase in salaries as that handed out in New South Wales in all the other capital cities, it will not be long before we must have further increases in fees, both at the university and the Institute of Technology; and it would automatically follow that teachers would seek further increases. If these increases are to be continually granted we have to expect continual inflation and increases in costs to the ordinary taxpayers of this State. That is something from which we cannot run away, and we can in no way change the situation.

Some time ago I made reference to a matter which since then, as I predicted, has grown in importance, and that is the increasing incidence of bankruptcies in this State as compared with the position in other States. The latest *Quarterly Bulletin of Statistics* issued by the Commonwealth Statistician states that there were 150 bankrupts in this State for the year 1956; for 1957, 244; for 1958, 278; for 1959 and 1960 the figure was 366; while in 1961 the number rose to 560. In the six months ended June 30, 1962, the total was 292, an annual rate of 584. In six years the number of bankruptcies in this State has increased from 150 to about 600 a year, which is something in the order of a 300 per cent increase. The most significant point is that if one analyses the number of bankruptcies attributable to persons or debtors filing their own petition as compared with people who have been adjudicated bankrupt by creditors lodging petitions, one finds that 90 per cent of the people adjudicated bankrupt are bankrupt on their own petition. That increase is far greater in this State than in any other State of the Commonwealth. Why is that so?

As 90 per cent were adjudicated bankrupt on their own petition, one must come to the conclusion that there is something special about the situation in this State. There is something special because, under a provision in the South Australian Mercantile Law Act, it is forbidden for any court to make any order for payment of a debt against a man's wages or salary,

This provision does not exist, as far as I know, in any other State. There is provision in the Bankruptcy Act, which is a Commonwealth Act, for the court to order a bankrupt to make contributions to the reduction of his debts in bankruptcy from his wages or salary, except in any State where the law forbids that to be done. This State is the only one which forbids a garnishee order to be made on a man's salary or wages.

In South Australia a person by filing a petition in bankruptcy can completely shed himself of a large accumulated debt or debts; a person can file his petition in bankruptcy and in ninety-nine cases out of a hundred can completely forget about his debts. What are the disabilities of becoming bankrupt? As far as I can see, to the ordinary man in the street there is none. The first disability is that under the Bankruptcy Act a person is not supposed to get credit for any amount exceeding £20 without first notifying the person from whom he is receiving the credit that he is an undischarged bankrupt. That is a terrific disability! It is a disability that is honoured more in the breach than in the observance because it is almost impossible to police it. The second disability is that while he is an undischarged bankrupt a person cannot become a director of a company. What a terrific disability to the man in the street! Apart from those two matters there is practically nothing in going bankrupt; in fact, these days this situation does not rate a line in the daily press. For some reason or other, due possibly to lack of space, the daily press does not mention people who are before the court on their own petition.

Those are the only disabilities in going bankrupt and we have the fantastic situation—and I use the word "fantastic" deliberately—that in this State so long as a man is in debt legal proceedings can be taken against him; he can be brought before a local court on an unsatisfied judgment summons; the court may order him to pay what the court thinks is a fair and just amount from his wages or salary towards liquidating the debt (and as all honourable members know in an unsatisfied judgment summons court a person can be ordered to pay anything from 2s. 6d. to £2 or £3 a week); but as soon as that person files a petition in bankruptcy it is impossible to get a penny out of him. He can continue as an undischarged bankrupt suffering from the two disabilities I have already mentioned, and nobody can get a penny from him. That is because we have what I consider to be a completely outdated provision in the Mercantile Law Act which prevents the Bankruptcy Court ordering such a bankrupt to contribute even £1 a week towards the reduction of his debts.

The Hon. K. E. J. Bardolph: Has the legal profession considered this subject or discussed it fully?

The Hon. F. J. POTTER: This matter has been mentioned from time to time in legal journals, but I do not know whether it has been specifically brought before the attention of the Government. The position is now becoming almost a scandal and it is time that serious consideration was given to amending our Mercantile Law Act, at least to make it possible for the Bankruptcy Court, if nobody else, to see that people who are filing petitions in bankruptcy must contribute such amounts as the court may think fit towards the reduction of their debts. We all know that the Bankruptcy Court will normally give a discharge to the bankrupt if he pays 10s. in the pound, but many of these debtors who incur debts of anything up to £1,000 file their petition and walk away not paying a penny or making a voluntary offer of a shilling off their debts, and they just carry on in that way. I know of my own knowledge that the Bankruptcy Court in South Australia in two or three instances that I have in mind does not even know where the bankrupt is at present located. He has filed his petition and left South Australia and, although this is a Commonwealth Act, the court does not know where he is.

The Hon. K. E. J. Bardolph: Why doesn't the Law Society of South Australia make representations as an official body?

The Hon. F. J. POTTER: I hope that the Law Society will make representations as an official body, if it has not already done so. The position in South Australia is so bad that I think every responsible business man or trade protection agency would agree with me that it is time we gave serious consideration to amending the Act. I do not want it to be thought that I wish to make it possible or legal in South Australia for garnisheeing wages in the normal sense, because we have a good system that allows our courts to use their discretion and common sense to see that while a man is just an ordinary debtor he pays a normal and reasonable amount in liquidation of his debts. It is ridiculous that we should have existing in South Australia this way of escape for debtors. That is one of the basic reasons why we have this enormous increase of 300 per cent in bankruptcies whilst

in other States the increase is nothing like that. I believe I have made the two points that I think are important. I congratulate the Government on the very careful Budget it has drawn, and I am sure that even its estimate of electricity costs for pumping water will now prove to be somewhere near the mark. I support the second reading.

The Hon. M. B. DAWKINS secured the adjournment of the debate.

BANKS STATUTORY OBLIGATIONS AMENDMENT BILL.

Second reading.

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

That this Bill be now read a second time.

The object of this Bill is to amend and extend the authority and obligations of banks including savings banks in various respects and I deal with the clauses of the Bill (other than clauses 1 and 2, covering short title and interpretation) in order. Clause 3 is designed to enable the Savings Bank of South Australia to open and operate cheque accounts for ordinary personal depositors. Section 42 of the principal Act now provides only for certain deposit accounts and the bank has no general power to open cheque accounts. Clause 3 will add a new subsection to section 42 which will empower the bank to open and keep accounts to be drawn upon by cheque. The new subsection will provide that such cheques will be subject to stamp duty except in respect of trust estates, insolvent estates or companies in liquidation—cheques drawn by depositors under other provisions of the principal Act (local governing bodies, trade unions and non-profit organizations) are already exempted from stamp duty by the general provisions of the Stamp Duties Act.

The trustees and administration of the Savings Bank of South Australia have had under examination, for a considerable period, a proposal to widen the extent of its cheque-operated accounts which are at present restricted to local authorities and a range of non-profit societies and trusts. The Savings Bank trustees have been aware of an increasing demand on the part of their normal depositors for such extended facilities. The matter was brought up for more urgent review when private savings banks commenced operation in this State and were able to offer to their depositors cheque facilities within the same premises, and at the same time their parent banks were able to offer their ordinary trading bank customers savings bank facilities within those same premises. In recent years, too, the Commonwealth Savings Bank has been able to offer its customers cheque account facilities within the same premises, for it has been the practice latterly for the Commonwealth Banking Corporation to concentrate its expansion activities to the opening of savings bank branches and to provide therein an agency of the Commonwealth Trading Bank which would provide cheque account facilities.

With the increasing competition being given in this way by both private savings banks and the Commonwealth Savings Bank, and the evidence that the ordinary public find cheque facilities increasingly desirable and convenient, the trustees of the Savings Bank of South Australia have sought the authority to give this added service, and to recover a competitive disadvantage which has developed. Before deciding to submit this legislation the Government has, separately from the Savings Bank administration, had a close examination made of the practicability and desirability of the proposals. Inquiries were made of the experience elsewhere and in particular of the Victorian Savings Bank, which has operated such a scheme since March, 1958. That scheme has proved highly popular and has extended now to over 80,000 personal cheque accounts apart from the cheque accounts of non-profit societies of the kind already operated in the Savings Bank of South Australia.

It has appeared from such material as could be obtained that the operation of personal cheque accounts in the Savings Bank of Victoria was probably, if the project were considered in isolation, somewhat a losing proposition. How far this may have been offset by the profitability of retained or added deposits made by those same customers in the ordinary savings bank section is not determinable. The Victorian authorities believe the indirect gains and protection against competitive losses have been considerable. In addition they point to a clearly desired service to the public.

The Government was particularly concerned, however, that the Savings Bank of South Australia should not do anything which would, by adding to its costs, in any way endanger what is clearly its greatest competitive advantage. This is its ability to pay a rate of interest to ordinary depositors of one-quarter per cent higher than other savings banks find possible. Accordingly the administration of the Savings Bank of South Australia has, at the Government's request, had a number of conferences with the Under Treasurer and made

detailed surveys of the best and most economical methods of implementing the bank's proposals. The administration has, as a result, made proposals to the trustees which have been endorsed by the trustees and which they believe will enable the scheme to operate profitably apart entirely from any indirect gains in the increase and retention of ordinary savings bank deposits in the face of competition. In these circumstances the Government considers the proposed legislation to be most desirable and in the public interest.

In respect of the personal cheque accounts to be authorized by these amendments, no privilege is proposed which is not equally available to the trading banks. It is provided that cheques issued under the extended powers shall be subject to ordinary stamp duty, and it is anticipated, on Victorian experience, that the duty received may after the initial establishment period approach £10,000 a year. Further, the bank proposes not to allow interest on balances held in such accounts, and to make service charges either in accordance with the same pattern as the trading banks have hitherto applied, or some appropriate variant therefrom. It is not proposed to alter the conditions under which cheque accounts are operated by the Savings Bank of South Australia for local authorities and certain non-profit organizations, and of course persons who may operate the new personal cheque accounts will be permitted, and indeed encouraged to avail themselves of the opportunity to make interest-bearing savings bank deposits.

Clause 4 amends section 59 (1) of the Savings Bank of South Australia Act to make it consistent with the new provisions concerning the release of deposits by savings banks in the case of deceased estates. At present the Savings Bank of South Australia may, after reasonable inquiry and on the expiration of one month, release without the approval of the Commissioner of Succession Duties a deposit made by a depositor who has died, provided that the deposit does not exceed £600 and such a release may be made to any person believed to be entitled to it. The amendment will restrict such releases to the cases of a widow, husband or child of the deceased depositor. Persons other than those are ordinarily liable for succession duties on such a sum and it is considered inappropriate that a release of a deceased depositor's moneys should be made without the Commissioner's approval, other than to a widow, husband or child.

Clause 5 amends section 60a of the Savings Bank Act to permit the bank to accept special deposits as deemed proper from time to time by the trustees at a variety of rates and for a variety of terms. The existing provision has been shown by experience to be unduly restrictive.

Clause 4 amends section 57 (1) of the Succession Duties Act in two ways. The amendment made by subclause (*a*) is designed to provide against the evasion of duty. A person can open an account at the Savings Bank of South Australia and simply make a declaration that the moneys deposited therein are held in trust for the benefit of some other person. It is conceived that this is done on occasion with a view to avoiding duty and that there is no trust in fact. The amendment will not interfere with legitimate trusts made by declaration in this way, but will ensure that no amounts are released on the death of a person holding as trustee except after reference to the Commissioner of Succession Duties, who can then satisfy himself as to whether the deposit is in truth a trust deposit.

Subclause (*b*) of clause 6 restates the present provisions of section 63a (3) of the Succession Duties Act so as to bring all private savings banks within its provisions, as well as the two Government savings banks, so far as concerns the release of deposits of deceased persons without the approval or certificate of the Commissioner of Succession Duties. It also makes clear the position of joint depositsors, one of whom dies, in this respect.

Clause 7 is designed to remove an administrative anomaly in section 48 (*a*) of the Stamp Duties Act, 1923-1960. With its present construction the Treasurer may issue to any bank a licence to issue to its customers cheque forms having the words "Stamp Duty Paid" printed thereon. The Treasurer is not authorized to licence a bank to issue its own cheques for its own purposes similarly printed. This restriction was never intended, and is removed simply by the deletion of the three words.

Clause 8 extends to private savings banks the authority for duty-free cheques on certain non-profit accounts. For many years cheques drawn upon the Savings Bank of South Australia by local authorities and a range of non-profit organizations have been free of stamp duty. The Government has, quite understandably, had representations made it by the private enterprise trading banks and savings banks that they should be placed on a similar basis in this particular connection. The representations were renewed with some special

emphasis when it was rumoured that the Savings Bank of South Australia was seeking authority to operate ordinary personal cheque accounts so as to overcome a competitive disadvantage with the private enterprise banks. In most other States the exemption from stamp duty for such non-profit and charitable accounts is not confined to governmental savings banks. Apart from the aspect of equalizing competition, there is merit in the claim that a local authority, a union, or a charitable body should be free from stamp duty on its cheques, irrespective of whether its bank is a Government savings bank or not. As all trading banks now have their savings bank counterpart the situation is adequately met if the stamp duty is removed from cheques upon such accounts in savings banks generally, and not extended to trading banks. The present Commonwealth regulations covering private savings banks restrict their power to operate cheque accounts to such as are at present free from stamp duty at the Savings Bank of South Australia, and accordingly those regulations are adopted to define the extent of freedom from stamp duty. However, the freedom will not extend more widely should the authority given by Commonwealth regulations be extended

In connection with the foregoing amendments, which are designed mainly to place private savings banks upon a reasonably equal footing with the State Savings Bank, I would mention that the Government does not object to the entry of private banks into the savings bank business. Indeed it could not, in the face of Commonwealth legislation, prevent them from entering into this field. If competition can bring about greater efficiency, improved service and an increase in savings, the State and the community will gain. The new private savings banks have already given evidence of their desire to co-operate with the Government in making fair and reasonable contributions to semi-governmental and local government loans in the State and in financing the purchase of private dwellings.

The Hon. A. J. SHARD secured the adjournment of the debate.

COMPANIES BILL.

Second reading.

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

That this Bill be now read a second time.

It is designed to consolidate the State law relating to companies and to make such amendments to that law as would best serve the commercial needs and the interests of the public of this State. There has for many years also been a growing demand in responsible commercial circles throughout Australia for uniformity in company law because, with Australia's growth as an industrial nation and the spread of business interests from one State or Territory of the Commonwealth to another, the differences in the legislation of each State and Territory had tended to cause confusion and delay in the country's commercial activities and development. The need for all States and Territories to bring their company legislation up to date in the light of developments both in Australia and overseas afforded the Governments of the Commonwealth and the States an excellent opportunity to pool their research and experience in an endeavour to improve, and achieve uniformity in, company law throughout Australia.

The Attorneys-General of the Commonwealth and the States accordingly formed themselves into a standing committee with the object not only of eliminating as far as possible the differences in the existing legislation, but also of facilitating the operation of legitimate business, strengthening the provisions aimed at preventing fraudulent and undesirable practices and those designed to safeguard the investing public, and improving and simplifying the legislation in the light of conditions and developments in Australia and overseas. After close collaboration by the Ministers and their advisers extending over a period of two and a half years the Ministers finally approved a draft uniform Companies Bill, which they have recommended to their respective Governments for adoption, subject to necessary variations to suit the local needs of each State and Territory.

The uniform Bill was prepared after a close examination of the existing legislation and practices in each State and Territory and after considerable research into Australian and overseas conditions and experience. I should also mention at this point that this State was represented at all the conferences on company law and made an important contribution in shaping the policy and form of the proposed uniform legislation. The Ministers also obtained valuable assistance from various representations made from time to time by persons and organizations interested in the project. The Ministers and their advisers have also had the advantage of considering the Model Corporations Act produced by the American Bar Association after many years of research, the report of the Cohen Committee on Company Law

Amendment in England, the report of the Company Law Reform Committee in Eire published in 1958, the report of the Departmental Committee on Company Law Amendment in Northern Ireland published in 1958, and the report of the Royal Commission appointed to consider company law in Ghana. Individual members of the Ministerial standing committee and of the associated committee of officers have also had the advantage of discussing many of the problems associated with company law in Australia with members of the Federal Securities and Exchange Commission of the U.S.A., the Board of Trade and individual members of the Jenkins Committee on Company Law Amendment whose report was published in June, 1962. It is significant that many provisions of the uniform Bill give effect, in principle, to some of the recommendations contained in the recent report of the Jenkins Committee.

In November, 1960, the Ministers had reached a stage in their discussions when a draft Bill was ready for consideration and they decided to release the text of the proposed legislation to give interested persons and organizations throughout Australia an opportunity of examining and criticizing the draft at that stage. As the Attorney-General of New South Wales had hoped to introduce the legislation during the then current Parliamentary session in that State, he agreed to have the draft Bill printed and made available to the interested public at a nominal charge. A limited number of copies was made available for issue to certain representative Commonwealth and State bodies with a view to stimulating their interest in, and criticism of, the proposed legislation. At the same time the views and comments of all interested persons and bodies were invited informally and through announcements in the press, and applicants in this State for copies of the draft Bill were either issued with copies from the supply received for distribution by this State or referred to the Government Printing Office in Sydney, where extra stocks of the Bill were held.

Well over 1,000 comments and representations were received by the Ministerial standing committee and by individual Attorneys-General. These comments and representations were carefully considered by the standing committee and most of them were adopted in a revised draft, which was settled at the end of August, 1961. It might here be mentioned that in certain cases provisions favoured by some persons and organizations were not favoured by others. The Ministers, in making their decisions, had foremost in their minds the best interests of the public as well as the business communities throughout Australia. Inevitably, therefore, everyone could not be satisfied.

I have expanded at some length on the background of the uniform Companies Bill so that members might appreciate that the Bill was neither hastily nor arbitrarily framed, and that every interested person and organization not only had every opportunity but also was encouraged to submit any comments or representations on the Bill for consideration by the Ministers. At this point I would like to mention that although the standing committee of Attorneys-General has recommended that the uniform Bill be passed in all States and Territories of the Commonwealth substantially in the form in which it had been settled by them, it had been clearly understood that no Government or Parliament of a State or Territory was obliged to adopt the legislation unless it was acceptable. Indeed, variations to the uniform Bill to suit local needs have been made by the Governments or Parliaments of New South Wales, Victoria and Queensland and the Australian Capital Territory where the legislation is already in force and my Government also has, after a closer examination of the uniform Bill, found that, so far as the needs of this State are concerned, it is deficient in certain transitional and procedural provisions as well as other provisions which, without affecting the principles laid down in the uniform Bill, should apply only to certain classes of locally owned and operated companies. Representations have also been made to the Government by local professional and commercial organizations which have drawn attention to certain improvements some of which the Government has agreed to adopt.

Those deficiencies and improvements have accordingly received attention in the Bill. In its preparation, however, care has been taken to retain, as far as is consistent with the policy of my Government, the language of the uniform Bill and the numbering of clauses 1 to 380 which constitute the main body of the uniform law. This will not only ensure uniformity in regard to the main body of company law and practice throughout Australia, but also facilitate quick references to the corresponding provisions of the relevant enactments of each State and Territory by lawyers, text book writers and by officers and advisers of companies having interstate operations or dealings. Considerable advantages could also

accrue from judicial interpretation in any State or Territory of particular provisions of the legislation.

The second schedule contains the fees to be paid under the Act. The upper limit on existing capital fees has been removed but the rate of fee decreases as the nominal capital increases. The increase in the capital fees will not represent a proportionate increase in revenue. The fees are not a recurrent expenditure and are payable on nominal capital. In the past many companies (because of the existing upper limit on fees) have incorporated with highly exaggerated nominal capital far in excess of their needs. The removal of the upper limit would result in companies incorporating with more realistic nominal capital in future. In this connection I would also like to mention that the Jenkins Committee in their recent report has recommended that companies should pay a moderately large annual registration fee (to cover registration of documents) coupled with a substantial initial registration fee of an amount designed "to check the spate of irresponsible incorporations". This fee would be in addition to the stamp duty which is payable in England at the rate of 10s. per £100 of nominal capital. The maximum rate of fee payable under the Bill is £1 per £1,000 of nominal capital over £5,000, and the rate decreases to 5s. per £1,000 after the first £500,000 of nominal capital. The fee for registration of a foreign company, however, is half that for a locally incorporated company but where a foreign company registers in this State solely for the purpose of opening a share register or share transfer office, the maximum fee payable therefor is £500.

The Ninth Schedule requires more comprehensive details to be disclosed in company accounts than at present, and the Tenth Schedule prescribes the requirements with which take-over offers must comply as well as the requirements relating to the information which must be given by both the corporation making and the corporation receiving a take-over offer.

I think it can fairly be said that the Bill is a most comprehensive measure which provides a large degree of protection to the public with a minimum of interference with legitimate business. It cannot possibly satisfy all sections of the public, but I am sure that members will agree that the measure, if passed in this State, will go a long way to achieving the objects which the standing committee of Attorneys-General had in mind. All provisions in the Bill which are new in relation to existing legislation have been included only because there have been strong demands or pressing reasons for their inclusion and all new provisions which are designed to strengthen the law aimed at preventing or discouraging fraudulent and undesirable practices or to protect shareholders or the public follow the corresponding provisions contained in the laws of other places where those provisions have been in force and have proved effective.

I have already mentioned that measures substantially the same in form and effect as this Bill are already in force in New South Wales, Victoria, Queensland and the Australian Capital Territory. I am informed that the legislation is likely to be in force in Western Australia before the end of this year. The legislation is at present before the Parliament of Tasmania. No legislation could have received wider publicity or discussion.

As I have already mentioned, the Parliament of this State is not obliged to pass the legislation unless satisfied that it is acceptable. However, the fact that the legislation is already in force in the three eastern States and Canberra and is likely to be in force shortly in Western Australia and Tasmania and the fact that the measure has been widely acclaimed by persons and organizations closely connected with the various fields of company law throughout Australia as one well suited to the needs of the country are, I think, sufficiently pressing reasons for its adoption in this State without delay. A departure from uniformity by this State would deny the numerous South Australian companies which now are successfully operating in, or which hope to extend their operations to, other States and Territories the benefits of reciprocal rights contemplated by the uniform legislation. I should like to mention that the Governments of the Commonwealth and States have agreed that the standing committee of Attorneys-General should keep this legislation under constant review with a view to removing anomalies, improving the legislation and maintaining uniformity as far as practicable.

The detailed explanations of the clauses run into about 20 pages and it would take me about an hour and a half to read them. These detailed explanations have been made available to all members. They indicate the reference in the old Act to which the new clauses refer. This will give members a full explanation of

the position and, because of the special circumstances, I ask leave to have the second portion of my explanatory remarks relating to clauses placed on record in *Hansard* without my having to read them.

The PRESIDENT: The Minister has asked leave to incorporate in *Hansard* the explanations of the clauses that make the more important changes in our law without first reading such explanations, which of necessity are rather lengthy. In asking members whether it is their wish that the explanations be included in *Hansard*, I desire to point out that a special procedure has been followed, in that there has been placed on members' files a detailed explanation of each clause, which explanation shows not only the new provisions of the law but also the exact way in which the sections of the existing Act have been amended. In asking honourable members whether leave is granted, I should like it to be understood that this unusual course should not be taken as a precedent.

Leave granted.

Explanation of Clauses.

Clause 4 deals with the repeals and the usual and necessary savings and transitional provisions designed to preserve continuity in relation to existing matters. It also postpones the immediate effect of clause 9 (1) (*b*) and (*c*) in relation to the appointment and acts of auditors.

Clause 5 is the general definition section. It is important to note the distinction between "company" and "corporation". "Company" covers the range of all existing and future locally incorporated companies, while "corporation" is a wider expression which includes any body corporate formed or incorporated in the State or outside the State but does not include public authorities of Crown instrumentalities, bodies incorporated by special Acts or corporations sole. In short, a corporation could be either a locally incorporated company or a foreign company. The definition of "exempt proprietary company" is important, particularly to companies which may want to claim exemption from publishing accounts both in this State and any other State or Territory of the Commonwealth. Reciprocity of exemption between States would apply by virtue of clause 348 (5). Shortly stated, an exempt proprietary company is a proprietary company wholly owned directly, or through a chain of not more than four proprietary companies, by individuals. In future, if a share in a proprietary company is owned by a public company, that proprietary company would have to file its accounts with the Registrar. The policy governing this requirement is designed to ensure that public companies make full disclosure of their financial position and do not form or acquire controlling interests in proprietary companies for the purpose of obtaining exemption from filing accounts. Other definitions of importance are "officer", "private company" (which defines the private company as it now exists in this State) and "promoter".

Clause 9 goes further than its corresponding provision in the existing Act in that it prescribes qualifications for registration as a company auditor and also enables a firm to act as auditors for a company if all its members are registered auditors.

Clause 10 provides for the appointment of qualified persons as official liquidators for the purpose of conducting winding up proceedings and assisting the court in such proceedings.

Clause 14 and subsequent clauses provide for the incorporation of companies. No provision is made for incorporation in future of private companies as they exist in South Australia as the small family or business concern is adequately catered for in the proprietary company, and the existing South Australian private company is really an anomaly having no counterpart in any other part of the British Commonwealth.

Clause 15 widens the definition of proprietary company in the existing Act by disregarding members who are or have been employees of a subsidiary of the company in determining whether the company satisfies the limitation placed on the number of its members. It also does not prohibit a proprietary company from accepting money on deposit from non-members.

Clause 17 is based on the corresponding English provisions, adopting a recommendation of the Cohen Committee. It is designed to stop a subsidiary from becoming a member of its holding company.

Clause 20 abolishes the doctrine of *ultra vires* so far as it applies to transactions between a company and third parties not authorized by the company's memorandum. It is based on a similar provision in the American Model Corporations Act. However, the clause does not affect the rights of members or debenture holders against the company.

Clause 22 departs from the provisions relating to names of companies contained in sections 27 and 27a of the existing Act. It prohibits

the registration of a company by a name which, in the opinion of the Registrar, is undesirable, subject to an overriding control by the Minister. It is proposed that in future Registrars throughout Australia will be guided by a list of undesirable names agreed upon by the Commonwealth and State Attorneys-General and published in the *Gazette*. The clause also permits abbreviations of words in company names.

Clause 26 provides for conversion from a public or private company to proprietary company and from a proprietary or private company to a public company. In order to encourage private companies to convert to either proprietary or public companies the clause provides that no fee shall be payable in respect of such conversion if it takes place before the July 1, 1965.

Clause 27 (7) is designed to strengthen the law in relation to the raising of funds from the public by proprietary and private companies. Such companies are prohibited from inviting the public for share and debenture capital, but there have been cases where such companies have got round the prohibition by obtaining funds from the public by the use of solicitors, brokers and agents. The provision prohibits such transactions if arranged through a solicitor, broker or agent who by advertisement has invited the public to make use of his services.

Clause 38 is designed to protect the investing public by requiring a corporation to issue a debenture in respect of a deposit or loan of money made in consequence of an invitation to the public and, where the deposit or loan is not to be secured by a charge over the corporations assets, the debenture must be described as an unsecured note or unsecured deposit note.

Clause 40 applies the prospectus requirements to any advertisement offering or calling attention to an offer of shares or debentures if the advertisement contains information other than that prescribed by the clause. It goes further than section 51 of the existing Act and corresponding provisions of other State Acts which have proved ineffective for the purpose of stopping misleading and irresponsible advertisements through which the public have been deceived or misled into investing in shares and in debenture issues, the true nature of which had not been disclosed in the advertisements. Similar provisions have been in force in South Africa, New South Wales, Victoria, Queensland and Tasmania. However, in this Bill protection has been given to newspaper proprietors and other publishers if they obtain from a company a certificate accepting full responsibility for the advertisement. The clause also provides a defendant with a defence if he proves that he did not know and that by the exercise of reasonable diligence he could not become aware of the nature of the advertisement. A further safeguard is provided in subclause (9) which prohibits the taking of proceedings for the offence without the Minister's consent.

Clause 41 is designed to prevent companies from retaining over-subscriptions to debenture issues unless they expressly reserve the right to retain them and the amount of over-subscriptions is limited. It also regulates statements by companies as to the asset-backing for any debenture issue.

Clause 44 provides that where a prospectus states or implies that application is to be made for Stock Exchange listing of shares or debentures offered thereby, any allotment of shares or debentures pursuant to the prospectus would be void if permission for such listing is not applied for and granted within the specified time. The provision is designed to stop companies and promoters using a reference to Stock Exchange listing to induce the public to subscribe for shares or debentures unless they take steps to ensure that the listing will be permitted by the exchange. As a Stock Exchange does not normally grant permission to list shares or debentures unless its listing requirements are complied with, subclause (8) provides that where permission has been granted subject to compliance with the requirements of the exchange, permission will be deemed to have been granted if the directors have given a written undertaking to comply with those requirements; and in order to protect the interests of the persons who have subscribed for the shares or debentures and to ensure compliance with the undertaking it is further provided that if the undertaking is not complied with (except in relation to a requirement of the Stock Exchange made after the undertaking was given), each director who is in default shall be guilty of an offence against the Act. Thus protection is afforded a director where, for instance, an undertaking has been given to comply with future requirements of an exchange.

Clause 47, which follows the corresponding English provision, prescribes a penalty for a person who authorizes or causes the issue of a prospectus containing any untrue statement or

wilful non-disclosure. The clause, however, protects a defendant who proves that the statement or non-disclosure was immaterial or that he had reasonable ground to believe that the statement was true or the non-disclosure immaterial. A similar provision in relation to a statement in lieu of prospectus is contained in clause 51 (3).

Clause 63 will allow the court to validate issues or allotments of shares which are invalid if the court thinks it just and equitable.

Clause 66 prohibits the allotment of preference shares or the conversion of issued shares to preference shares unless the memorandum sets out the rights of holders of such shares.

Clause 68 provides that, except where debenture holders have an option to take up shares by way of redemption of the debenture, a public company must not grant options over unissued shares with a currency of more than five years.

Clause 70 requires a company which issues debentures to keep a register of debenture holders. The corresponding provisions of the existing Act (section 94 and the Fifth Schedule) implied, but did not require, that a register of debenture holders should be kept. The effect of the clause is virtually to make mandatory what is only implied in the existing law.

Clause 74 requires any corporation offering debentures to the public to make provision in the debentures or in a trust deed for the appointment of a trustee, but the trustee must be a corporation whose accounts are available to the public or a person who is a registered liquidator. The clause also provides that, without leave of the court, a person cannot be appointed, hold office or act as a trustee for the holders of debentures of a corporation if that person is a director or an auditor of the corporation or falls within any of the other categories which disqualify the person from appointment. In order also to ensure, as far as possible, some degree of continuity of the trusteeship, provision is made for the appointment of a successor to a trustee who ceases to hold office.

Clause 75 is designed to prevent a trustee for debenture holders from indemnifying himself against liability for breach of trust. It follows the corresponding provision of the English Act.

Clause 93 gives a company the right, if authorized by its articles, to have a duplicate common seal.

Clause 98 gives a statutory authority to the practice of certain companies of marking transfers with a certification to indicate that scrip for the quantity of shares or debentures shown in any transfer has been produced to the company.

Clause 114 will require public companies to have three directors and proprietary and private companies to have at least one director. In the case of a public company, at least two directors must be natural persons ordinarily residing in the Commonwealth and in the case of proprietary and private companies, at least one director must be such a person.

Clause 120 adopts a corresponding provision of the English Act and provides for the removal of a director of a public company by an ordinary resolution of which special notice has been given. The requirements for special notice are found in clause 145.

Clause 124 follows the corresponding provision of the Victorian legislation requiring a director at all times to act honestly and use reasonable diligence in the discharge of his duties. It also prohibits any officer of a company (which term includes a director) from making use of any information acquired by him by virtue of his position to gain an improper advantage for himself or to cause detriment to the company. A defaulting officer is, in addition to a penalty, made liable to the company for any profit made by him or damage suffered by the company as a result of the default.

Clause 125 follows the corresponding provision of the English Act which prohibits loans by a company to a director. It provides a wide range of exceptions which include loans to provide a director with funds to meet expenditure necessarily incurred for the purposes of his duties and to acquire a home, if the company approves the loan in general meeting. The principle supporting this provision was contained in a recommendation of the Cohen Committee (and endorsed by the Jenkins Committee) which stated that it was undesirable that directors should borrow from their companies for the reason that if a director can offer good security, it is no hardship to him to borrow from other sources; whereas if he cannot offer good security, it is undesirable that he should obtain from the company credit which he would not be able to obtain elsewhere.

Clause 126 is similar to the corresponding provision of the English Act. It requires a company to keep a register of directors' shareholdings and debenture holdings which is to be

open to inspection to members and debenture holders and to persons acting on the Minister's behalf. The clause will afford members some degree of protection and information which could not otherwise be available to them and provides a means for placing on record the directors' dealings in the company's shares and debentures.

Clause 128 follows the corresponding English provision which prohibits tax-free payments to directors except under a contract in force prior to the commencement of the Act and which provides expressly for such payments.

Clause 139 lays downs the conditions under which a poll may be demanded on any question at a general meeting of a company. It also provides that a company must accept a form of proxy if it is lodged no later than 48 hours before the meeting in question.

Clause 143 gives the right to a proportion of the total membership or of the voting rights of a company to require the company, at the expense of the requisitionists, to give notice to the members of any resolution proposed to be moved by the requisitionists at the next annual general meeting of the company together with a statement with respect to the proposed resolution. But the company is not obliged to circulate the statement if the court is satisfied that the right conferred by the section is being abused to secure needless publicity for defamatory matter.

Clauses 144 and 145 set out the requirements relating to special resolutions and special notices.

Clause 152 permits a company to keep its register of members at an office in the State other than its registered office. This permits the register to be kept by a public accountant or a share transfer office, but, in such a case, notice of the place where the register is kept must be given to the Registrar.

Clause 156 is similar in effect to section 125 of the existing Act but although, except as provided in the clause, it prohibits the entry of notice of a trust on a register, it provides that shares held by a trustee may, with the company's consent, be marked in the register so as to identify them with a particular trust. Subclause (5) provides that a person who holds shares in a proprietary company or a prescribed private company as defined in clause 397 as trustee for a corporation must give the secretary of the company notice thereof in writing. This is to enable the secretary to determine whether or not his company falls within the description of an exempt proprietary company, a prescribed proprietary company or a prescribed private company—the three classes of company which under this Bill will receive exemption from filing their accounts.

Clauses 158 and 159 correspond with sections 129 and 130 of the existing Act which require companies to make an annual return, but instead of being made up to September 30 or some other day agreed to by the Registrar, the annual return must be made up to the date of the annual general meeting of the company or a date not later than 14 days thereafter. It is to be noted that, except in the case of an exempt proprietary company or a prescribed proprietary or a prescribed private company as defined in clause 397, the Eighth Schedule to this Bill requires a copy of the last balance sheet and the last profit and loss account of the company to accompany this return.

Clauses 161 to 164 which deal with the accounts to be kept by companies are more comprehensive than the corresponding provisions of the existing Act.

Clauses 165 to 167 deal with the appointment and removal of auditors, the right of ten per cent of the members or the holders of ten per cent of the issued capital of a company to require the company to prepare a statement showing the emoluments paid to the auditor, and the powers and duties of auditors. Every company is required to appoint an auditor but, if all the members of an exempt proprietary company agree, they may dispense with the appointment of an auditor.

Clauses 168 to 180 deal with the appointment of inspectors to investigate the affairs of companies. Some of these provisions are similar to corresponding provisions of the existing Act and the new provisions are designed to strengthen the powers of investigation.

Clauses 177 to 179 give the Minister power to appoint one or more inspectors to investigate the true ownership of shares in a company. They follow the corresponding provisions of the English Act.

Clause 180 will enable inspectors to operate throughout Australia where the company being investigated is operating beyond the limits of any State.

Clauses 181 to 186 relate to arrangements and compromises between a company and its creditors or between a company and its members and to reconstructions and amalgamations of companies.

Clause 184 regulates the procedure to be followed in take-over offers. At present there is no law regulating take-over offers. The clause sets out the basic information that must be given by the corporation making the offer and requires the corporation receiving the offer either to furnish the offeror corporation with certain information or to furnish that information to its own shareholders. The clause, however, would not apply to any scheme involving an offer for the acquisition for cash by a corporation of all the shares in another corporation which are beneficially owned by the directors of that other corporation. The nature of information to be supplied both by the offeror and by the offeree corporations is prescribed in the Tenth Schedule.

Clause 186 gives a member of a company a right to seek protection from the court where the affairs of the company are being conducted in a manner oppressive to one or more members. The court may order that the company be wound up or, if that course would unfairly prejudice the minority, make an order regulating the conduct of the company's affairs or for the purchase of the members' shares.

Clauses 198 to 215 contain new provisions which will govern the new procedure to be known as official management which is designed to assist the rehabilitation of a company which has run into financial difficulties. This is done by the creditors appointing an official manager who will undertake the management of the company.

Clauses 216 to 318 deal with the winding up of companies. The standing committee of Attorneys-General intends to review these provisions when the Commonwealth Bankruptcy Act is revised. These clauses, however, apply the bankruptcy rules to company liquidations, so far as this has been practicable.

Clause 232 provides for the method of fixing a liquidator's remuneration.

Clause 263 provides that after the commencement of a winding up, any attachment or execution shall be void and no action shall be proceeded with or commenced against the company except with the leave of the court. It also empowers the court to require any person to pay or deliver to the liquidator any property in his hands belonging to the company.

Clause 292 sets out which debts must be paid on a winding up in priority to all other unsecured debts. The clause is similar in effect to section 279 of the existing Act but the limit in regard to wages or salary has been raised from £25 with respect to services in respect of the period of four months prior to the winding up to £500 with respect to services in respect of the period of six months prior to the winding up. In regard to workmen's compensation, the present Act has a limit of £100, but that limit has been removed in this Bill. All remuneration payable to any employee in respect of annual leave, long service leave and sick leave is also given priority and, where any amounts had been advanced by any person to the company for the payment of wages, salary, annual leave or long service leave, those amounts are given the same priority as would apply in relation to the employee if he had not received the payment.

Clause 293 provides that any transfer, mortgage, payment, or other act relating to property made or done by or against a company which, had it been made or done by or against an individual would be void or voidable in his bankruptcy shall, in the event of the company being wound up, be similarly void or voidable.

Clause 295 gives the liquidator of a company the right to recover from a director the amount by which the cash consideration for property acquired by the company from the director exceeded its true value or the amount by which the value of property sold by the company to the director exceeded the cash consideration.

Clauses 334 to 343 constitute a new division which applies to certain companies, which may be proclaimed as investment companies, whose main business is the investment of shareholders' funds in shares, debentures and other marketable securities. It is intended to deter directors of such companies from investing funds under their control in other companies, or from borrowing, to a greater extent than would be safe in the interests of shareholders. Legislation similar to this division has been in force in Victoria since 1938 and has been adopted by Western Australia and Tasmania to control the activities of persons who float public investment companies and use the shareholders' funds to fill the subscription lists of public share and debenture issues which had been underwritten by them but which have been undersubscribed. The division is intended to provide a reserve power in the Government to proclaim such companies if it becomes necessary in the interests of shareholders and the public. The division applies restriction and control only to proclaimed investment companies.

Clauses 344 to 361 deal with foreign companies. A company operating in this State as a foreign company will be in no better position, so far as the filing of documents and accounts

is concerned, than a comparable locally incorporated company.

Clause 348 requires a foreign company to file with the Registrar its balance sheet containing such information as it is required to prepare in its place of incorporation but, if the information filed is not sufficient to disclose the company's financial position, the Registrar may require the company to prepare and file further information but not more than the foreign company would have to file if it had been a locally incorporated public company. The foreign companies that will be exempted from filing balance sheets in this State are English exempt private companies and companies incorporated outside this State which are equivalent to an exempt proprietary company as defined in clause 5.

Clause 353 will control the use of names by foreign companies in much the same way as clause 22 will do in relation to locally incorporated companies.

Clause 364 provides that where a shareholder's whereabouts have not been known for ten years or more, the company, after advertising notice of intention to do so, may transfer the shares to the Treasurer who shall dispose of them and deal with the proceeds as if they were unclaimed moneys.

Clause 367 provides that an inspector appointed under the Act shall not require disclosure by a legal practitioner of any privileged communication except as respects the name and address of his client. The provisions relating to inspection and to the appointment and powers of inspectors are contained in clauses 168 to 180.

Clause 376 prohibits the payment of a dividend by any company except out of profits or pursuant to clause 60 which permits payment of a dividend out of the share premium account if the dividend is satisfied by the issue of shares to members.

Clauses 379 and 380 contain provisions relating to penalties and default penalties. At this point I would like to mention that the Bill fixes no minimum penalties, but in many instances maximum penalties have been increased. It should be borne in mind that penalties generally in South Australia have been unchanged since 1934 and there has been a considerable change in money values since then. As there are no fixed penalties provided for, it is essential that the maximum penalty for each offence should be adequate to meet the varying degrees of blameworthiness in relation to that offence. Many defaults in relation to companies have occurred in the past which, though not attributable directly to fraud, have proved to have greatly facilitated and even encouraged the perpetration of frauds and other undesirable practices through which the public have suffered great loss. It is therefore thought that the penalty appropriate in all the circumstances of a case should be left to the Court. I would also like to mention that the application of the provisions relating to default or daily penalties has been changed. Under the existing Act a default fine is payable as from the commission of the offence but under this Bill it accrues only (if the offence continues) after conviction.

Clause 382 provides that (except where the Act provides otherwise) proceedings for any offence against the Act may be taken by the Registrar or with the written consent of the Minister by any person. Under the existing Act there is no restriction on the institution of proceedings for an offence and any person may institute proceedings for an offence without reference to any authority. The main object of the clause is primarily to protect companies from mischievous complaints by shareholders and members of the public.

Clauses 382 (4) to (6) and 383 to 397 reproduce many of the provisions of the existing Act which have not been included in the uniform Bill.

Clauses 397 to 399 constitute a part which contains special provisions relating to locally incorporated and operated proprietary and private companies. These companies are defined as "prescribed proprietary companies" and "prescribed private companies" in clause 397. Their basic features are that they must have no more than fifty members and must operate only in the State.

Clause 398 exempts, from the obligation to file its accounts, any prescribed proprietary or prescribed private company which is wholly owned by individuals or by other such companies or by a combination of individuals and such companies where neither a public company nor a foreign company beneficially owns any shares in those companies or in companies related to them, such as holding companies and subsidiaries. A company claiming exemption must include in its annual return a certificate that it possesses the necessary qualifications for exemption.

The Hon. C. D. ROWE: I thank all honourable members for their courtesy in granting me the leave sought. Perhaps I should also mention that the consent of the Council was unanimous, there being no dissentient

voice. I should like to place on record the very outstanding work and great assistance given to me and to all the Attorneys-General of the Commonwealth by our Assistant Parliamentary Draftsman (Mr. Ludovici). He has spent many hours on the preparation of this uniform Bill and to my own knowledge has contributed in large measure to the drafting of many of its provisions. Officers from other States have told me that his contributions were quite outstanding, and I should like to express my indebtedness to him and the appreciation of all honourable members for the work he has done—often under very high pressure. I am also indebted to him for preparing these lengthy but comprehensive and clear explanatory notes which will be of great assistance to honourable members and to those who have to deal with company law in the future.

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

FOOD AND DRUGS ACT AMENDMENT BILL.

Returned from the House of Assembly without amendment.

CIVIL AVIATION (CARRIERS' LIABILITY) BILL.

Returned from the House of Assembly without amendment.

HOSPITALS ACT AMENDMENT BILL.

Returned from the House of Assembly without amendment.

REGISTRATION OF DEEDS ACT AMENDMENT BILL.

Returned from the House of Assembly without amendment.

SALE OF HUMAN BLOOD BILL.

Returned from the House of Assembly without amendment.

MOTOR VEHICLES ACT AMENDMENT BILL.

Returned from the House of Assembly without amendment.

UNCLAIMED MONEYS ACT AMENDMENT BILL.

Returned from the House of Assembly without amendment.

LOCAL COURTS ACT AMENDMENT BILL.

Returned from the House of Assembly without amendment.

METROPOLITAN DRAINAGE WORKS (INVESTIGATION) BILL.

Returned from the House of Assembly without amendment.

ADJOURNMENT.

At 4.40 p.m. the Council adjourned until Tuesday, October 16, at 2.15 p.m.