LEGISLATIVE COUNCIL

Tuesday, August 3, 1965.

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

QUESTIONS

MATRICULATION CLASSES.

The Hon. G. J. GILFILLAN: Can the Minister of Labour and Industry, representing the Minister of Education, say how many departmental schools in the metropolitan area and how many in the country are teaching to matriculation standard at present and how many such schools will be teaching to that standard in those areas in 1966?

The Hon. A. F. KNEEBONE: I shall be pleased to convey the question to my colleague, the Minister of Education, and bring down an answer for the honourable member as soon as possible.

JUSTICES OF THE PEACE.

The Hon. C. D. ROWE: Has the Chief Secretary, representing the Attorney-General, a reply to the question I asked last week in regard to recommendations for further appointments to the commission of the peace?

The Hon. A. J. SHARD: The Attorney-General has supplied the following reply:

Where there is a special case of need, appointment of justices will be made. Otherwise, future appointments will await the completion of the current survey of existing justices.

DROUGHT RELIEF HAY.

The Hon. R. A. GEDDES: I ask leave to make a statement prior to asking a question.

Leave granted.

The Hon. R. A. GEDDES: I understand that at least some of the first consignment from lower Eyre Peninsula of hay given by farmers in that area for stations in the drought-stricken North has been carted to the rail head at Port Augusta by carriers free of charge. Will the Minister representing the Minister of Agriculture say whether the Government will consider paying the road transport costs for any future consignments of hay from lower Eyre Peninsula to the rail head at Port Augusta?

The Hon. S. C. BEVAN: I will seek the information required by the honourable member and let him have a reply as soon as possible.

TWO WELLS WATER SUPPLY.

The Hon. L. R. HART: I ask leave to make a statement prior to asking a question.

Leave granted.

The Hon. L. R. HART: In last year's Loan Estimates was an item dealing with the Barossa water district as follows:

A comprehensive scheme has been prepared to improve the water supply in the Barossa district, to provide for future expansion and to allow for subsequent enlargement of mains to the Two Wells district. The first step is the duplication of 13,600ft. of main between Sandy Creek and Gawler, and a by-pass at Sandy Creek. This part of the scheme is estimated to cost £90,000, and £1,000 is provided to commence work this year.

This is only the beginning of a much more comprehensive scheme to supply Two Wells and surrounding districts. The extent of the scheme will depend upon whether the township and district of Virginia are also supplied with mains water. The need for this scheme is something I need not dwell upon; it is well known to the department. Will the Minister of Labour and Industry seek from his colleague, the Minister of Works, a report stating whether the £1,000 provided for the commencement of the work was spent during the last financial year (when it was supposed to have been spent), and to what extent the scheme for the expenditure of the £90,000 has proceeded?

The Hon. A. F. KNEEBONE: I shall be pleased to convey the question to my colleague and bring back a report as soon as it is available.

EYRE PENINSULA LAND.

The Hon. C. C. D. OCTOMAN: Recently applications closed for two blocks of land in the hundred of Murlong (sections 19 and 26) situated near Lock on Eyre Peninsula. Can the Minister representing the Minister of Lands advise how many applications were received for these two blocks?

The Hon. S. C. BEVAN: I will obtain the necessary information from my colleague and give a reply later.

CITRUS INDUSTRY.

The Hon. C. R. STORY: Has the Minister of Local Government obtained a reply from the Minister of Agriculture to a question I asked on July 28 about the Citrus Industry Inquiry Committee?

The Hon. S. C. BEVAN: Yes. My colleague advises that the position regarding the report of the Citrus Industry Inquiry Committee was explained fully by the Minister of Agriculture in the House of Assembly on July 28 in reply to a question asked by Mr. Curren, M.P. For the information of the honourable member, I will

read the reply that was given by the Minister in another place, which was:

The honourable member correctly stated that this committee was set up by the former Government to inquire into the citrus industry generally. This is an excellent committee: it has carried out its work assiduously and has made wide inquiries. It has taken evidence in all the citrus-growing areas of the State; it has visited the marketing set-ups of this State; it has taken evidence in Victoria and New South Wales; it has had evidence brought to it from Queensland; and it has visited the markets and marketing organizations in Victoria and in New South Wales. I should be sorry to hear any criticism of the committee, as it has worked long hours to bring down a full report to Cabinet when its inquiries are completed. The committee has done everything that could be desired of it, and has gone even further than that. I am sorry to hear of any criticism of this committee, as it intends to bring in a report towards the end of September. When that report is received it will be presented to Cabinet, which will consider any further action required as a result of the committee's investigations.

SOUTH-EAST AIR SERVICE.

The Hon. R. C. DeGARIS: Has the Minister of Transport a reply to a question I asked on June 15 about the air service in the South-East?

The Hon. A. F. KNEEBONE: I have not a reply. I have looked in my bag and cannot find one. As soon as I have it available, I shall let the honourable member have it.

ROAD MAINTENANCE.

The Hon. G. J. GILFILLAN: My question is in two parts. First, can the Minister of Local Government say how much grant money, including that collected under the Road Maintenance Act, was allocated in the year ended June 30, 1965, to (1) metropolitan councils and (2) country councils? Secondly, can he say how much money has been allocated in the current year to (1) metropolitan councils and (2) country councils?

The Hon. S. C. BEVAN: Naturally, I would not have the amounts to hand at the moment but I shall seek the information and inform the honourable member later.

FORRESTON MAIN STREET.

The Hon. M. B. DAWKINS: I ask leave to make a statement prior to asking a question.

Leave granted.

The Hon. M. B. DAWKINS: It has been the policy of district councils, and I think of the Highways Department, for some years to attempt to seal the main streets of country towns wherever possible. Even those in quite small country towns have been sealed. The residents of the township of Forreston are seeking a similar benefit in their town. It would, of course, reduce the dust and various other disadvantages of the open road system. Can the Minister of Local Government say whether the Highways Department intends to assist the District Council of Gumeracha to seal the main street in the township of Forreston in the coming financial year?

The Hon. S. C. BEVAN: I have not the information now whether or not the Highways Department intends to seal the road that the honourable member mentions. I shall have to obtain that information. I point out to him, however, that it is not intended that the Highways Department shall not give the same consideration to councils in this financial year as in other financial years. There is no suggestion that the amount of money that has been made available to assist councils to carry out necessary work in their districts shall be cut. As a matter of fact, where possible, this assistance will be increased. However, I am not at the moment aware of the department's intentions about this particular street. I shall seek that information from the department.

GOVERNMENT FILES.

The Hon. D. H. L. BANFIELD (on notice):

1. Is the report which appeared in *The Australian* on July 23 correct when it states that Ministers of the previous Government, upon vacating office, took with them departmental reports or correspondence of any real value?

2. If the report is correct, can the Minister advise if the Government is in a position to recover the reports?

3. Are departmental reports the property of the Minister concerned or do the reports remain at all times the property of the Government?

The Hon. A. J. SHARD: The replies are:

1. To the best of my knowledge—No.

2. The Government would be in a position to recover reports, if need be.

3. They remain the property of the Government.

APPRENTICES.

The Hon. F. J. POTTER (on notice):

1. When an apprentice has completed five years' apprenticeship with a Government department and then commences his employment as a tradesman, is the Government prepared to pay him the 25s. a week service payment?

2. Is the Government prepared to pay an extra allowance to tradesmen employed by it who, during their apprenticeship, satisfactorily completed a fourth or fifth year at the trades

school (beyond the three years' compulsory schooling), or does it consider that the metal trades margin of £5 12s. is sufficient recompense for five years' tertiary study?

The Hon. A. J. SHARD: The replies are:

1. The Government was aware that certain anomalies might be created as a result of the service pay decision. This and other anomalies concerning service pay are receiving the attention of Cabinet and will continue to do so until all are resolved.

2. As it is the policy of the Government to pay the marginal rates of pay prescribed by the awards and determinations to which it is a respondent, any increase in margins is a matter for consideration by the appropriate industrial authority.

CORPORAL PUNISHMENT.

The Hon. F. J. POTTER (on notice): In view of the Government's avowed policy on the abolition of corporal punishment, is it the intention of the Government to repeal Regulations 5 to 9 under Part XVII of the Education Act Regulations dealing with the maintenance of discipline in schools?

The Hon. A. J. SHARD: The Director of Education reports:

It would appear that the honourable member is attempting to confuse two completely different matters. The use of flogging as part of the criminal code is one thing; the use of corporal punishment on boys of school-going age is quite another. The decision of the Government to abolish a part of the criminal code has no relation, in my opinion, to the abolition of corporal punishment as provided in the regulations under the Education Act and approved by Parliament. Corporal punishment is seldom used in our schools and then only as a last resort for gross breaches of school discipline and the normal accepted rules of conduct. If corporal punishment, as provided in the regulations, is abolished, it would be necessary in many cases to resort to expulsion.

JETTIES.

The Hon. JESSIE COOPER (on notice):

1. How many jetties at South Australian out-ports are under the administration of the Harbors Board?

2. How many of these are being fully maintained by the Harbors Board?

3. How many are not being fully maintained in first-class order?

4. Will the Minister supply a list of those which are being allowed to deteriorate in whole or in part?

The Hon. A. F. KNEEBONE: The replies are:

1. 70.

2. 63. The maintenance of five has been taken over by the local councils and two have been abandoned.

3. The 63 jetties and wharves mentioned in 2 above are being maintained to various standards, depending upon type of use, exposure to gales, etc. Quite a number of them need extensive repairs to keep them in a safe condition and about £80,000 to £90,000 a year is spent on this work.

4. All the State's jetties are subject to constant wear and tear but the outer ends of the following have been abandoned:

Kingston.
Semaphore.
Cape Jervis (old storm damage).
Rickaby.
Minlacowie.
Vivonne Bay, Kangaroo Island.

The jetty at Meningie and the wharf at Swan Reach have been wholly abandoned.

POTATOES.

The Hon. H. K. KEMP (on notice):

1. Does the Government appreciate the urgency of reorganizing the Potato Board?

2. Will the Minister endeavour to ensure that the Crown Law Office and the Department of Agriculture implement the necessary reforms immediately?

3. How soon can the function of the board be separated from the Wholesalers' Association, which at present serves as agent with divided loyalty?

The Hon. S. C. BEVAN: The replies are:

1. Following representation from grower organizations, the Minister has examined the changing pattern of potato production throughout the State and has agreed to re-allocation of Potato Board electoral boundaries on the basis of comparative total production. This includes the introduction of one completely new district, which will have grower representation.

2. Yes. It should be appreciated that designing and proclaiming boundaries of the several districts simultaneously must take some time as does the preparation of completely new rolls if they are to be accurate.

3. The Chairman of the Potato Board advises that all functions relating to grower delivery, acceptance of potatoes, distribution to washers, merchants or processors, re-distribution of washed potatoes, price-fixing at all levels (grower, washed, pre-packaged, wholesale and retail) are carried out by the board or persons directly employed by and administered by the board. Any inference of divided loyalty with respect to any individual concerned with any aspect of the board's operation is grossly incorrect.

PERSONAL EXPLANATION: CITRUS COMMITTEE.

The Hon. C. R. STORY (Midland): I ask leave to make a personal explanation.

Leave granted.

The Hon. C. R. STORY: I feel that the reply given to the question I asked last week for the benefit of myself and this Council implies that criticism has been levelled at the Citrus Industry Inquiry Committee. As that reply has been given to a question that I asked, in which I suggested no criticism of that committee, I want to make it clear that the criticism was made by a member of another place. So far as I was concerned, I was merely seeking information and not suggesting any criticism of that committee.

PUBLIC WORKS COMMITTEE REPORTS.

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

Campbelltown Boys Technical High School,
Forbes Primary School Additions (interim),
Ingle Farm Primary School (interim),
Kingscote and Central Kangaroo Island Water Supply (Modified Scheme) (interim),
Mount Gambier Infant School (interim),
Para Vista and Para Hills West Primary Schools,
Reynella South Primary School,
Whyalla Divisional Headquarters and Police Station.

TRAVELLING STOCK RESERVE.

The House of Assembly transmitted the following resolution in which it requested the concurrence of the Legislative Council:

That the travelling stock reserve in the hundreds of Eba, Lindley, Maude, Bundey, King and Baldina, and in land out of hundreds, shown on the plan laid before Parliament on May 13, 1965, be resumed in terms of section 136 of the Pastoral Act, 1936-1960, for the purpose of being dealt with as Crown lands.

STATUTE LAW REVISION BILL.

Second reading.

The Hon. A. J. SHARD (Chief Secretary): I move:

That this Bill be now read a second time.

It repeals two Acts now considered obsolete and makes miscellaneous amendments of a drafting nature to several Acts. Clause 2 and the First Schedule provide for the repeal of the Sand Drift Act. Most of the local government areas of the State where sand drift is a serious problem are within soil conservation districts and in such districts the Sand Drift Act does not apply. In areas outside soil conservation districts, district councils have the option of using the Sand Drift Act or the Soil Conservation Act. In practice, the latter Act is used; the former Act is superseded and it is considered that none of its provisions ought to be retained. Clause 2 and the First Schedule also provide for the repeal of the Travelling Stock Waybills Act. This Act prohibits (with certain exceptions) the movement of stock unless the person moving the stock has in his possession a waybill complying with the Act. It is considered that the Act serves no useful purpose today and only causes embarrassment and inconvenience to reputable stockowners.

The original Act was passed in 1911 at a time when all stock were moved on the hoof and, if it were suspected that they had been stolen, could be inspected during their movement from place to place. As the owner was required to set out in the waybill the origin, destination and route of the stock concerned, it could be determined whether they had travelled more than the distance prescribed under other Acts. Modern stock movement, however, is by motor transport and instructions for the movement of stock are given by owners or agents by telephone. The transport operator may make more than one trip to move a herd of stock and may use more than one vehicle to move them. As a result, the requirement to provide a waybill causes the owners and agents a great amount of inconvenience.

In modern times the only justification for the continued operation of this Act is that it could operate as a deterrent to stock-stealing. The Government considers, however, that the Act has no such effect and that it should now be repealed. The Commissioner of Police, in recommending the repeal, proposes, as a more satisfactory measure for detecting any stealing of stock, the introduction of stock movement forms to be completed by police officers whenever stock is observed on the move. Inquiries can then be made at the places of departure and destination of the stock.

Clause 3 and the Second Schedule provide for the amendment of several Acts. This schedule contains two amendments to section 48 of the Dentists Act consequential on the amending Act of 1960. The need for these amendments has been raised from time to time by the present Minister of Education and the opportunity is taken of including the appropriate amendments in this Bill. The other amendments in the second schedule are, in general, minor drafting amendments to Acts passed in recent years, as follows:

1. A clerical correction to section 134 (3) of the Licensing Act;

2. Two drafting corrections to the Local Government Act, sections 384 and 443 respectively.
3. A drafting amendment to section 29 of the Metropolitan Taxi-Cab Act;
4. A clerical correction to the long title and section 1 of the Mines and Works Inspection Act Amendment Act, 1964. (Under clause 4 this amendment will have effect retrospectively as from the commencement of last year's Act.)
5. A drafting amendment to section 33nb of the Nurses Registration Act;
6. A consequential amendment to section 38 of the Phylloxera Act;
7. Consequential amendments to sections 7 and 10 of the Prevention of Pollution of Waters by Oil Act;
8. A clerical correction to section 17 of the Public Service Act.

In addition, the Second Schedule contains minor amendments to section 45 of the Police Offences Act and section 13 of the Volunteer Fire Fighters Fund Act, by the substitution of references to the new Bush Fires and Road Traffic Acts respectively. I commend the Bill for the consideration of honourable members.

The Hon. C. D. ROWE secured the adjournment of the debate.

PISTOL LICENCE ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from July 27. Page 674.)

The Hon. Sir NORMAN JUDE (Southern): I do not desire to delay this measure and wish only to make a few remarks before it is considered in Committee. Honourable members will recall that in 1963 this Chamber passed a similar measure, except that it raised the fee for a pistol licence to 10s. Apparently it fell foul of someone as it involved other States and it lapsed in another place. I hope the reasons that caused it to lapse have ceased. One or two minor problems exist, but I am sure there are no major ones.

I do not object to an increase in the basic licence fee, which has remained at 2s. 6d. ever since 1929. At this figure, the revenue would not equal the cost of collection. As the Hon. Mr. DeGaris pointed out, a prominent member of the Government Party, who was in Opposition when the previous Bill was introduced, then said that pistol licence fees must not be used merely to obtain revenue. As is the case with motor registrations and other similar matters, many administrative matters are costly, and I think all honourable members will agree that fees for pistol licences should cover the cost of the administration that is necessary in relation to a very dangerous commodity—something that should not be left around for the use of children and the public at large. However, we should see that no Government increases fees beyond what is reasonably required for administration for these minor social measures.

Last year 7,664 small arms licences were issued in this State. I am not sure how many people held these licences, but I imagine the number would have been about 2,500. The Police Department received the magnificent income of £958 for issuing these licences, out of which it had to pay 5d. for posting out each form and another 5d. for sending out each licence. The taxpayer also had to spend 5d. to post back his application form. It is unreasonable to think that this can be done for a fee of 2s. 6d.

Pistol licences are issued at one time of the year. I have asked the Police Department whether it considers it desirable to spread their issue, as is done with drivers' licences, but I have been assured that because of the small number of licences—there are not 500,000 pistol licences, as is the case with drivers' licences—it is desirable to issue them quickly in the Christmas month, and I accept that. I think raising the fee to £1 is reasonable. However, this should not be regarded as a tax, particularly as this sport is growing rapidly and as it is not a wealthy man's sport. It is the sport of the ordinary man in the street. Pistol clubs in the South-East have 200 members, and the Adelaide Pistol Club has over 220 members; there are more than 500 registered members of the clubs in this State. From this it can be seen that many people take an interest in a good sport. Marksmanship is always to be encouraged, but the use of small arms must be controlled.

We have 27 pistol clubs in this State, and each club owns pistols for the use of visitors. From what my colleague said I had the impression that some of the clubs had large numbers of pistols, but I have been told that they average 2.6 pistols each, and that no club has more than nine. These are lent to visitors in the same way as golf clubs have sets of clubs to lend. I do not think we need be concerned about the pistols licensed by clubs and kept for the use of visitors or members who cannot afford to buy pistols of the various calibres associated with the different events. On the other hand, sometimes both husband and wife belong to a club. I know of instances

where they are allowed to have four pistols each, so they would have to pay £8 for licence fees, which would be rather an imposition. Although I do not entirely agree that the licence fee for all pistols apart from the first should be 2s. 6d., I think the Government should consider a fee lower than £1 for the additional pistols licensed for members of pistol clubs approved by the police. I will reserve any further comments until the Bill reaches the Committee stage. I support the second reading.

The Hon. D. H. L. BANFIELD (Central No. 1): I too, support the second reading. It seemed to me almost as though Sir Norman Jude was reading from my notes, as I made similar inquiries. I do not think £1 is an unreasonable fee. The original fee was 2s. 6d. for each licence. No member of a club is permitted to have more than four licences, except that he may have five for a limited period when he is changing from one pistol to another. Sir Norman Jude mentioned a husband and wife each having four pistols, but I do not think that should have any bearing on the matter, because, although they are married, they are still individual members of the club, so it would not cost any individual member more than £4 a year. Nobody can say that this proposed increase is for the purpose of raising revenue. As has been pointed out, only £958 is collected annually from licence fees. To administer these licences, the services of two senior members of the department, a retired police officer and a female typiste are required, and £958 would not even represent half the salary of one male officer in the department. Even if £7,664 should be collected it would not cover the department's administration costs. In addition to the administration costs in the department, the local constable, whenever an application for a licence is received, has to make inquiries, all of which adds to the cost of administration. The £1 is not unreasonable, irrespective of the number of licences held by any one person.

The Hon. M. B. DAWKINS (Midland): I support the second reading of this Bill and indicate that, when it comes into Committee, I intend to support the proposed amendment to be moved by Mr. DeGaris. I cannot agree with the honourable gentleman who has just resumed his seat that £4—or £8 in the case cited by the Hon. Sir Norman Jude—is not something of an imposition on one individual or family. I have not had time to do much research in this but it appears that the feeling among the pistol clubs is that this would be an imposition and that there would be considerable support for the amendment proposed to be moved by Mr. DeGaris.

The sport of pistol shooting is becoming more popular. I do not think it is a good thing to restrict it in any way provided it is carried out under proper supervision and by people competent to use a pistol correctly. For that reason, I feel that the imposition of the fee of £1 on every individual pistol is rather much. At first glance, the increase from 2s. 6d. to £1 appears, in itself, to be great but, having regard to the time lapse since the 2s. 6d. was introduced (and I think the Hon. Sir Norman Jude said something about 1929), I agree that the fee of £1 for the first pistol is not unreasonable. I am prepared to support that. On the other hand, I believe there should be some considerable reduction for the second, third or fourth pistol that a club or individual may own.

The Hon. C. R. Story: An individual member of a club.

The Hon. M. B. DAWKINS: Yes, or the club itself. In that case, without wishing to prolong the debate any longer, I shall reserve any other comment I may have for the Committee stages. With these reservations, I support the Bill at the second reading stage.

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

NOXIOUS TRADES ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from July 28. Page 710.)

The Hon. Sir LYELL McEWIN (Leader of the Opposition): This amending Bill is a result of an unsuccessful prosecution, in respect of a nuisance created by a trade, by a council under the Local Government and Health Acts. It derives its importance from the 1943 Act, when action was taken as a result of the development of secondary industries in the metropolitan area, many of which had been established for a considerable period. However, with the development of residential areas surrounding these industries, the problem arose of the interests of the local householder as against the smells, smoke and dust from the nearby industries. The Act provided for the establishment of a noxious trades area where noxious trades could be established, immune to any objection by anybody coming there and building later. Those industries established prior to that Act were protected from objections from people who came to reside in those areas.

Generally, I think the position was accepted that both parties had their rights, and legislation was provided to look after the interests of both.

With the development of investigations and scientific systems, we have come to regard clean air as of some importance to the health of the community, knowing that smog and other such things, as well as noise, can affect the health of the people. So, as a result of complaints, a council took steps to prosecute a certain industry for creating a nuisance—I think the words used were "smoke, soot and ash" constituting a nuisance. That prosecution took place under the relevant sections of two Acts, the Health Act and the Local Government Act. I looked through the Local Government Act hurriedly. If ever there was a need for some consolidation, it is there. I started with volume 5 and followed through I do not know how many volumes until finally I located the relevant section in quite a small volume. But that had several amendments, so one needs plenty of time and the maximum of intelligence to even find his way through the Statutes to discover where the Local Government Act begins. I found in that small volume section 540a, a powerful section, which reads as follows:

If from any premises (other than a private dwelling-house), within any municipality or township within any district, smoke, dust, or any fumes or gases are sent forth in such quantity as to be a nuisance, the owner or occupier of the premises shall be guilty of an offence and liable to a penalty not exceeding five pounds, and on a second conviction to a penalty not exceeding ten pounds, and on each subsequent conviction to a penalty not exceeding twice the amount of the maximum penalty which might have been imposed on the last preceding conviction.

I think that was drafted in anticipation of decimal currency. Subsection (2) reads:

In any proceedings under this section it shall be a sufficient defence to show—

(a) that the defendant, at all times material to the alleged offence, has, in connection with the premises in question, made use of any means generally recognized as sufficient, having regard to the nature of the manufacture or trade carried on upon the premises, and to the character of the locality, for preventing the emission of smoke, dust, or such fumes or gases, or carried out the reasonable requirements of the council for preventing the emission thereof.

I shall not weary honourable members by reading the whole of this section. It will be seen that many things exist for which the industries concerned could be responsible and for which they were subject to a penalty that multiplied. It began at £5, moved to £10 and increased as it went along. Then I looked at the other Act, and apparently it was a case of a double-barrelled gun. Section 83 (2) of the Health Act, 1935-1955, is more simple, except that it is not consistent with the penalties imposed under the Local Government Act. Section 83 (2) reads:

If any premises are in such a state as to be a nuisance or injurious to health or offensive, the occupier of the premises shall be guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds.

So a variation in penalty exists for a similar offence, and the provisions of both those Acts were included in the prosecution. One Act involved a penalty of £5 for a first offence and the other a penalty of £50 for a first offence.

However, the case failed, as the Minister observed, because of a let-out under the Noxious Trades Act that was inserted to protect the industry. The effect of that legislation was that if an industry was established it was just too bad if anybody built a house alongside it because the industry was there first. It meant that because the industry was established first it could not be punished merely because of the fact of its being there unless an order was obtained to move it. In such an event it would in any case receive compensation from the Government.

I remember a case of a local government body trying to take advantage of that Act in order to move an industry. However, such a move was subject to appeal and in this case the appeal was lodged. When I investigated the matter I discovered that nothing had happened that had not happened before. We are aware of the expression, "You cannot make an omelette without breaking eggs", and you cannot engage in the industry of fellmongering without having objectionable smells. For many years I travelled on the northern train line and when passing through Islington railway station usually there were objectionable smells. They were not caused by an industry, but they were just as hard to tolerate as odours from any industry.

I consider the legislation was fair as it set out to look after both parties—the individual residing in an area and the industry itself. The let-out under the Noxious Trades Act defeated the prosecution that was mentioned by the Minister. It is contained in section 13(2), which this Bill amends. It states:

(2a) No criminal proceedings shall be taken in respect of any nuisance directly arising, after the commencement of the Noxious Trades Act Amendment Act, 1965, from the carrying on under the licence under this Act of any noxious

trade within any part of the State to which this Act applies unless it is shown that the noxious trade was not conducted in a proper manner to prevent the same becoming a nuisance.

There is a further proviso in another Act, as mentioned by the Minister, and that is the Manufacturing Industries Protection Act, 1937, which is probably more definite than any other. Section 4 of that Act states:

So long as an area is a protected area under this Act—

(*a*) no person shall be entitled to civil remedy, legal or equitable, on the ground of any noise or vibration arising (at any time whether before or after that area became a protected area or before or after the passing of this Act) from any factory within that area, unless he became the owner or occupier of the land or premises injuriously affected by the noise or vibration before manufacturing operations were originally commenced in the factory, or unless it is shown that the occupier of the factory has failed to take reasonable precautions to prevent the noise or vibration from becoming a nuisance.

It is on that legislation that these amendments are based. If my interpretation of the Statutes is correct, an industry should be protected as long as it is operating for the purpose of its original establishment, whether such an industry be a boiling-down works, a fellmongering establishment or a noisy industry. If, however, through any carelessness or inefficiency of operation it does become offensive, or more offensive than is considered normal to the particular industry then, under this amendment, proceedings may be taken against that establishment. I have examined this matter from the point of view that if a prosecution is beaten at law it may not justify legislation being enacted to obtain a different result. I do not think I can read into this amendment anything inconsistent with what has been provided in legislation I have quoted.

The Hon. A. J. Shard: Or intended.

The Hon. Sir LYELL McEWIN: That is so, and what I have just said means the same thing. The main amendment is to section 13, so far as remedies are concerned, by adding new subsection (1a) which states, *inter alia*:

(*b*) unless it is shown that the noxious trade was not conducted in a proper manner to prevent the same becoming a nuisance.

Therefore, as long as it is a smell or vibration or anything associated with a noxious trade that is something normal to that trade and while nothing else happens that is offensive, say, through bad management, I think that that trade is still protected. It is on that assumption that I support the Bill as it is presented to the Council.

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

HAWKERS ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from July 28. Page 710.)

The Hon. G. J. GILFILLAN (Northern): The amendment, as explained in the second reading speech by the Chief Secretary, is a simple one. I believe that the proposed increases in charges are reasonable and fair. I agree with the Chief Secretary's statement that these travelling salesmen do not contribute to the upkeep of the districts in which they trade and I would go further and say that there is another important factor that he did not mention: that is, that hawking and the business of travelling salesmen, if taken to excess, might materially affect the survival of small businessmen, who do provide a permanent service to the people. This is one of the points we have to watch in considering Bills of this kind. At the same time, we have to ensure that we maintain open competition as far as possible on equal terms between the resident and non-resident trader. I, therefore, have no objection to the proposed increases in fees. In the circumstances, and particularly as these fees were originally set in 1934, these increases are not unreasonable.

The business of travelling salesmen has changed considerably since 1934. We no longer have the hawker, as he was known years ago, travelling from farm to farm supplying necessary services. Nowadays the door-to-door salesmen tend to sell luxury items at considerable cost. They come to a town or area and spend a few days there, selling rather expensive articles, and then they leave. I do not believe that the proposed scale of charges will prevent these people from carrying on their business.

I point out that there is provision for the control of hawkers under two Acts. We have the Hawkers Act of 1934, which is being amended by the Bill before us, and provisions in the Local Government Act that enable councils to control hawkers and salesmen in their areas. The two main sections of the Hawkers Act provide powers for councils to make the necessary by-laws, and, in my experience, most councils consult the Local Government Act, when contemplating a by-law, in order to ascertain their powers. In 1948, when

a previous amendment of the Act was made, 15 country municipalities and 24 district councils had adopted by-laws to control hawkers.

The Hon. A. J. Shard: There would be a lot more than that now.

The Hon. G. J. GILFILLAN: I have no doubt that there would be many more. In fact, there are two such by-laws on the table of the Council now. On reading many of these by-laws, I find quite a large variation in the conditions laid down in regard to the definition of a hawker and in regard to the scale of charges proposed. I am not a lawyer (and I think it is something where legal opinion should be obtained), but it appears to me that, because of this variation, some by-laws do not comply with the Hawkers Act. I took the trouble to trace the history of that Act and, on the introduction of the original Bill in 1934, clause 3 was explained thus:

Clause 3 contains the definitions. The important definition is that of "hawker". This definition is so worded as to bring within the scope of the Bill not merely those persons who are hawkers in the strict sense of the term, but also another class of trader, who for convenience may be called itinerant shopkeepers. This latter class embraces city retailers who travel throughout the country, visiting possibly several country towns in turn and remaining in each for a few days for the purpose of conducting retail trade. The effect of including these persons in the definition of "hawker" will be to place an obligation upon them to take out licences under the Bill and pay fees appropriate to their class of business. They will also have to take out a licence for each employee engaged in selling goods on their behalf in the course of their business as itinerant shopkeepers.

The Hon. R. C. DeGaris: Are they people who hire a room in the town?

The Hon. G. J. GILFILLAN: No. This is intended to define "hawker". The Act states clearly that "hawker" means:

Any person who travels either personally or by his servants or agents by any means of locomotion (whether by land, air, or water, and whether with or without a vehicle) from place to place or from house to house carrying or exposing goods for sale by retail: Provided that the term "hawker" shall not include a person who sells goods or exposes goods for sale only from premises such as a house, shop, room, stall, tent, or marquee:

Section 9 of the Act deals with fees and says:

9. (1) The fees payable for licences shall be as set out in the Second Schedule.

(2) No licence shall be issued until the fee payable therefor has been paid to the Commissioner.

Section 10(1) says:

Every hawker's licence shall contain a condition that the holder thereof shall comply with all by-laws relating to hawking—

and this is the important part—

(other than by-laws requiring hawkers to be licensed or to pay any fees) which are in force in any district or municipality in which he hawks.

The licence is issued by the Commissioner of Police and the fee is paid to the Main Road Fund. A hawker, having been issued with a licence, cannot be called upon to pay a further fee or to obtain a further licence but, according to this section, he can be subject to control. Councils have the power to introduce by-laws to regulate, control or prohibit hawkers but they have not the power under this section to charge an extra fee or to issue them with another licence, except (and this will be found in a part of the Local Government Act) in the instances where the local authority makes a stall or premises available to them. This is where the overlapping causes quite a lot of confusion. Section 669 (13) of the Local Government Act says:

1. For prohibiting or regulating the use of streets, roads, and public places by street hawkers and street traders, both generally and with power to prohibit any such persons during particular hours from using any streets, roads or public places:

2. For appointing stands in streets, roads, and public places for street hawkers and street traders, with power from time to time to abolish, enlarge, or diminish any such stands, to limit the space to be occupied by each person on any such stand, and the number of persons who may occupy any particular stand:

3. For fixing the charges to be paid for the right to use such stands, with power to vary the charges according to the stand used, . . .

This is quite clear. Under a Local Government Act by-law a council may charge a hawker for the use of a stand, but it cannot charge a separate fee for another licence or demand that another licence be taken out.

Under section 10 of the Hawkers Act a council may make a by-law, and, although in the Local Government Act it may regulate or prohibit hawkers altogether, it cannot charge a hawker another fee. However, in many by-laws that have been adopted there is a completely different definition of these people. The street trader's licence, which no doubt is intended to refer to hawkers, is distinct from a non-resident trader's licence. The non-resident trader no doubt is the person mentioned in section 20 of the Hawkers Act, under which a council has power to license and make conditions for people who do not continuously reside or trade in an area but who trade from premises, such as shops, buildings, etc. It also fixes a maximum fee of £2 a day. The proposed amendment makes it £4 a day. The two categories defined in this Act

are the holders of hawker's licences and the persons who do not continuously reside in a district and who are not hawkers in the true sense. However, the by-laws use different terms, such as "street trader's licence" in relation to a hawker and "non-resident trader's licence" for a licence issued to a person who trades in premises but does not live continuously in the district. In other by-laws the terms "non-resident trader's licence" and "trader" are used.

The Hon. S. C. Bevan: But they would not be hawkers; they would be traders in premises.

The Hon. G. J. GILFILLAN: No, and that is the point. The by-law relating to a street trader's licence is as follows:

No person shall trade in or from any street, road or public place within the municipality unless he is the holder of a current licence issued to him by the council (hereinafter called a street trader's licence).

The sum charged is £5 5s. a quarter. This is a similar definition to that of a hawker, and I have no doubt that it is intended to refer to the hawker because it specifically states "street, road or public place". In the same by-law the non-resident trader's licence is mentioned as follows:

No person who does not continuously reside or carry on business within the municipality shall trade in or at any house, shop, room, store or other premises within the municipality unless he is the holder of a current licence issued to him by the council (hereinafter called a non-resident trader's licence).

The fee for that is £5 5s. a quarter. Under the Hawkers Act the council has no right to charge an extra fee for a street trader's licence. It can control a hawker but it cannot charge an extra fee, yet under some by-laws a fee is imposed. However, a council can issue a licence to a person who does not continuously reside or carry on business within the municipality. It is permitted to do this under section 20 of the Hawkers Act, but that Act limits the fee to a maximum of £2 a day, which will be increased by this measure to £4 a day. Many by-laws quote fees which vary from £5 5s. a quarter to £10 10s. a quarter, and in one by-law there are just the words "fee £20" without any explanation of the duration of time. This does not seem to me to be consistent with section 20 of the Hawkers Act, which states specifically the fees which may be charged. A person could trade in a district for one or two days and under some of the by-laws that have been approved could be charged £10 10s. or £21. I hope the Government will examine this matter closely, because an amendment this session to the Local Government Act has been foreshadowed.

The Hon. Sir Norman Jude: You are an optimist!

The Hon. G. J. GILFILLAN: That was mentioned in the Governor's Speech. There is much confusion in the administration of the various Acts and by-laws controlling hawkers. Many council areas are divided by just a road, and a different set of by-laws and charges operates in each. I suggest that if the Government contemplates amending the Local Government Act it may be practical for it to consider combining legislation in one Act and at the same time to examine the by-laws that have been passed to ensure that they comply with our Statutes. I support the Bill.

The Hon. L. R. HART secured the adjournment of the debate.

ADJOURNMENT.

At 3.33 p.m. the Council adjourned until Wednesday, August 4, at 2.15 p.m.