LEGISLATIVE COUNCIL.

Tuesday, September 22, 1964.

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

DISTINGUISHED VISITOR.

The PRESIDENT: On behalf of honourable members I extend to Mr. J. P. S. Taylor, B.A., a Senior Clerk in the British House of Commons, who is on exchange duty with this Parliament, a very cordial welcome to the Legislative Council, and express the hope that his stay in South Australia will prove both interesting and enjoyable.

QUESTION.

HEALTH PAMPHLET.

The Hon. JESSIE COOPER: Has the Minister of Health seen a pamphlet, reputedly signed by Mr. G. Ruthven Mitchell, L.R.C.P., L.R.C.S., which has been put in letter boxes in the Mitcham and other areas in my district and, if he has, will he take steps to have the police investigate its origin?

The Hon. Sir LYELL McEWIN: Yes. I have seen one of these pamphlets that have been placed in letter boxes and have made some inquiries because the last paragraph reads:

One may reasonably ask why the Minister of Health is allowed to incite lay local authorities to practise something which, in the case of qualified physicians, is condemned by the law, by medical ethics and by the Ministry of Health itself.

When this was brought under my notice I was at a loss to understand the implications of the paragraph and after inquiries I obtained this information:

Inquiries have been made in an endeavour to locate Mitchell for the purpose of interviewing him regarding the last paragraph in this circular. Inquiries reveal that the 1964 English Medical Directory (Churchill's Medical Directory) lists George Ruthven Mitchell, L.R.C.P., L.R.C.S. Ed., L.R.F.P.S. (Glasgow 1925), retired, of 19 Lewes Crescent, Brighton 7, Sussex, England. Due to the fact that the letters following Mitchell's name on the circular letter are identical with those that are listed in the 1964 English Medical Directory, it would appear that the signature shown at the foot of the circular letter is intended to indicate that the G. Ruthven Mitchell listed in the English Medical Directory is the author of this letter. Although it is possible that Mitchell did cause this letter to be printed and circulated it is also possible that the letter is an extract from other written work of Mitchell referring to fluoridation of water in England as reference is made in the circular letter to the National Health Service, an organization that does not exist in Australia but does exist in England.

Interestingly enough, since I got that report I have had a similar document or pamphlet posted to me with the following words added at the top, "What an English doctor said about fluoridation." Those words were omitted in the first pamphlet placed in letter boxes so that it conveyed a meaning quite different when that heading was added, as the document applies to conditions existing outside of this country.

PUBLIC WORKS COMMITTEE REPORTS.

The PRESIDENT laid on the table the following final reports by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Elizabeth West, Salisbury East and Christies Beach High Schools,
Mount Burr Sawmill Log Bandmill.

BOOK PURCHASERS PROTECTION ACT AMENDMENT BILL.

The Hon. C. D. ROWE (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Book Purchasers Protection Act, 1963. Read a first time.

The Hon. C. D. ROWE: I move:

That this Bill be now read a second time.

Its object is to strengthen the provisions of the Book Purchasers Protection Act which was passed last year. The requirement in section 4 (*c*) of the Act that certain words must be printed on a contract for the sale of books can be strictly complied with by printing the required words in light type and light ink in such a manner that it is by no means obvious. It has also been found that the requirement that a purchaser not less than five nor more than 14 days after the date of the contract must notify his confirmation of the contract can be complied with by the expedient of the vendor's obtaining from the purchaser a written authority appointing the vendor as his agent for the purpose of giving the notification. The Bill is designed to overcome the matters which I have mentioned.

Clause 4 will amend section 4 of the principal Act in two ways. In the first place, paragraph (*c*) of that section will, as the result of the proposed amendments, provide that there is to be printed conspicuously on the contract in capital letters in heavy type of a size not less than 18 point face and so as to be clearly seen the required words. Paragraphs (*a*), (*b*) and (*c*) of clause 3 of the

Bill make the necessary amendments in this connection.

As regards the matter of a vendor having himself appointed as the purchaser's agent, paragraph (*d*) of clause 3 will make it clear that the notification of confirmation of a contract must be signed personally by the purchaser. Clause 4 of the Bill will amend section 6 of the principal Act by prohibiting a vendor or his agent from soliciting a confirmation at any time whether before or during the period allowed for confirmation. It also prohibits a vendor, his agent or any employee from obtaining or attempting to obtain any authority to act as a purchaser's agent, to confirm a contract or to act in any way in relation to a contract. The amendments proposed should close at least two loopholes which have been brought to the notice of the Government.

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

ROAD TRAFFIC ACT AMENDMENT BILL (GENERAL).

Read a third time and passed.

ABORIGINAL AND HISTORICAL OBJECTS PRESERVATION BILL.

Adjourned debate on second reading.

(Continued from September 16. Page 837.)

The Hon. R. R. WILSON (Northern): The object of this Bill is to facilitate the preservation of aboriginal rock carvings and relics of past decades. This is most important to the present generation and to succeeding generations. The committee appointed, whose names were mentioned in the second reading explanation, are to be commended for their report to the Government, but no consideration in that report has been given to the landowners, a vital matter. I am in sympathy with the recommendation of the committee but I do not think it should apply over the whole State: only certain areas should be proclaimed.

It is interesting to read an article that appeared in the *Advertiser* last week that at Portland in Victoria two geologists found in a cave species of a marsupial lion, the Tasmanian tiger, the Tasmanian "devil", and the nail-tail wallaby; also material dating back approximately 5,000 years. The geologists at that cave excavated earth 24 ft. wide, 12ft. long and 8ft. deep. This confirms what the Hon. Ross Story mentioned last Tuesday about his lemon tree patch. What happened in that case can happen on any landowner's property.

The Hon. Mr. Kemp is a real enthusiast in such things as rock carvings and relics and spends much of his spare time in going to places where he can discover further aboriginal writings that are so interesting to him. There are many other people who, likewise, spend much time and expense in furthering discoveries of this sort. Last Friday week when travelling to Western Australia we met a Mr. Tilbrook, who has a business at Kensington and also owns an original settler's cottage at Whaler's Haven at Rosetta Bay, near Victor Harbour. He has made wonderful discoveries of the whaling days and aboriginal carvings in that part of the State. Since he opened the cottage with all the relics that it contains, in 12 months 18,000 people have looked at what he has there to show them. The Government Tourist Bureau every week runs a bus to Whaler's Haven. People come from all over the world to see what he has there. That is the sort of thing that can happen to the writings that this Bill is meant to preserve. Many people are carried away with excitement over these historic things and often innocently damage property. Property owners should be protected from invaders and at least permission should be obtained from the owner beforehand. The owner should have the same authority as those who wish to see these privately owned properties. Each visitor should have some authority to inspect whatever he wants to. I support the Bill as far as the second reading. I understand some amendments will be moved during the Committee stage.

The Hon. A. F. KNEEBONE (Central No. 1): I, too, support the Bill. I did not intend to speak on it but, after seeing an article in yesterday's *Advertiser* referring to damage done to irreplaceable objects in the Northern Territory by vandals, I am of opinion that the provisions of this Bill cannot come into force too soon, and it should be the pattern for similar Bills in other States, because these things that have been handed down to us are irreplaceable. When we hear of people who, as these people did in the Northern Territory, take a pot of white paint and deface aboriginal drawings and carvings in the Ayers Rock area and in many other areas, we begin to wonder what sort of mentality they have. We like to see the tourist trade encouraged, for it has brought to Australia much money from overseas but, when people deface these objects, I do not know what we can do to preserve them. I have a little sympathy with the point of view expressed by the Hon. Mr.

Wilson about the protection of property. When we realize the damage done to these objects, we can appreciate that vandals are likely to damage property. Mr. Wilson has forecast amendments to the Bill to take care of that eventuality. I shall be interested to see what the amendments are.

The Hon. R. C. DeGARIS (Southern): I support the principles contained in this Bill, which seeks to assist the preservation of certain objects of ethnological, anthropological, archaeological and historical interest and value. We all know that there have been instances of damage, as outlined by the Hon. Mr. Kneebone and the Hon. Mr. Kemp, and instances of removal, sale to overseas buyers, defacement and destruction of many of these objects of interest and value. I am certain that every member of this Chamber is only too willing to do everything in his power to assist in preserving such objects. I pay a tribute to the people who over many years have done so much to interest people generally in preserving these things, many of which are unique and have a scientific field of interest much wider than this State.

As the Attorney-General said in his second reading speech, this Bill is based on an ordinance of the Northern Territory. I agree with the Hon. Mr. Gilfillan, who said that circumstances in this State were different from those in the Northern Territory. The land use here, for instance, is quite different from that in the Northern Territory. South Australia has many areas carrying a comparatively dense population, and I cannot see how the Northern Territory ordinance can be applied completely in this State. From my understanding of the Bill, any area that contains aboriginal artefacts (and in South Australia thousands of acres contain them) will on the passing of this Bill come under its provisions immediately. In clause 3, by regulation certain objects can be exempted from the provisions of the Bill. This clause contains a definition of "prescribed object" as follows:

"Prescribed object" means—

(*a*) an object relating to Aborigines which is of ethnological or anthropological interest or value;

(*b*) an object relating to the State which is of archaeological or historical interest or value;

(*c*) an article manufactured by an Aboriginal or person of aboriginal blood according to aboriginal methods; and

(*d*) such other objects of ethnological, anthropological, archaeological or historical interest or value as are prescribed,

but does not include an object, or an object included in a class of objects, specified in the regulations to be an object, or a class of objects, to which this Act does not apply.

I take this to mean that this blanket clause applies to everything that has ever been manufactured by an Aboriginal. The only exclusion is in the last part of the clause, which I think has been inserted to exclude certain things such as boomerangs manufactured by Aborigines and sold to the tourist trade. In his second reading speech the Minister said:

The provisions of the Bill are extended to objects other than rock carvings, because at the site of rock carvings it is often possible to dig up objects of archaeological value.

However, the definition of "prescribed object" is a blanket provision covering the whole State, and many thousands of acres contain artefacts manufactured by Aborigines. If the Bill is passed in its present form, any person who takes up these artefacts over the thousands of acres that contain them will break the law. Clause 4 enables the Minister to exempt a person, or persons included in a class of persons, from compliance with this measure or with any provision of it. Clause 5 deals with the preservation of prescribed objects. Another point that worries me is that many people have been for many years collecting aboriginal artefacts and as a result have these things in their possession. Under this provision, these things can be acquired or purchased from these people. I entirely agree that it is necessary to have laws to prevent the sale outside Australia of many of these unique objects, but I think it is going a little too far if we place an enthusiastic amateur, who has over a long period been collecting these things over many thousands of acres, in a position in which he can have them taken from him.

Clause 6 deals with the removal of prescribed objects, and I take this provision to mean that any person who picks up aboriginal artefacts, whether on his property or not, will contravene the law. The definition clause provides that a prescribed object is an article manufactured by an Aboriginal. This covers a multitude of things such as axes, grinding stones, scrapers, points, and ovens, and many of them exist in this State. I know of many people in my area who spend practically all of their spare time wandering over the country, particularly the coastal strip from the Coorong to Mount Gambier, searching for such articles. If my understanding of the Bill is correct, these people will be breaking the law. I know of places where a sugar bag can be filled with

these things in a short time. If my interpretation is correct, this Bill will be rather restrictive, and I think a saner approach should be taken. Certain camp sites that are fruitful from a scientific point of view should be declared and be out of bounds to the amateur fossicker, but placing a blanket over all areas seems to me to be wrong. Some of our most important anthropologists began in this field as enthusiastic amateurs.

Clause 7 provides that a person shall not knowingly conceal, destroy, deface or damage a prescribed object. What interpretation should be placed on the word "conceal"? I know many people who have interesting private collections and in the use of the word "conceal" these collections may be included because of not being declared. It could be interpreted as a concealing of the articles.

Clause 9 was mentioned by the Hon. Mr. Story and the Hon. Mr. Gilfillan, so I will not deal with it at length, although it is probably the most contentious clause in the Bill. In another place one member mentioned the matter, and it has been pointed out here that there is no protection for the landholder on whose property there may be historical remains or grounds that were used for ceremonial, initiation or burial purposes. Clauses 11 and 12 are directed mainly against the sale of prescribed objects. This is worth while and possibly it will prevent the sale outside Australia of many of these unique objects. When those clauses are read in conjunction with clause 7 I wonder where these enthusiastic people with collections stand.

I support the general principles of the Bill. As has been mentioned by other speakers, it is necessary to have legislation to protect many of these unique objects. However, the rights of the landholders should be protected, as well as the rights of the large band of enthusiastic people who are amateur anthropologists in the search for the objects mentioned in the Bill. I agree that the legislation is necessary but I ask the Attorney-General to ascertain whether the Bill can be amended to give the protection I think is necessary.

There has grown up a practice of using a capital "A" to denote some significance for the words "Aborigines" and "Aboriginal". To the outside world this must appear amusing and devoid of any originality or imagination. Some people have the quaint idea that these words belong exclusively to Australia and that because the word "Australia" begins with a capital "A" the capital should be applied to the words "Aborigines" and "Aboriginal". These are common nouns for the indigenous people of any country; therefore, to use a capital "A" and make those words proper nouns is to my mind improper and incorrect. The magic use of the capital "A" satisfies some of us as being a suitable parallel for the words "Eskimo", "Negro" and "Maori". They are aboriginal people. To spell those words with a capital is correct, but to use the capital "A" for the "Aborigines" in Australia is improper and incorrect.

The Hon. Sir Frank Perry: Do you think it could be altered?

The Hon. R. C. DeGARIS: I suggest it could be done by an amendment to the Bill.

The Hon. Sir Frank Perry: Is it not the common custom to use the capital "A"?

The Hon. R. C. DeGARIS: No, as I shall point out in a moment. This is the only State in the Commonwealth to use the capital "A" for the words "Aborigines" and "Aboriginal". I have a copy of a Commonwealth Act relating to aboriginal studies, assented to on June 2, 1964, and throughout it the small "a" is used for the words "Aborigines" and "Aboriginal". I can find no justification on scientific and etymological grounds for the use of the capital "A". Common usage does not justify it, either, because most scientific writers and anthropologists insist upon the small "a" being used. It is interesting to study the history of this matter. When the Aboriginal Affairs Bill was explained in the other place in August 1962, page 565 of *Hansard*, the Minister said:

> The word "Aboriginal", wherever appearing in the Act, commences with a capital letter "A". The purpose of this apparently small matter is to recognize the status of the Aboriginal inhabitants of this country in the same manner as the like courtesy and recognition are extended to the native populations of other countries, *e.g.*, Maoris, Papuans, Americans, Danes, Spaniards, etc.

This was the first time that the capital "A" was used in *Hansard* and the literature of this Parliament. As we read through *Hansard* we find that wherever the word "Aboriginal" is used as a noun the capital "A" is used, but wherever the word is used as an adjective the small "a" is used. If we carried this argument to its logical conclusion it would be right to use the small letter at the beginning when the words "Eskimo", "Maori", etc., were used as adjectives. I suggest that this creates a ridiculous position. To use the capital "A" as a means of applying a respectful and dignified term for the indigenous

people of Australia reeks of maudlin sentimentality. I indicate that I shall move in Committee that wherever the words "Aboriginal" and "Aborigines" are used the small "a" be used.

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

HONEY MARKETING ACT REVIVAL AND AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 15. Page 766.)

The Hon. A. F. KNEEBONE (Central No. 1): I support the second reading. My colleagues and I believe in the orderly marketing of primary products provided always that the primary producers desire it. We believe that they should be given the democratic right to decide the matter for themselves by means of the ballot box, and as the Bill provides for that we support it. Orderly marketing requires a uniform national policy, but one of the greatest stumbling blocks to orderly marketing on a State basis has always been section 92 of the Commonwealth Constitution. The experience of most States is that the local market becomes flooded with products from other States, which often upsets the equilibrium of orderly marketing schemes. I am pleased to see the amendment proposed in clause 3. In the existing Act provision is made for the appointment of the South Australian Honey Board. That board consists of seven members, four of whom are selected by the Minister as nominees of the South Australian Apiarists Association, three being the nominees of the South Australian Honey Packers Association. Each was required to nominate twice the number of members required, and from this panel the Minister selected the representatives on the board. I have always considered this system to be wrong in principle. The Bill will correct this procedure, but only in relation to the producer members. It is proposed to select the Packers Association members in the same way as at present.

The Hon. C. R. Story: There are not that many of them, are there?

The Hon. A. F. KNEEBONE: No, but the principle is the same. The Bill requires that all honey producer members shall be elected by ballot. It is proposed that the State shall be divided into four districts for this purpose. I believe that the Bill was amended from its original form in another place. In the present Bill it is provided that the Minister shall for the purpose of each election in respect of each electoral district prepare a roll of producers whose hives are registered and who reside in that district and who are 15 years of age or over.

I emphasize the words "15 years of age or over". One producer member is to be elected from each of the four districts constituted according to the Bill. The amendment in respect of the age limit is a wise one. It will overcome to a certain extent the danger of plural voting that existed previously. People engaged in the industry have informed me that this was brought about by people registering some of their hives in the names of their children. This was done by certain people in the industry who had a large number of hives. Some of the children were very young and I do not know how they cast a vote, but possibly somebody voted for them and this brought about plurality of voting. This has been prevented in the Bill by the provision of an age limit.

Apparently, for the ballot on the retention of this Act and the system of orderly marketing, an amendment to provide an age limit was overlooked. A person must be over 15 years of age before he may participate in a poll to elect a representative on the Honey Board but in respect of the equally important point affecting orderly marketing this provision was not made. Section 2 provides that the ballot shall be taken among producers whose names are included in a list prepared by the Minister. I assume that this list is compiled from those producers registered pursuant to the Act. I propose to move an amendment in the Committee stages to section 36a. Unless this is done I believe that the same old system of registering children of producers will still prevail and there will still be plurality of voting. This would upset the democratic nature of the poll and would not be desired by the majority of legitimate producers in the industry. With regard to the other clauses of the Bill, I believe them to be eminently satisfactory and therefore I have pleasure in supporting the second reading, with the reservation that I intend to move an amendment in Committee.

The Hon. C. R. STORY (Midland): I rise to support the Bill which, as its title suggests, is a revival of the previous Act. I understand that this lapsed because the Minister could not get an indication from the producers as to whether or not they wished the board to continue. Over a number of years the board has

had a rather checkered career, and that would perhaps be putting it mildly. Orderly marketing today is one of the things we have had to accept, but it has to be orderly marketing and not something in between, otherwise there will be complete chaos in the industry. I think it is significant that the producers of honey have procrastinated quite a time before deciding to revive the Honey Marketing Act. It has been revived, as the Hon. Mr. Kneebone said, in a slightly different form, a form that will be more acceptable to the producers. Many meetings have been held in various parts of the State, and as a result a good deal of pressure has been applied so that this Bill is different from the previous one. I do not think that orderly marketing can be made to work unless there is statutory control.

I agree with the Hon. Mr. Kneebone that it is desirable that this be established on a Commonwealth basis. The honey that is being processed for export is covered by a Commonwealth board, but within the Commonwealth it is on a State basis. This Bill is the first step. If this board functions properly I do not doubt that other boards will be set up. Eventually we shall have a honey industry, which is a large one, with a Commonwealth set-up if our scheme proves to be successful. The first Act was passed in 1949 and when the Honey Board was established in 1950 there were then 1,107 registered producers. Of this number 459 voted—not a very high percentage—with 302 of that number voting in favour and 151 against the proposal, with six informal votes. From those figures it appears that the honey producers were not greatly interested in the matter at that particular time. The position throughout its history is that it has not had the backing of the producers to any large extent except in times of glut. No co-operative or board system can be operated where people come and go, as it were: they have to give consistent support, otherwise the whole thing becomes a farce.

At present there are 1,103 registered colonies of bees in South Australia, broken up in this way: colonies of one to 10 hives—458; 11 to 50 hives—317; 50 to 100 hives—112; 100 to 200 hives—99; 200 to 500 hives—108; and over 500—nine only. Of this number only 103 people are financial members of the South Australian Apiarists Association. Under the Act a producer is interpreted as a person who keeps 10 or more colonies. It is wise that this provision should be included. To that category belong the majority of beekeepers, as is apparent from the figures I have just quoted.

The constitution of the board is altered, and I think that is for the best. I imagine that the election of the board on this four-man basis will be much better than the previous position, where there was a nominated board or panels were submitted to the Minister, from which he could choose. The board is designed to assist the producers, particularly at a time when the local market cannot absorb all the supplies. It fixes the wholesale price of honey at a time when the local price is below export parity. Almost the main function of any of these boards is to try to get a price determined. We have had recent experience of other boards (both the Egg Board and the Potato Board) where there have been violent fluctuations in prices. That is about the last thing a producer wants: he needs some stability so that he knows approximately how much he will earn as his income. Until we can reach the stage when these prices are reasonably constant, producers will not be encouraged to supply this form of our staple diet, as they are with potatoes. The board also may arrange finance for producers in the case of honey delivered to the board's pools. That is a good thing because in the past this position has been made rather difficult by speculators from other States coming in, buying honey, waiting, and then cornering the market. It is a good provision that the board has powers of arranging finance. It should use them. The Hon. Mr. Kneebone has raised the interesting point of disposal. I notice, too, that a provision was inserted in another place to prevent producers under the age of 15 years from voting. I have studied Mr. Kneebone's amendment carefully. I shall not commit myself on it at present because it has far-reaching effects. I should like to consider it more fully before actually committing myself on it, but I certainly support the second reading.

Bill read a second time.

In Committee.

Clauses 1 to 10 passed.

Clause 11—"Polls on continuation of Act."

The Hon. A. F. KNEEBONE: I move:

After "amended" to insert the following passage:

> "—(*a*) by inserting after the word 'list' second occurring in sub-section (5) thereof the words 'and who at that time are 15 years of age or over'; (*b*)"

This will bring this clause into line with clause 4 (5), which provides that people taking part in a ballot shall be people over 15 years of age, thus dealing with the point of plural voting raised in the second reading debate.

At lunchtime today the Secretary of the South Australian Apiarists Association (Mr. Gardiner) called to see me. Mr. Harding, the member of Parliament for Victoria in another place, brought him to me. Mr. Gardiner said that their executive had looked at the proposed amendments and were concerned that in another place these amendments had been made in one instance but not in another. They were happy to see that the amendment not made had been picked up in this Chamber; they said they supported it.

The Hon. C. R. STORY: I support the amendment, which I think tightens up the matter.

The Hon. Sir LYELL McEWIN (Chief Secretary): As the Hon. Mr. Kneebone has explained, this amendment is to prevent plural voting. The Minister of Agriculture has informed me that he does not object to it.

Amendment carried; clause as amended passed.

Remaining clauses (12 and 13) and title passed.

Bill reported with an amendment; Committee's report adopted.

BUILDING ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 16. Page 823.)

The Hon. S. C. BEVAN (Central No. 1): I have examined this Bill thoroughly and although I think some of its provisions are necessary I cannot understand why some others have been introduced, as what they set out to do is already covered by the principal Act. Clause 3 amends section 3 of the principal Act, which deals with the application of the Act. The principal Act now provides that the Governor may by proclamation declare certain types of buildings in certain areas, but he has no power to proclaim that a particular type of building shall or shall not appear in certain sections of an area. Paragraphs (*a*) and (*b*) of clause 3 amend section 3 of the principal Act to provide that a proclamation may provide that the Act is to apply only to the kinds of buildings specified in the proclamation or is not to apply to such kinds of buildings as are so specified.

Clause 4 amends section 9 of the principal Act by inserting new subsections 9b and 9c, and this clause seems to be far-reaching in its effect. It deals with a notice of unlawful building and is bound up with other sections of the principal Act, which already gives power to councils to do what is set out in clause 4 of this Bill. Section 8 (8) provides:

> No person shall commence to erect, contruct, add to, alter, or underpin any building until plans, drawings, and specifications in respect of the erection, construction, addition, alteration, or underpinning have been approved in writing by the council.

A person doing this work must submit plans and specifications for the approval of a council, and, if the council approves, it must give its approval in writing. Plans and specifications must be provided not only to the council but to the surveyor.

The Hon. Sir Frank Perry: Isn't that one and the same person?

The Hon. S. C. BEVAN: Not necessarily.

The Hon. Sir Frank Perry: It is the same office, isn't it?

The Hon. S. C. BEVAN: It may be, but it is not necessarily so. In country districts a surveyor may be acting for more than one council. If his office is not situated in the council office, he would have to have a copy of the document. Section 9a gives the council power to disapprove of any plan submitted. If this happens, the matter must be referred to referees for determining. The council has the power under the principal Act to take this action against an owner who commences building unlawfully, and additional powers exist in other sections. Section 9, which this Bill amends, does not provide any penalty, and to enforce an order court action may have to be taken by the council. That should not be necessary. Sections 84 and 85 of the principal Act say that if a person commits a breach of the Act he is subject to a penalty of £50. I thought that gave a council the power to order the stoppage of any work where there was a breach of the Act. This new subsection gives the council more specific power to order a cessation of work. Where a council has not consented to the work it can order that the work cease. If it is not stopped the council can then take further action. I am not in complete agreement with the proposed amendment. Proposed new section 9b (1) states:

> If an owner of land has commenced to erect, construct, add to, alter or underpin a building on his land:
>
> (*a*) without the approval in writing of the council; or
>
> (*b*) otherwise than in accordance with any plans, drawings or specifications approved by the council, the council may by notice in writing to all or any of the following persons:
>
> i. the owner of the land: or
>
> ii. a person carrying out or employed or engaged in carrying out the erection, construction, addition, alteration or underpinning,

require him or them, as the case may be, to cease carrying out any such work.

That gives a definite power to a council in regard to unauthorized work. Proposed new section 9b (2) states:

If any such person who has received a notice under subsection (1) of this section does not comply therewith he shall be guilty of an offence and liable to a penalty not exceeding £100 for each day during which he so defaults.

Proposed new section 9c (2) states:

If an owner who has received a notice under subsection (1) of this section does not comply therewith within three days after receipt thereof he shall be guilty of an offence and liable to a penalty not exceeding £50 for each day (after the period of three days) until he complies with the notice.

Proposed new section 9c (3) states:

A penalty under this section may be imposed upon an owner in addition to a penalty under section 9b of this Act.

Under proposed new section 9b (2) there is a penalty of £100 for each day during which the person defaults. Immediately he receives a notice from the council to cease his activities, because he has not obtained the written consent of the council, or has not submitted plans to the council, he is liable to that penalty. Then, if he does not cease his activities, at the expiration of three days after receiving the notice he becomes liable to a further penalty of £50 a day until he does comply with the notice. That £50 can be an additional penalty to the £100. The first penalty should be a sufficient deterrent, but then the owner is given a breathing space of three days.

The Hon. G. J. Gilfillan: He has three days in which to submit plans.

The Hon. R. C. DeGaris: I think that proposed new section 9b refers to the owner.

The Hon. S. C. BEVAN: Yes. The first £100 a day penalty is related to all persons—owners, contractors and employees. They are all liable. The amended section 12 in clause 5 deals with the erection of stables, or a building that is proposed to be used as stables. The consent of the council must be obtained for this work, and the material to be used must be approved by it. Under that section if a person does not in the time specified by the council pull down and remove the stables he will be guilty of an offence and liable to a penalty not exceeding £50. Why is there this discrimination? The Bill is not consistent.

The Hon. Sir Frank Perry: Must he pull down the stables?

The Hon. S. C. BEVAN: He could be told to pull them down and if he did not comply he would be liable to a penalty not exceeding £50. The subclause under new section 9c could have been written into new subsection (2), which applies a penalty of £100. If the owner did not comply with a notice within a period of three days he would become liable to a penalty of £100 for each day that he did not comply. That should be sufficient penalty.

Clause 7 amends section 56 of the principal Act, and paragraph (*a*) states "by striking out all the words after 'carry out' in subsection (2) thereof" and it inserts various other words. The section of the principal Act should be clarified. Section 56 deals with neglected structures. It reads:

56 (1) The surveyor may, for the purpose of this section, at all times in the day-time, enter into or upon any structure or upon any land upon which any structure is situated.

(2) If, after inspection of any structure, the surveyor is satisfied that any structure is—

(*a*) ruinous; or

(*b*) so far dilapidated as to have become unfit for use or occupation; or

(*c*) by reason of neglect or otherwise, in a bad state of repair; or

(*d*) by reason of its uncompleted state and of neglect, in a condition prejudicial to property in or the inhabitants of the neighbourhood, the surveyor may cause notice to be given to the owner or occupier of the structure requiring him to carry out the works specified in the notice, to the satisfaction of the surveyor and within the time specified in the notice. The said notice may require the owner or occupier to carry out any one or more of the following, namely, to take down, to rebuild, or to repair the structure.

In the subsection just quoted the words "carry out" appear twice. The amendment says "by striking out all the words after the words 'carry out' in subsection (2)". Where is this amendment to be made; after the words "carry out" first appearing, or after their second appearance? I submit that it should be one or the other and not both. Perhaps the Minister could clarify this matter. New paragraph (h1) of section 83 (1) states:

(h1) in respect of any buildings to which this paragraph applies and of any class specified in the regulations, provision for parking vehicles on the allotments of land upon which the buildings are erected or constructed. This paragraph applies only to buildings erected or constructed pursuant to the approval of the council granted after the commencement of the regulations.

My understanding of the regulations is that on and after a certain date every new office building block erected in the metropolitan area shall provide parking space for motor vehicles. This would undoubtedly assist with parking problems, especially in the metropolitan area. Provision has already been made in some new buildings for parking space for some members of the staff, but it allows limited parking only. Most supermarts provide parking space for their customers. New supermarts being constructed today invariably reserve a large parking area for customers. The parking space now provided for some new buildings is sufficient only for executive members of the staff. After the regulations are proclaimed no doubt the local council will be the controlling authority as all plans must first be submitted to that body for approval. I think councils will insist that plans include provision for a parking allotment; but I hope that this amendment will be clarified. Comments have appeared in the press recently in relation to this amendment, and no doubt other members have been made aware of those comments. One statement attributed to the Town Clerk of the Adelaide City Council mentions some of his experiences overseas in connection with buildings.

He found that regulations or by-laws overseas stipulated that a parking area in proportion to the area of office space had to be provided. If that were to apply in the city it would create considerable hardship, as often a building is erected and cannot be added to because the allotment is not large enough. The site is perhaps sufficiently large for a twelve-storey structure, but not to provide for further expansion, so the only provision to be made in those circumstances would be a basement for a parking area. That basement would be limited and it would be impossible to provide parking space in conformity with the building area. In those circumstances the council could say, "Until you comply with this requirement, we shall not approve the plans", and the building would not be erected. On an allotment a certain area could be reserved for parking space but if it were said that parking space had to be provided for a certain number of cars it might not be practicable to do so. This will apply not only within the metropolitan area but in the rest of South Australia, because we are extending these powers to country councils and it will be necessary for them from time to time to come to a decision on these matters. This amendment appears to be a wise one.

I put these points forward for consideration. Perhaps the Government will consider providing parking space for its employees in the new offices in Victoria Square. It would be a good thing if this provision came into force before that building advanced too far so that the Government could give a lead to all local bodies by providing parking areas, at least for its own employees if not for people visiting Government departments.

The Hon. A. J. Shard: The Highways Department has done a good job in that regard.

The Hon. S. C. BEVAN: When it is spending so much on office accommodation in Victoria Square the Government could well look into that suggestion, for there is no provision for parking space for that office block.

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

COMPANIES ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 15. Page 765.)

The Hon. Sir ARTHUR RYMILL (Central No. 2): This Bill is an attempt to further protect the public in relation to its deposit of moneys with or its lending of moneys to companies. The public in general appears to have welcomed this legislation both in South Australia and elsewhere. A similar Bill was passed in Victoria some time ago. A Bill similar to that, although not quite the same, was passed in New South Wales, and recently a similar Bill with a rather important amendment was passed in Queensland. We in South Australia are now asked to pass legislation, although again our Bill is not identical in form with the others, even though it closely resembles them.

Commercial interests are concerned with this Bill, not with its endeavour to protect the public (which in the main, I am sure, they welcome, and they only hope that it will be effective because there are some doubts about how far one can go with any legislation to protect people against themselves) nor with the motive of the Bill (the prevention of fraud, misrepresentation or faulty direction or management) but with two specific aspects. The first is that in its aim to restrict undesirable activities on the part of a comparatively few companies the Bill should not add unnecessarily to the costs of the vast majority of other companies properly run and managed; nor should it further burden their administrations with unnecessary work.

Secondly, people in the commercial arena are concerned that the onus placed on directors of companies and trustees of debenture holders, already high, should not be made so high as to give them responsibilities virtually impossible to fulfil. This, in essence, is a Committee Bill. Honourable members will find on their files a number of amendments that I have had prepared, designed to minimize the work and expense of genuine companies (as one may call them) while at the same time not damaging the effectiveness of the Bill as a measure to protect the public. Although I have said it is a Committee Bill, it behoves me at this stage to explain the nature of my proposals so that honourable members will have the opportunity of considering them before we reach the Committee stage, because some of them are quite technical. The amendments probably need explanation, because being of a technical nature they cannot completely speak for themselves as can less technical amendments.

If honourable members will be good enough to refer to the roneoed sheets on their tables, I shall deal with my proposed amendments in the order in which they are printed on those sheets. The amendment to clause 6 is the first one. It is related to new section 74d which imposes certain liabilities on the trustees of the holders of debentures. The words used at present in the clause are "such trustees shall exercise reasonable diligence to ascertain" certain matters relating to the borrowing corporation. As far as I know, "reasonable diligence" has never been legally defined. It is not the sort of phrase that a layman understands, and I must confess I do not understand what it is. Therefore, I have tried to insert in place of that phrase words which are more easily definable by the layman and which perhaps more clearly define the position. Instead of using the words "such trustees shall exercise reasonable diligence to ascertain", I am aiming to insert the words "from time to time, as the circumstances may reasonably require, make reasonable inquiries as to" the various matters set forth in that clause. This is not a nation-rocking amendment, but I think it will assist in the matter. It does not detract from the clause, but the word "reasonable" in relation to inquiries is well-known to the law and well-defined, and I submit that the amendment will improve the wording of the Bill.

The next amendment is a technical amendment. Proposed new section 74d empowers a trustee for debenture holders to apply to the Minister for an order imposing certain restrictions on the borrowing corporation if the trustee is of the opinion that the assets of the corporation are insufficient or are likely to become insufficient to discharge the principal debt. I am told that the approach to the Minister is offered in case the trustee considers that the publicity associated with an application to the court, which the trustee may make under new section 74d (3), might be detrimental to the interests of the debenture holders themselves. The new section at present provides that, on an application being made to the Minister, the Minister may make the order applied for or he may, if the borrowing corporation so desires, direct the trustee to apply to the court. This provision does not give the borrowing corporation the right to be heard by the court if the order of the Minister is unfavourable to it, and the court has no power to alter, vary, or rescind the Minister's order. The amendments I am submitting provide that the Minister before or after making the order may, and if the borrowing corporation so requires shall, direct the trustee to make his application to the court, and the court shall have power to vary or rescind the Minister's order.

The PRESIDENT: The honourable member is discussing the second reading of this Bill; it is not in Committee. Perhaps he should be dealing with general principles rather than the actual amendments to the Bill. If he mentions what he is going to do and does not go into detail on the amendments, I think this will meet the requirements of Standing Orders.

The Hon. Sir ARTHUR RYMILL: Very well, Sir. Under proposed new section 74f, the directors of the borrowing corporation are required to lodge with the Registrar and with the trustee for the debenture holders a quarterly report. Under proposed new section 74f (2) the report must be signed by not less than two of the directors on behalf of all of them. This provision is obviously drawn in this way so that every director does not have to sign, as some may not be available; perhaps some may be overseas. The fault I have to find with this new subsection is that if two of the directors signed a report on behalf of all the directors they could make false statements on behalf of the other directors that would penalize the other directors without their even knowing that such a report had been lodged. My amendment will provide that all directors can sign it or, pursuant to the resolution of the board, any two or more can sign on behalf of

all of them. This envisages a resolution being necessary. This resolution would be minuted and thus every director would have knowledge of the fact that a report had been made.

The provision as drafted provides that the quarterly report of the directors must state, *inter alia*, whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor corporations have occurred which materially affect any security or charge for the debentures. There is no protection in the provision as at present drawn for the directors; the Bill provides that they must state that events have happened whether those events are within their knowledge or not, or whether the events should be within their knowledge or not. I shall attempt to cure this by offering a protection for the directors in a manner that will be unexceptionable.

One of the most serious provisions in its effect on borrowing corporations is new section 74f. Under this the directors of all borrowing corporations are required to lodge half-yearly audited accounts with the Registrar and with the trustees for the debenture holders. At present, as everyone knows, companies make an annual accounting, and these requirements are met annually, whether the company is a borrowing corporation or not, because of the Companies Act. This clause was found to be so objectionable in Queensland that it was omitted from the State's legislation altogether, but I can envisage that a six-monthly statement can be desirable in certain circumstances, such as we have recently had the misfortune to see in relation to a certain Victorian company. Thus, I thought there might be some intermediate course between deleting the requirement of six-monthly accounting altogether and the absolute requirement of six-monthly audited accounting. Audits are expensive, and stocktakings, especially physical stocktakings, are vastly expensive procedures. Consequently, I shall endeavour to amend the clause so as to give latitude to the trustees so that they will not have to require six-monthly accounting unless there are some substantial reasons why this should be required. This is a sort of intermediate course between what exists in the Bill and what has been done in Queensland; namely, omitting the requirement altogether.

The Hon. R. C. DeGaris: Could not six-monthly accounting be misleading?

The Hon. Sir ARTHUR RYMILL: Yes, I think it could be thoroughly misleading unless one understood the nature of the business. Some businesses, such as pastoral companies, are seasonal; their results depend very largely on the season concerned. They may have a good first half or a good second half of the year. The good Lord dictated that we should have a year of 12 months and not two sets of six months, and I think that is the way we must of necessity operate. If we try to kick against the laws of nature, I think we shall find ourselves in considerable difficulty. In further response to the interjection, I point out that companies that are not directly seasonal in their operations, such as banks, are very much affected indirectly by the destinies of companies that are directly seasonal, and I think the Hon. Mr. DeGaris is very conscious of that. The Attorney-General has an amendment on the files in relation to this matter. One of my proposed amendments dovetails with it, but I also have an amendment to the Attorney-General's amendment.

I propose to move for the insertion of new clause 6a to amend section 76 (1) and I would like your direction, Mr. President, as to whether I need an instruction to the Committee. It is designed to exempt trustee companies appointed by Act of Parliament from the provisions dealing with the other interests mentioned in Division V of the principal Act. It is designed to exempt trustee companies, formed by Act of Parliament, from the principal Act in relation to superannuation and retirement fund schemes conducted by them. I have always felt, although other members do not necessarily agree with me, that it was never intended to bring those companies under the scope of this provision. My amendment will relieve a trustee company of the onerous burden of submitting a prospectus in relation to its fund every time it appeals to the public for money. A trustee company has no beneficial interest in the fund, except an amount of 1 per cent as commission, which it is entitled to claim for the service rendered. Exemptions for other financial institutions already exist. Friendly societies, industrial and provident societies, and building societies are exempt. It is submitted that a company whose sole business is to act as a trustee, where it is recognized by an Act of Parliament, should stand in at least the same position as a friendly society.

The PRESIDENT: The honourable member will have to move for an instruction on this matter.

The Hon. Sir ARTHUR RYMILL: Thank you, Mr. President. Shall I move for it at the end of the second reading debate?

The PRESIDENT: It is a matter of a notice of motion and it can be done by a suspension of Standing Orders.

The Hon. Sir ARTHUR RYMILL: Thank you. I shall take that procedure, if I may, when I conclude my remarks on the second reading. Clause 10 amends section 162 and new paragraph (ba) says that the report of the directors must state whether or not any circumstances have arisen which render adherence to the existing method of valuation of assets or liabilities of the company misleading or inappropriate. Clause 3 (2) of the Ninth Schedule of the Act states:

For the purposes of this clause the net amount at which any assets stand in the company's books at the commencement of this Act (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the commencement of this Act cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of the valuation of those assets made at the commencement of this Act . . .

In other words, if a company has depreciated its assets and finds it onerous to ascertain what the actual depreciation was it can include the book figure at which the assets were showing at the commencement of the Act. In practice many companies adopt that excellent provision. In most cases the valuation mentioned is considerably below the market value. That is a prudent thing and most prudent companies see that the assets are not over-valued and preferably are on the conservative side. As I read the amendment in the Bill, it is intended to strike at the reference to over-valuation but not under-valuation. If the clause is carried in its present form it will completely negate the valuable clause 3 (2) of the Ninth Schedule, by removing its force and effect.

I shall submit an amendment that the misleading nature mentioned shall apply to the over-valuation of assets, or the under-valuation of liabilities, and not for the opposite to that, which does not matter anyhow. I do not think it was ever intended that that should be covered by the provision. Under clause 10 the report of the directors has to state whether any contingent liabilities have been undertaken by the company since the end of the period covered by the last report. In its present verbiage, if a company undertakes any contingent liabilities since the end of the previous accounting period, even though those liabilities may have been discharged before the end of the current accounting period, it is still necessary to show them. My amendment will make it clear that discharged contingent liabilities do not have to be included, only the current ones.

I intended to comment on clause 11 about the penalty that may be imposed on auditors. This is the first time to my knowledge that any penalty has been imposed, or attempted to be imposed, on auditors as such, and I see no reason why the practice should start. If the penalty is imposed on auditors the next thing we shall find is a penalty imposed on solicitors or members of other professions. This is a novel procedure and I am sure it has just crept in somehow. Since I jotted down this note on my papers I have noticed that the Attorney-General has placed a desirable amendment on the files to strike out the provision, so I shall not take it further now.

Clause 25 refers to section 38 and an amendment to the Fifth Schedule, and mentions a company proposing to raise money by the issue of mortgage debentures. Members will notice the distinction between mortgage debentures and other debentures. The prospectus relating to the issue has to contain a statement to the effect that the repayment of all moneys that have been or may be deposited with or lent to the company pursuant to the prospectus is secured currently by first mortgage. That is, it is secured by a first mortgage over land vested in the guarantor company, and the mortgage must have been registered or was a registrable mortgage that had been lodged for registration. Circumstances can arise where those provisions cannot be complied with at the time required by the clause, and my amendment provides that the prospectus must state that the repayment is secured or that it will be secured by the acceptance of any moneys pursuant to the prospectus. I think that is a desirable provision that should be of assistance; it is really a technicality, but I think it is necessary to have this amendment to cover cases not already covered.

That, at this stage, is all that I wish to say about this Bill. In conclusion, I would say that I support the second reading. I acknowledge the assistance that I have received from the Assistant Parliamentary Draftsman, Mr. Ludovici, in what has been a very onerous task. He has made my task much easier, as he has assisted me in drawing these amendments; in fact, he has very largely drawn them for me. I am grateful for his help because without that help it would have taken me much longer than the considerable time

that it has already taken me to obtain a proper comprehension of these rather technical amendments.

The Hon. C. R. STORY secured the adjournment of the debate.

The Hon. Sir ARTHUR RYMILL: I move that Standing Orders—

The PRESIDENT: That can be done after the Bill has been read a second time and before we go into Committee.

ADJOURNMENT.

At 4.18 p.m. the Council adjourned until Wednesday, September 23, at 2.15 p.m.