LEGISLATIVE COUNCIL

Thursday, March 16, 1967.

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

QUESTIONS

SITTINGS AND BUSINESS.

The Hon. R. C. DeGARIS: I ask leave to make a statement prior to asking a question of the Chief Secretary.

Leave granted.

The Hon. R. C. DeGARIS: We have a fairly full Notice Paper, and notice has been given of a further Bill to be introduced. Will the Chief Secretary say whether the Government expects us to deal with all the legislation before us before Parliament prorogues, and whether it intends to introduce further legislation for consideration?

The Hon. A. J. SHARD: I think the items listed on our Notice Paper could be handled before prorogation. We do not intend to proceed with some items on the Notice Paper in another place before Parliament prorogues, but I think the Government would like decisions on the matters before us now, if possible, before prorogation.

GAS.

The Hon. G. J. GILFILLAN: When the Bechtel report on the relative merits of the alternative routes for bringing gas from Gidgealpa to Adelaide is received, will the Minister of Mines make the information contained in it available to honourable members?

The Hon. S. C. BEVAN: When the report is available it will be presented to Cabinet, which will determine what will be done.

CARRIBIE BASIN.

The Hon. M. B. DAWKINS: I ask leave to make a statement prior to asking a question of the Minister representing the Minister of Works.

Leave granted.

The Hon. M. B. DAWKINS: In August of last year I made some inquiries of the Minister representing the Minister of Works with reference to extensions to the Yorke Peninsula water scheme, with particular reference to the development of the Carribie Basin, and the Minister concluded his reply as follows:

As soon as a report is received from the Mines Department, an investigation will be made and a scheme prepared for the development of the Carribie Basin.

Some three months later the Minister of Mines was good enough to inform me that the Carribie Basin had been investigated and a report had been forwarded to the Engineering and Water Supply Department. In view of that and of what I am sure is the Minister's desire to extend the supply, will the Minister of Labour and Industry ask his colleague whether a plan has been prepared or whether it is in the course of preparation?

The Hon. A. F. KNEEBONE: I shall refer the honourable member's question to my colleague and bring back a reply as soon as possible.

LOCAL GOVERNMENT COMMITTEE.

The Hon. C. M. HILL: I ask leave to make a statement prior to asking a question of the Minister of Local Government.

Leave granted.

The Hon. C. M. HILL: A copy of minutes of the general meeting of the Municipal Association of South Australia held on Wednesday, March 1 this year, has been sent to me, and this is reported under the heading "Local Government Act Revision Committee":

The President reported that he had attended all meetings of the committee held since his appointment but that the work would have to be suspended due to lack of finance. He requested that all members of local government use whatever influence they had, particularly with members of Cabinet, to press for the release of funds for this work.

I have some doubt as to the influence I have, particularly with members of Cabinet. However, can the Minister say whether it is true that this work has been suspended and, if it is, when he thinks funds will be available so that the revision committee can sit again?

The Hon. S. C. BEVAN: If my memory serves me correctly, a similar question was asked of me last week. I have nothing to add to what I said then.

GILES POINT.

The Hon. C. R. STORY: Has the Minister representing the Minister of Marine a reply to the question I asked recently in regard to Giles Point?

The Hon. A. F. KNEEBONE: No, I have not a reply for the honourable member, but I shall check on the matter and get a reply as soon as possible.

SCHOOL FLYSCREENS.

The Hon. A. M. WHYTE: I ask leave to make a statement prior to asking a question of the Minister representing the Minister of Education.

Leave granted.

The Hon. A. M. WHYTE: Some schools in country areas are of the old type commonly known as Moseley dog boxes and are not equipped with screens on the window openings or doorways. The Education Department has given as the reason for not providing the screens that children carry flies into the rooms and the flies then collect at the windows and cannot get out. However, that is not quite the position. I realize that the flies would not be able to get out, but most of the children attending these schools are aware of the fly problem and would be chastised if they left open the screens in their own homes. I consider that the department should reconsider the obsolete view that has been taken. Will the Minister ascertain from the Minister of Education whether the position can be rectified?

The Hon. A. F. KNEEBONE: I shall be happy to take up the matter with my colleague, the Minister of Education, and bring back a report as soon as it is available.

RAILWAY INSURANCE.

The Hon. G. J. GILFILLAN: I ask leave to make a statement prior to asking a question of the Minister of Transport.

Leave granted.

The Hon. G. J. GILFILLAN: At the present time it is possible to consign goods on the South Australian Railways either at the consignee's risk or at the Railways Commissioner's risk. The rate for goods consigned at the Commissioner's risk is considerably higher. There is also a third alternative—the possibility of insuring goods through the normal channels. This difference in freight rates affects many primary products carried in bulk, including livestock. Most consignees are prepared to take the risk of normal losses, but a derailment is something unforeseen by the ordinary consignee and, under the existing method of considering compensation, he has to prove wilful misconduct. As competitive road transport in many instances carries its own insurance against these eventualities, will the Minister consider a more liberal attitude towards situations like this?

The Hon. A. F. KNEEBONE: This matter was recently brought to my notice. Although there are different rates where liability is covered by the Railways Department and where it is not, the Railways Commissioner has been very reasonable in some of these cases of derailment. I know of a very recent case in which, although the consignee had not taken the rate where the liability rested with the Railways Commissioner, after considering the matter and after negotiations between the consignee and the Railways Department, the Railways Commissioner agreed to pay 50 per cent of the loss although the consignee had not taken advantage of the fact that he could insure himself with the Railways Department against such loss. All such cases are taken on their merits and looked at from this point of view, but I am prepared to discuss the matter with the Railways Commissioner and see whether something cannot be done on the lines suggested by the honourable member today.

LEVEL CROSSING ACCIDENT.

The Hon. L. R. HART: Has the Minister of Transport a reply to my question of March 2 about a level crossing accident and the position of the guard's van?

The Hon. A. F. KNEEBONE: Yes. Not infrequently are a limited number of goods vehicles, fitted with special bogies, attached to the rear of passenger trains. This is done not only to provide express movement for certain categories of freight but also to make the best possible use of the locomotive power available. The last vehicle on any train, whether it be a brakevan or a goods vehicle, is always fitted with a marker lamp on each side which shows a yellow light to the front and side and a red light to the rear. It would be inappropriate to make any specific comment at this juncture on the recent level crossing accident near Virginia, except to say that the time interval between the passage of the last illuminated passenger car on the train and the trailing goods vehicle would, at the most, be a matter of a few seconds.

COUNTRY DOCTORS.

The Hon. M. B. DAWKINS: I ask leave to make a short statement prior to asking a question of the Minister of Health.

Leave granted.

The Hon. M. B. DAWKINS: My question relates to the supply of medical practitioners in country towns. This matter has concerned many members, including the Hon. Mr. Geddes and myself, as well as you, Sir, when you were on the floor of the Council. We have several country towns that are without resident doctors. My particular concern is for the town of Karoonda in my district, but I am aware that other towns are in the same position in that a medical service is not readily available. When I spoke to the Minister previously about this matter, he was hopeful of getting medical men from the Old Country

and, in that way, of improving the position. I know these troubles still exist. Has the Minister any comment, and can he tell us of any improvement in the availability of doctors for country areas?

The Hon. A. J. SHARD: Regarding the matter of an improvement in the position, and whether we have been able to direct medical practitioners to work in certain country towns, the Government is in no better position than previously. It takes time to educate future graduates in order that they may become medical practitioners; we have one student doing the medical course and on its completion the Government will be able to request him to go to a country town. We are negotiating regarding a second student, but it is a long-term matter.

We are attempting, through the Agent-General in London, to obtain doctors who are prepared to migrate and practise in country areas. We badly need these medical practitioners, but we have been unsuccessful in persuading them to do this. To my knowledge, since Christmas, two medical practitioners from England have gone to country areas in this State. One locality sought a certain type of practitioner and received 16 applications; I am informed that any one of the applicants would have been a welcome addition. The best applicant was picked; another of those applicants is working in a different country town. We have also assisted a specialist to come to South Australia. We are continually trying, through the Agent-General, to prevail upon medical practitioners to come from England to South Australia, but it is extremely difficult to persuade them to go to outlying country towns. Until the students in training graduate, I am afraid that we shall have difficulties. I do not want to throw a wet blanket on this matter: I assure the Council that we are continually working on this question. I only wish that we could be more successful.

DENTAL SERVICES.

The Hon. C. R. STORY: I ask leave to make a brief statement prior to directing a question to the Minister of Health.

Leave granted.

The Hon. C. R. STORY: The Minister will recall that I asked a question about six months ago concerning dental services in country areas. The Minister told me at that time that the matter was receiving serious consideration. The object was to provide dental services in country areas for people on pensions. Has the Minister anything to report?

The Hon. A. J. SHARD: I cannot add anything to my earlier remarks. The matter of cost has been discussed. We have listed it, but not officially, for discussion at the conference of Ministers of Health to be held next month. I intend to take it up at that conference. We feel that we are justified in dealing with it there because in some measure it is the Commonwealth Government's responsibility to assist with the cost. Unless the Commonwealth Government is prepared to come to the party and assist, as it does in some other branches of the medical profession, I am afraid the cost will be too great for this State to bear. On my return from the conference I will not mind letting the honourable member know the result.

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:

East Marden Primary School,
Port Pirie Isolated Oil Berth.

INDUSTRIAL CODE AMENDMENT BILL.

The Hon. A. F. KNEEBONE (Minister of Labour and Industry) obtained leave and introduced a Bill for an Act to amend the Industrial Code, 1920-1966. Read a first time.

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

That this Bill be now read a second time.

The Labor Party approached the electors at the last election with a specific policy for amending the Industrial Code and, during the course of the election campaign, the following matters were spelt out specifically by the Labor Party as being part of its policy for such amendment. Firstly, the Code should be amended to cover workers in agriculture. There can be no justification whatever for denying to workers in South Australia the right to approach the tribunal for the fixing of fair and just wages and conditions. It cannot be contended that workers in agriculture cannot be given reasonable conditions and a fair wage, or that agriculture cannot sustain these, and it should be possible for them to be prescribed by the Industrial Commission.

Secondly, the Labor Party made it clear that its policy on employment was one of preference to unionists. The brunt of the cost of obtaining awards prescribing wages and conditions falls upon members of trade unions.

It is unfair that other people should be able to take equal advantage of those awards and conditions without contributing a cent. Preference to unionists should, therefore, be given and, with the widespread acceptance of the system of conciliation and arbitration, there is no reason not to grant this. Membership of associations, both of employers and of employees, should be specifically encouraged in law in order that the system of conciliation and arbitration may effectively work.

The Labor Party also made it clear that it was against penalties on strikes. A labourer has nothing but his labour to sell. He should be able to refuse to sell that labour if the conditions prescribed for the job in which he is engaged or which were imposed by the employer are such that he would prefer to withdraw his labour or to seek some other employment. Under the present terms of the Industrial Code, if a group of employees decides that they would find it preferable to work in some other avocation and for some other employer, they could be dealt with by the court and penalized for an act in the nature of a strike. This is an intolerable limitation upon the freedom of a workman. In consequence, the Government proposes to delete from the Industrial Code all the penal clauses relating to lock-outs and strikes.

Again, the Labor Party made it clear that there should be no artificial limitation upon the right of a workman to recover his prescribed wages and allowances. These are, after all, a civil debt. Normally civil debts are recoverable within six years of their being incurred. The Labor Party sees no reason why workmen's wages should be treated any differently and therefore proposes to extend the limitation period from 12 months in certain cases under the Industrial Code to the normal six-year period.

I now turn to detailed consideration of the clauses of the Bill. Clause 3 removes the heading in the arrangement section of the Act which deals with lock-outs and strikes. Clause 4 removes the definition of "agriculture" from the definition section as this will no longer be needed to differentiate agriculture from other forms of profitable undertaking. It also includes in the definition of "industrial matters" that may be determined by the commission or by a conciliation committee preferential employment for members of registered associations. It also amends the definition of "industry" by removing the passage "(except agriculture)" and it removes the definitions of "lock-out" and "strike".

Clause 5 is a consequential amendment to the removal of certain of the penalty sections in division VIII of Part II. Clause 6 removes the proviso to section 29f (I) (*e*) of the principal Act, which prohibits the granting of preference to unionists and inserts instead power to the commission to grant preference to unionists. It also removes a proviso to paragraph (*t*) of that subsection. This removal is consequent on the repeal of Division VIII of Part II.

Clause 7 repeals Division VIII of Part II which deals with "lock-outs" and "strikes", and penalties therefor. Clause 8 makes certain consequential amendments to section 121 and alters the time limit for recovery of wages fixed by an award or order from 12 months to six years. Clause 9 makes a similar amendment to section 121a of the principal Act. Clause 10 makes an amendment to section 122 of the principal Act consequent upon the power to require preference to unionists.

Clause 11 amends section 123 of the principal Act by removing the prohibition upon an employee from ceasing work because an employer has employed or does employ non-unionists. This is an essential provison to ensure that employees have the right to withhold their work from an employer for good reason and without penalty. The particular clause that is being removed is one which in the present Act differentiates against employees as between this section and the previous section of the principal Act that deals with employers. Clause 11 also contains certain other consequential amendments.

Clauses 12, 14 and 16 are further amendments altering the time limit for recovery of wages from 12 months to six years. Clause 13 gives specific power to a conciliation committee to award preference to unionists. Clause 15 provides that an employer whose employee is a member of a conciliation committee and who has to attend a meeting of that committee during working hours shall pay to his employee the amount the employee would have received had he not had to attend the meeting of the committee, and makes certain consequential amendments.

Clause 17 repeals the Third Schedule of the principal Act, which provides forms for the procedures of enforcing penalties under the "lock-out" and "strike" provisions of the Act now repealed. The Third Schedule is, therefore, no longer required.

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

ABORIGINAL AFFAIRS ACT AMENDMENT BILL.

Read a third time and passed.

CONSTRUCTION SAFETY BILL.

Second reading.

The Hon. A. F. KNEEBONE (Minister of Labour and Industry): I move:

That this Bill be now read a second time.

The first Scaffolding Inspection Act in this State was passed in 1907. It had application only if scaffolding or hoisting appliances were erected in connection with building work. In the course of the following 20 years a few amendments were made to the Act, and then in 1934 the present Act was passed. That Act, however, did not differ substantially from the 1907 Act. It was not until 1957 that any major amendments were made. Further amendments were made in 1961 and 1963.

The Act was, in 1961, for the first time extended to apply to the demolition of larger buildings and excavations for building foundations. Thus, the Act is no longer a Scaffolding Inspection Act as its name implies. Difficulties have been encountered because the Act in its present form is now largely a patchwork arrangement that basically had its origin in 1907, when building construction activities were of a far different nature from those which exist at present.

Another important omission from the Scaffolding Inspection Act is that there is no provision whereby members of the public may also have protection from building operations, particularly from hazards associated with the demolition of buildings, and from excavation work on a building site which is involved in connection with building, but not necessarily excavations for building foundations. The Act is framed to protect workmen engaged on building and demolition work. This, however, does not go far enough. An example of the need for extending the scope of the Act occurred in connection with the rebuilding of the Royal Adelaide Hospital, where extensive deep tunnelling was necessary between buildings; but as these excavations were not for the foundations for new buildings, the Act did not apply to that work.

With all of this in mind the Government has decided to repeal the Scaffolding Inspection Act and replace it with a new Act with the title Construction Safety Act. This short title will more properly describe the scope of the Act, the object of which will be to ensure that safe working conditions are provided and observed on building work, the demolition of buildings and also the excavation, shaft sinking and tunnelling on the site of and in conjunction with buildings. In addition, the Act will empower the Governor to proclaim that it shall apply to other work of or in connection with an excavation or tunnel. This is a similar type of provision to that which was inserted in the Mines and Works Inspection Act some years ago in connection with work which is similar to mining but not done in a mine. Further, provision is made for compressed air work done in connection with building work to be subject to the Act, should such work be undertaken.

Where practicable and appropriate, the provisions of the present Scaffolding Inspection Act have been retained, but a number of new features is contained therein. I shall explain them as I deal with each clause of the Bill.

Clause 2 provides for the repeal of the present Scaffolding Inspection Act. Clause 3 lays down the areas to which the provisions of the Bill will apply. Although all workmen engaged on building construction work should be provided with safe working conditions, the provisions of this Bill apply only to those parts of the State to which the present Scaffolding Inspection Act now applies. The Government is satisfied that the interests of workmen in the building industry can best be served by concentrating the activities of inspectors on those parts of the State where major building activities are taking place. However, provision is included for the areas to which the Bill applies to be altered by regulations, as is the case under the present Scaffolding Inspection Act.

The various definitions of terms used in the Bill and necessary to interpret the legislation are set out in clause 4, while clause 5 deals with the scope of the work to which the provisions of the Bill will apply and to which I have already referred. The appointment of inspectors is provided for in clause 6. The requirements of clause 7 are similar to those presently applying, in that any person who intends to carry out work to which the Act applies must notify the department before work commences. In addition, two provisions have been included to cover difficulties which have been encountered in the present provisions of the Scaffolding Inspection Act. The first is to ensure that, where a person undertakes some work to which the Act applies but does not do any of the work himself, he is responsible for giving notice and paying the prescribed

fee. This is commonly known as the brokerage system, under which a person (who is for the purposes of this Act to be regarded as the principal contractor) subcontracts the whole of the building of a spec house.

Under the present Act it has not been possible to require any notification of intention to build, or to obtain a fee from such person, but this position will be altered because of the new definition of principal contractor, which extends to this class of person. The second provision ensures that any person who is convicted for not giving such notice and paying a fee shall be liable upon conviction to pay the fee. A case occurred some time ago where, after a person was convicted for not giving notice and paying the fee, the Crown Solicitor advised that the fee could not be recovered.

Clause 8 empowers the making of regulations concerning scaffolding, gear, hoisting appliances, power driven equipment, and shoring. In addition provision is made requiring that every contractor and employer ensure that the provisions of the Act are complied with and take all reasonable precautions to ensure the safety of workmen engaged on any work to which the Act applies. Clause 9 contains a new, but very desirable, provision which has operated satisfactorily for some years in both the United Kingdom and New Zealand. It will apply on major work, that is, where more than 20 workmen are employed at any one time.

Generally, this work will be the construction of multi-storey buildings (including the excavation work for such buildings) and group cottage construction. In such cases the Bill requires the principal contractor to appoint a safety supervisor who has the necessary qualifications to be specifically charged with ensuring the safety or protection of persons employed on the work and its safe conduct generally. The safety supervisor need not be employed in a full-time capacity.

The provisions of clause 10 are also new. They concern the supply by an employer to his employees of protective equipment, which, when supplied, must be worn or used by the employee. It also requires an employer to provide artificial lighting when natural lighting is insufficient, and a penalty for failure to comply with the provisions of this clause is provided.

One of the difficulties of the Scaffolding Inspection Act is that no provision is made for the welfare of any person engaged on work to which that Act applies. Clause 11 empowers the making of regulations concerning drinking water, washing facilities, accommodation for meals, clothing and tools, sanitary conveniences, first-aid equipment, and appliances for the prevention and extinction of fires as required on work to which the Act applies. These are matters in respect of which the Industrial Code has, for many years, provided for the making of regulations in respect of persons employed in factories.

While some of these matters are now included in awards applying in the building industry, this is not a satisfactory arrangement, as invariably persons employed under a number of awards work on the same building project and there can be different provisions in respect of amenities, especially when some of the awards are made by the Commonwealth Conciliation and Arbitration Commission and some by the State Industrial Commission. In some cases awards do not make any provision at all for these matters.

In order that persons engaged on work to which this Bill will apply may be aware of its provisions and the regulations to be made under it, provision is made in clause 12 for copies of the Act and regulations to be available for perusal by workmen at all reasonable times. The Industrial Code already provides that an employer shall display a copy of the award applying to his employees at his principal place of business and at every branch or depot where a substantial number of employees are required to work or report.

During the construction of multi-storey buildings it is necessary for heavy plant, equipment and structural steel members for buildings to be lifted, and for cranes to be hoisted to the top of buildings for use in building operations, and these cranes subsequently have to be dismantled. These are examples of work which it is necessary to have supervised by a competent rigger. In New South Wales and Western Australia it is necessary for such riggers to hold a certificate of competency, obtained after examination, and the Government considers that a qualified rigger who holds a certificate of competency should be required to supervise any rigging work, whenever work to which the Act applies is being undertaken.

For many years it has been necessary for crane drivers who operate large cranes on building work to hold a certificate, issued by the Enginedrivers Board constituted under the Steam Boilers and Enginedrivers Act, and it is equally as important for riggers to be properly qualified. Clause 13 makes provision for the Chief Inspector to issue the certificates of competency, but provides that this provision

shall not come into operation until one year after this Bill becomes law.

Clause 14, which deals with the reporting of accidents, is in substantially the same form as the corresponding section of the Scaffolding Inspection Act, and also the Industrial Code. In order that the Bill and the regulations made under it shall be complied with and safe working conditions observed on work to which the Bill applies, it is necessary for inspectors to be given powers to give directions. This is the purpose of clause 15, which also is substantially in the same form as the provisions of the Scaffolding Inspection Act. Clauses 16, 17 and 18 deal with the powers of inspectors, and give them power to enter any land with or without interpreters or members of the police force for the purpose of making inspections for the enforcement of the provisions of the Bill. Clause 19 empowers the making of regulations, while clauses 21 and 22 are consequential legal provisions. It has been the practice for the Government to observe the provisions of the Scaffolding Inspection Act, but it is considered that this should be made a matter of law and, accordingly, provision is made in clause 20 of the Bill to bind the Crown.

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

COMMONWEALTH POWERS (TRADE PRACTICES) BILL.

Second reading.

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

That this Bill be now read a second time.

Its object is to refer to the Parliament of the Commonwealth such matters relating to or arising out of restriction of competition in trade and commerce as would enable that Parliament, pursuant to the Constitution of the Commonwealth, to enact legislation having force and effect within the State in relation to intra-State matters, with a view to preserving competition in trade and commerce to the extent required by the public interest.

This Bill can be regarded as a corollary of the Trade Practices Act, 1965, of the Commonwealth which was passed by the Commonwealth Parliament, after some years of consultations and discussions with Ministers and officers of the States, in order to secure a measure of control over certain agreements and practices which operated in restriction of trade. The States were kept informed of the work that was being done in the formulation of the policy governing the Commonwealth legislation as it was recognized that the Commonwealth legislation could have effect only in the area of interstate trade and commerce, intra-State agreements and practices of a kind covered by the Commonwealth legislation being unaffected by it, and that those States that were disposed to do so would enact complementary legislation extending the application or the effect of the Commonwealth legislation to such intra-State matters. The Commonwealth legislation was accordingly designed with the intention that the States could make use of Commonwealth administrative and judicial facilities.

When the question of the States passing complementary legislation was first discussed by the Standing Committee of Attorneys-General, it was assumed that there was no constitutional bar to the States conferring on the Commonwealth Industrial Court jurisdiction to deal with judicial matters arising under the State law. However, in recent times doubts have arisen about the validity of this assumption and the opinion of the Commonwealth Solicitor-General (Mr. A. Mason, Q.C.) was obtained. After a very thorough investigation of the authorities, Mr. Mason came to the conclusion that on the present state of the authorities the question was an open one but, at the same time, he was not confident that the High Court would hold that Chapter III of the Constitution would permit the vesting of State jurisdiction in a Commonwealth court.

Furthermore, any complementary law passed by a State involving use of the Commonwealth administrative and judicial machinery can operate only if the Commonwealth declares it to be a complementary State law. A State Act which has any substantial departure from the Commonwealth scheme could not, as a matter of practical administration, be declared to be a complementary State Act and would therefore be a dead letter. Another major difficulty with respect to complementary State legislation is that of keeping the State law in line with future amendments of the Commonwealth Act and regulations.

If future amendments to the Commonwealth Act had to be adopted by further State Acts, there would be the difficulty and trouble of preparing and presenting future Bills, the uncertainty of their passage and the certainty of a substantial time lag between amendments to the Commonwealth Act and the passage of these Bills. This could cause serious confusion in the law. Such confusion could occur in

other respects as well. If complementary State legislation were passed in this State, there could possibly be two laws operative in relation to a trade agreement or practice and difficult decisions by parties and authorities would have to be made at various stages as to which law was being relied on, or whether both were being relied on. If both laws had to be relied on, there would of necessity be duplication of documents and even of proceedings, duplication of orders and possible failure of proceedings by reason of reliance on the wrong law.

Because of these and other difficulties the Government has decided that the only safe approach to satisfactory legislation in this field is to refer to the Commonwealth Parliament the necessary power to enable it, under section 51 (xxxvii) of the Constitution, to legislate in that field.

Apart from the constitutional problems involved in the idea of complementary State legislation, a reference of power as proposed by this Bill has distinct advantages over complementary State legislation. By no means the least important of these advantages are as follows:

1. The public will be subject to one law only, namely, the Commonwealth law, whereas, if there were complementary State legislation, the relevant law would be contained in Acts and regulations of both the Commonwealth and the State.
2. The public of the State and the administering authorities would not have to concern themselves with many complex and unnecessary problems and, in particular, would be able to avoid the duplication and overlapping of inquiries and procedures and the need to make difficult decisions as to whether the Commonwealth law or the State law was relevant in particular circumstances.
3. There being no scope for a complementary State Act to contain any material departures from the scheme provided for in the Commonwealth legislation, the problem whether the Commonwealth would or would not recognize the State Act as a complementary State Act would not arise.
4. There could be no possibility of any hiatus between the Commonwealth and State laws with the consequence that some agreements and practices would be covered by neither law.
5. Effective Ministerial responsibility for a complementary State Act would not be possible, all the officials associated with the administration of the legislation being employed by the Commonwealth and there being no room in the Commonwealth machinery for a State Minister to exercise control over them in regard to State matters.
6. The serious questions whether the State Parliament can vest State jurisdiction in the Commonwealth Industrial Court and how that court's orders wherever made can be enforced would not arise.
7. The need for State legislation to be constantly keeping in line with Commonwealth amendments (both in its Acts and in its regulations) would not arise.
8. Uncertainties in the law and scope for litigation both in relation to constitutional power and in relation to construction, would be reduced to a minimum.

The Bill is a short one and consists of four clauses. Clause 2 refers to the Parliament of the Commonwealth the matters mentioned in paragraphs (*a*) and (*b*) of subclause (1) of that clause. Briefly, they are:

(*a*) agreements and practices that restrict or tend to restrict trade or commerce; and

(*b*) the exercise or use by a person, or by a combination or any member of a combination, of a monopolistic power in or in relation to trade or commerce.

Clause 4 and clause 2 (2) provide that the reference is to terminate on any day which the Governor may fix by proclamation, and clause 3 assures that the reference is intended to confer on the Commonwealth Parliament power to enact provisions having the same operation within the State that the Trade Practices Act of the Commonwealth would have if its operation within the State were not restricted by reason of the limits of the legislative powers of the Commonwealth Parliament.

At this point I would like to assure honourable members that in the case of *The Queen v. Public Vehicles Licensing Appeal Tribunal of Tasmania* (37 A.L.J.R. 503) the High Court held that the time limitation in the Tasmanian Act referring the matter of air transport for a period terminable in the same way as expressed in this Bill was a valid reference, and that an Act which refers a matter for a time which is specified or which may depend on a future event, even if that event involves the will of the State Governor in Council and consists in the fixing of a date by proclamation, was within the description of a reference in

paragraph (xxxvii) of section 51 of the Constitution.

I shall now explain the main features and effect of the Trade Practices Act of the Commonwealth. The philosophy behind the Act is that only clearly defined classes of agreements and practices should be liable to control, and that agreements and practices within these classes should be looked at, each on its own merits, to ascertain whether they are contrary to the public interest, and should, on that account, be prohibited. Under the method of control applicable to all agreements and practices, other than the practices of collusive tendering and collusive bidding, no agreement or practice is to be in any way unlawful unless and until it has been examined and found to be contrary to the public interest.

The question whether an agreement or practice is contrary to the public interest is to be determined by a specially constituted administrative body called the Trade Practices Tribunal. This tribunal is to consist of a president, a number of deputy presidents and a number of other members. The presidential members are required by section 10 to have been barristers or solicitors of not less than five years' standing, and non-presidential members are required to have knowledge of, or experience in, industry, commerce or public administration. Although the members are to be appointed for terms of years, they are not to serve on a full-time, or continuous, basis. They will form a panel of members from which divisions of the tribunal will be constituted from time to time to deal with particular cases. Normally, a division would consist of one presidential member and two other members. However, if the parties to a proposed proceeding agree, the tribunal may be constituted for that proceeding by a single presidential member.

Questions of law are to be decided in accordance with the view of the presidential member while other questions are to be decided in accordance with the view of the majority. The tribunal is able to act with less formality than a court of law; for example, it is not bound by the ordinary rules of evidence and in most matters it is free to determine its own procedure. It is required to sit in public except where it is satisfied that a private hearing is desirable because, for example, of the confidential nature of evidence to be taken. The tribunal has expressed power to receive, and to act upon, undertakings in the same way as a superior court of law.

The function of the tribunal is to determine whether agreements and practices within the defined categories of examinable agreements and examinable practices are contrary to the public interest. Where it determines that an agreement or practice is contrary to the public interest, it is to make an appropriate order to restrain its continuance. Such orders will operate prospectively only.

The agreements that are examinable by the tribunal are defined in section 35. The definition covers an agreement only if the parties to it include two or more competitors for the supply of goods or services or persons who would be in competition if it were not for the agreement. The parties to these agreements must be at the same level of the productive or distributive process and therefore the agreements are commonly referred to as "horizontal agreements". Thus agreements between manufacturers of the same product are included as also are agreements between wholesalers and agreements between retailers. But an agreement between a manufacturer and a wholesaler or one between a wholesaler and a retailer is not covered. In addition to the horizontal characteristic, the agreements must contain a restrictive condition of a kind specified in section 35 which must have been accepted by the parties to the agreement.

The five kinds of agreement covered by the Act are those that contain restrictive conditions accepted by the parties which limit their freedom to compete with each other in relation to:

(1) Agreed conditions of supply. These include price fixing, for example, where separate manufacturers of a product agree as to the wholesale and retail prices of their product;

(2) Uniform terms of dealing, including allowances, discounts, rebates or credit. For example, manufacturers of a particular product may agree not only on the uniform price of goods bought by ordinary retail customers, but also on fixed scales of discounts for specified purchases;

(3) Restrictions of output, including restrictions as to quality or quantity;

(4) Restrictions as to outlets, or, in other words, zoning; and

(5) Selective dealings or boycotts, for example, where manufacturers agree to supply some resellers but not others.

Section 38 exempts certain agreements from examination. These include agreements relating to industrial conditions, the exploitation

of a patent, copyright or trade mark, and the protection of the goodwill in the sale of a business. Agreements authorized by State Acts are exempted except where they give rise to restrictions to be observed beyond the borders of the State which authorizes them. In addition, section 106 (2) enables regulations to be made exempting agreements or practices of a specified organization or body that performs functions in relation to the marketing of primary products.

Section 36 lists the following four classes of practices that are examinable, because of the possibility that they may involve abuse of dominant economic power:

(1) Obtaining, by a threat or promise, discrimination in prices or terms of dealing where the discrimination is likely to substantially lessen the ability of a person or persons to compete with the person engaging in the practice;

(2) Forcing another person's product, for example, an oil company requiring that the licensee of one of its service stations deal in tyres supplied by a specified rubber company;

(3) Inducing a person carrying on a business to refuse to deal with a third person where the person inducing is:

(*a*) a trade association or is acting as a member or on behalf of such an association; or

(*b*) acting in pursuance of an agreement with, or in concert with, another person carrying on a business;

(4) Monopolization. This practice is defined in section 37. The first element of the definition is the existence of a person who or a combination that is in a dominant position in the trade in goods or services of a particular description. For this purpose the section provides that a person shall be regarded as being in a dominant position if the tribunal is satisfied that he is the supplier of not less than one-third of the goods or services of the relevant description that are supplied in Australia or the part of Australia to which the dominance relates. Except in special circumstances that part of Australia must comprise the whole of a State or Territory. The second element of the definition is that the person in the dominant position takes advantage of that position in one of three specified ways, namely:

(*a*) inducing a person carrying on a business to refuse to deal with a third person;

(*b*) engaging in price cutting with the object of substantially damaging the business of a competitor;

and

(*c*) imposing prices or other terms or conditions of dealing that would not be possible but for the dominant position.

(Section 39 exempts some practices from examination).

Proceedings before the tribunal for the examination of examinable agreements and examinable practices to determine whether they are contrary to the public interest may be instituted only by an officer called the Commissioner of Trade Practices. Before the Commissioner institutes such proceedings, he is required to have formed the opinion that the relevant agreement or practice is contrary to the public interest, and he must, in addition, have endeavoured, either personally or through members of his staff with adequate knowledge of, or experience in, industry or commerce, to carry on consultations with the persons concerned with a view to obtaining an undertaking or having some action taken to render the proposed proceedings unnecessary.

The Act provides for a register of trade agreements to be kept by the Commissioner. Examinable agreements containing restrictions relating to goods or to land are required to be registered. For the most part agreements containing restrictions relating to services do not have to be registered. However, as far as the services are connected with the production, distribution, transportation or servicing of goods or the alteration of land they are registrable. This means that where there are agreed charges for such things as professional services, banking services, newspaper advertising and passenger fares, the agreements are not registrable. The register is not to be open for public inspection and the officials maintaining it are prohibited from disclosing its contents except to the Attorney-General of the Commonwealth or the relevant Minister of a participating State, to a person appearing from the register to be, or to have been, a party to a registered agreement, or in proceedings under the Act. The purpose of the register is to provide the Commissioner with information that will assist him in his task of instituting proceedings before the tribunal in respect of agreements that warrant examination by the tribunal. There

will be only one register for the whole of Australia, but it will be possible for documents to be submitted for registration by being lodged at an office of the Commissioner in any of the State capital cities. Any party to an agreement will be able to submit it for registration, and registration at his instance will suffice for the purposes of the other parties. Trade associations will be able to attend to registration matters on behalf of all their members.

Failure to comply with a registration requirement is an offence. A defence of "honest inadvertance", which is provided by section 43 (4) will protect a person whose failure was not attributable to a desire to avoid his obligations and who has submitted the necessary particulars before the institution of a prosecution. A point to be noted is that the liability of an agreement to be examined by the tribunal is in no way dependent on its having been registered. Failure to comply with the registration requirements does not affect the lawfulness of the relevant agreement. It remains lawful until the tribunal has found it to be contrary to the public interest. No practice has to be registered. The registration requirement is confined to agreements. The Commissioner is also empowered by section 103 to requisition, by a notice in writing, information and documents relating to examinable agreements and examinable practices. Failure to comply with such a requisition is an offence.

Section 50 of the Act sets out the method to be adopted by the tribunal in considering whether an agreement or practice is contrary to the public interest. The tribunal is not left at large to decide this matter in any way it thinks fit. It is required to take as the basis of its consideration the principle that the preservation and encouragement of competition are desirable in the public interest, but it is then required to weigh against the detriment constituted by a proved restriction of competition the beneficial effects of the agreement or practice in regard to a number of specified matters (Section 50 (2)). After weighing the detriment of an agreement or practice against its relevant benefits, the tribunal is to decide whether, on balance, the agreement or practice is contrary to the public interest. Its conclusion is made the subject of a determination. If the determination is that the agreement or practice is contrary to the public interest, the tribunal will make an appropriate order to restrain its further continuation. The consequence of the tribunal determining that an examinable agreement is contrary to the public interest is that the agreement becomes unenforceable. The same applies in the case of an examinable practice.

Orders of the tribunal remain in force until rescinded by the tribunal upon the ground that there has been a material change in circumstances. The orders are binding only on those on whom they are expressed to be binding (section 57 (2)), and they cannot be expressed to be binding on a person unless he, or a person appointed to represent him, was a party to the proceedings. Breach of an order constitutes a contempt of the tribunal and such a contempt is punishable by the Commonwealth Industrial Court as if it were a contempt of that court.

Division 3 of Part VI makes provision for the review and, where appropriate, the reconsideration of determinations as to whether agreements or practices are contrary to the public interest. Reconsideration of a matter is undertaken only when directed by a review division of the tribunal, which is constituted by three presidential members. Such a direction may be made on any one of the following three grounds:—

(1) That the determination is based on reasons that are inconsistent with the reasons for another decision of the tribunal:

(2) That the determination is of such importance that, in the public interest, it should be reconsidered:

(3) That a material error of law was made by the tribunal in the hearing or determining of the proceedings.

A reconsideration of a matter is materially different in nature from an appeal from one court to a higher court. The reconsideration is undertaken by a division of the tribunal of no higher status than the division that made the determination being reconsidered. In fact, a reconsideration may be undertaken by a division constituted by the same persons as were responsible for the original determination.

Division 2 of Part VI makes provision for negative clearances and accelerated hearings at the instance of parties to examinable agreements or practices. The provisions enable the Commissioner, with the leave of the tribunal, to file a certificate to the effect that he is satisfied that an agreement or practice in regard to which he has been having consultations is not contrary to the public interest, and such a certificate then has the same effect as a determination by the tribunal. Orders for accelerated hearings can be obtained from

the tribunal on the ground that the agreement or practice is necessary to the success of a new venture or an extension of an existing venture and that the venture is unlikely to be embarked upon unless there is an assurance of the legality of the agreement or practice.

Two practices are prohibited outright, that is, without prior examination by the tribunal as to their compatibility with the public interest. These are the practices of collusive tendering and collusive bidding (sections 85 and 86). The prohibition is based on the view that these practices are inexcusable in any circumstances. Subject to certain exceptions, tendering and bidding are collusive for the purposes of the Act if either is pursuant to an agreement that has the purpose or effect of preventing or restricting competition amongst the tenderers or bidders. The prohibition of those two practices is subject to an important exception in favour of standing agreements if—

(*a*) they were not made for the purpose of a particular invitation to tender or a particular auction;

(*b*) full particulars of the agreements are contained in the register; and

(*c*) the tribunal has not determined that the agreement is contrary to the public interest.

Part X confers a civil right of action to recover damages suffered in consequence of a contravention of an order of the tribunal or in consequence of contravention of the provisions of the Act relating to collusive tendering or collusive bidding. Section 91 extends the ordinary meaning of "agreement" to cover arrangements and understandings irrespective of whether they are in writing or legally enforceable. The ordinary meaning of "practice" is extended by section 5 so as to include a single act or transaction.

I would ask honourable members to give their most earnest consideration to what is proposed by this Bill. There can be no denying that agreements and practices of the kind covered by the Commonwealth legislation are current in our community. No-one could argue against the proposition that, because of their restrictive nature, these agreements and practices are harmful to the public interest, an interest that could best be safeguarded by the element of free enterprise in business and commerce. The philosophy of this piece of legislation is contained in a speech made by the Hon. G. Freeth on behalf of the then Attorney-General (Sir Garfield Barwick) in the Commonwealth Parliament in 1962. He said:

Before outlining the scheme of legislation which the Government has in contemplation, I ought to indicate broadly the philosophy which underlies it. In opening the second session of the twenty-third Parliament, the Governor-General indicated that the Government desired to protect and strengthen free enterprise against tendencies to monopoly and restrictive practices in commerce and industry. I have already referred to the place competition has in the maintenance of free enterprise. The Government believes that practices which reduce competition may endanger those benefits which we properly expect and mostly enjoy from a free-enterprise society. But the Government is also conscious of the fact that the lessening of competition may, in some aspects of the economy, be unavoidable, and, indeed, may be not only consistent with, but a proper ingredient of, a truly free enterprise system. This is more likely to be so in such a state of growth as we are experiencing, and particularly when we are gearing ourselves more and more for the export of secondary goods. In short, the Government does not subscribe to the view that there are no circumstances in which public interest can justify a reduction in competition, but on the contrary believes that there may well be some practices, restrictive in nature, which are in the public interest.

Later, in a lecture delivered at the University of Melbourne, Sir Garfield said:

Neither do I propose to discuss all the various kinds of practices which businesses see fit to engage in to promote their interests. Those that I propose to discuss, and indeed the Government's proposals are confined to them, all have one common denominator—a restriction, in some form or another, of competition: these are the restrictive trade practices. Without getting too far into fields which more properly belong to the economist, I think I can safely say that this common denominator puts these practices into a class which appears, on the face of it, to contradict the basic assumption of a free-enterprise economy, or at any rate to require the presence of some additional elements to accommodate them to that form of economy.

In restricting competition, these practices tend to remove what I might describe as the automatic regulator of a free-enterprise economy. What would, in the absence of the practices, be regulated by the competition that has been restricted or removed, becomes regulated and controlled instead by the practices themselves—or, to be more precise, by the parties engaging in those practices. The nature of the free-enterprise economy is thus basically changed. If there is a trend—and at lowest the practices to whose existence I have been alerted show a trend—towards such a change, then I suggest that we must ask ourselves some basic questions. In the first place, we must ask ourselves whether we really do believe in a free-enterprise economy; whether we believe that such an economy, notwithstanding all the problems that we know are inherent in it, and the perils that go with it, is

nevertheless preferable to an economy in which freedom of enterprise and competition give way to regulation by controls. And then, if we conclude that we are believers in a free-enterprise economy, we must go on and ask ourselves to what extent, and in what manner, and on what principles, should it be permissible for the very basis of that form of economy to be modified by restrictions on competition. Or, putting it another way, to what extent, how and on what principles should we act to safeguard free enterprise against the trends we have identified.

In other words, free untrammelled competition is an indispensible requirement of a free enterprise economy. If it is hindered, obstructed, or to a significant degree stultified, we cease to have a free enterprise economy. In place of it we have an economy that is in part controlled. The control falls into the hands of organized groups in industry and commerce and is often exercised against the public interest. That control is not subject to examination by an impartial authority. It can become tyrannical. It can be exercised to the disadvantage of manufacturers and traders who are not part of the organization, and it can and in fact does result in discrimination, high prices and a concentration of influence and power that is the negation of free competition and disadvantageous to the public interest.

It is surprising to hear some people who ought to know better referring to the Commonwealth enactment as if it vested the Commissioner and the tribunal with untrammelled autocratic powers. I have already explained in some detail the scope of the legislation and its relatively restricted area of operation. But the most important thing to realize is that the essential ingredient of it is one of conciliation. The tribunal can exercise its powers only on a reference to it by the Commissioner. Before the Commissioner does this he must satisfy himself that the restriction is inimical to the interests of the public. He is charged to consult and confer first with the parties concerned to hear their side of it and with a view to the practice being altered if needs be, so that the public interest is not adversely affected. All these consultations can take place "without prejudice" with the result that no evidence or statement of admission made during the consultation can be used as evidence before the tribunal unless all parties consent.

The Act is a fair and reasonable piece of legislation designed to ensure that the public of Australia, and governmental and semi-governmental instrumentalities, are not made a pawn in the machinations of big business. Let it not be thought that this is an original idea. England has had this legislation for some years and it is much more severe than ours. So has New Zealand and all of us have heard at one time or another of what is taking place in the United States under similar powers. I submit the Bill for the careful consideration of honourable members.

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

WEIGHTS AND MEASURES BILL.

Adjourned debate on second reading.

(Continued from March 14. Page 3597.)

The Hon. G. J. GILFILLAN (Northern): I support the second reading of this Bill, which is a long measure of 68 clauses and three schedules contained in 42 pages. It can be said generally that it brings the law relating to weights and measures more into line with modern trade practices.

The Bill repeals the existing Weights and Measures Act, part of the Statute Law Revision Act that relates to weights and measures, and part of the Decimal Currency Act that relates to weights and measures. I cannot but agree with this principle of consolidating into one Act the legislation affecting one issue. One of the problems we so often have in legislation is that we pass Bills inserting amendments in other legislation: that has happened particularly during this session. Generally, the Bill recognizes the Commonwealth legislation, which provides for a uniform standard of measure throughout Australia, but at the same time leaves administration of the legislation within the powers of the State Parliaments. I have no severe criticism of the Bill but hope that the Minister, when he replies, will answer some queries.

The Bill is dependent on the regulations that will be introduced at a later stage. In some fields of commerce concern has been expressed at some clauses, but I think those matters must be considered when framing regulations. First, I refer to some goods sold by the meat trade. Clause 5, the definitions clause, provides:

"article" includes, but without limiting the generality of the meaning of that term, liquids, foods, chattels, wares, merchandise, and other goods of any and every description and, where necessary, any article and its package:

Later, "package" is defined as:

"package" includes any form of packaging of goods for sale as a single item, whether by way of wholly or partly enclosing the goods or by way of attaching the goods to or winding

them round some other article, and, in particular, includes a wrapper or confining band:

The combination of these definitions covers a wide field and the meat trade handles a wide range of small goods, such as sausages, fritz, and other smallgoods prepared in the Continental fashion. I was interested to learn recently that a sausage can be a sausage even if it has not a skin.

The Hon. C. M. Hill: Then it becomes a snag.

The Hon. G. J. GILFILLAN: Yes. The Health Act regulations provide that a sausage is an article enclosed in a casing or formed by other means. That raises the matter of whether the skin of the sausage is a package or a part of the article itself. There is provision, in the clause regarding regulations, for exemptions, and consideration must be given to either altering the definitions or altering the exemptions under the regulations, because I understand some of these goods are left hanging for some time and in some cases they are smoked, resulting in a continual loss of weight. Even after they have been processed and prepared for sale, they can lose weight. The Bill provides that the net weight must be stamped on the package and heavy penalties are provided for any breach of this provision. Subclause (1) of clause 47 states:

No person shall sell any article by weight or measure otherwise than by net weight or measure.

Subclause (4) states:

(4) If the article is less than the due weight or measure the person selling the same shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or in the case of a second or subsequent offence four hundred dollars.

Subclauses (2) and (3) of clause 49 provide:

(2) Any person who sells, offers, exposes or has in his possession for sale any article in a package upon which the net weight, measure or number of the article is not legibly written or printed on the outside of the package shall be guilty of an offence against this section. This subsection shall not apply to any article weighed, measured, or counted in the presence of the purchaser or to any article exempted by regulation from the requirements of this subsection.

(3) This section shall not apply to any article exposed for sale or sold by weight in a package if the weight of such article is subject to variation by reason of climatic influences, and the package bears a conspicuous label or inscription showing the words "Net weight when packed".

This raises the matter of the precise meaning and intention of the words "by reason of climatic influences". I understand that many of these goods lose weight fairly constantly by reason of the range of climatic conditions in South Australia. I should be obliged if the Minister could give a clear answer to these matters when he replies. Another interesting question is posed by clause 52, which refers to the sale of firewood. Subclause (3) provides:

Any seller, or purchaser of coal or firewood, or any person in charge of a vehicle in or on which coal or firewood is carried or any inspector may require that coal or firewood or any vehicle used for the carriage of coal or firewood be weighed or reweighed, in his presence, or that any firewood sold by measure be measured or remeasured in his presence.

What will be the position when a person delivers firewood at some considerable distance from a weighbridge? Who will meet the cost of loading and conveying this wood to the weighbridge and the cost of obtaining another certificate of weight? The matter of cost could give rise to difficulty in administration of the legislation. Clause 55 states:

In any proceedings for an offence against this Act in respect of any weight, measure, weighing instrument or measuring instrument the onus shall be on the defendant to prove that the weight, measure, weighing instrument or measuring instrument was tested verified or stamped as required by this Act.

Again, I raise this question of the onus of proof being on the defendant. I should be pleased to hear the reason for this method of charging a person. Also, I should like to know just what type of proof is expected in those cases.

In the case of weighing instruments, this Bill provides that they must be inspected by a qualified inspector at regular intervals and that they must be stamped by him. Is it expected that a certificate will be issued as a means of proof at the same time, showing that this person may use them, or can the instruments be identified by some form of certificate? It is impracticable in many instances to produce the instruments that can be built into a weighbridge. Will a statutory declaration be expected? These are points of administration.

I agree we must protect the public in the matter of weights and measures. The average person engaged in commerce in contact with the people gives a real and honest service but, unfortunately, there are those occasional instances where the public requires the sort of protection that this Bill envisages. Clause 63 states:

When any weight, measure, weighing instrument or measuring instrument is found in the possession of any person carrying on trade or on the premises of any person which whether a

building or in the open air, whether open or closed are used for trade such person shall be deemed for the purposes of this Act, until the contrary is proved, to have such weight, measure, weighing instrument or measuring instrument in his possession for use for trade.

Here again we have this onus of proof. A person carrying on business could have in a storeroom scales that he has rejected, and it is up to him to prove that he is not using them in carrying on his business. Clause 64 (1) states:

(*a*) Any weights, measures, weighing instruments or measuring instruments or goods in connection with which any offence against this Act or regulations is committed may on conviction of any person guilty of the offence be forfeited by order of the court:

(*b*) Such forfeiture may extend to the whole of any similar goods in similar packages found on the defendant's premises or in his possession at the time the offence was committed.

This clause appears to be rather harsh, in that, if a person has on his premises a package found to contain less than the weight marked on it, the remainder of his goods in similar packages can be confiscated, even though their contents may be up to the weight stamped on them.

I turn now to another matter, again connected with administration, that will be brought into effect by regulation. I bring it to the notice of the Minister because it could create some difficulties in country areas: the registration of public weighbridges by the owners thereof and the registration of weighmen. I have found in country districts where the district council is in control of a large area there may be several weighbridges in smaller towns within that area, with only one office of administration of the council in the main centre.

In these cases the weighbridges are controlled by the council, but the key is usually left with a local storekeeper or businessman who makes it available to local people (possibly at a fee) to weigh goods. In fact, I know of instances where these keys are let out by the council at an annual fee to people like wood merchants who use weighbridges regularly. I should like to know how it is proposed by regulation to carry out the registration of weighmen and still enable the normal business practices throughout a large area of the State to be carried on without undue interference. I conclude by saying that there is much good in this legislation. I hope the Minister in his reply will be able to answer the questions I have posed. With these reservations, I support the second reading.

The Hon. M. B. DAWKINS (Midland): I, too, rise to support the second reading of this Bill in general terms. The Minister in his second reading explanation said:

The most important features of the new Bill are provision for any council to relinquish control over the administration of the Act in its area upon satisfying the Minister that such action is desirable; increased power for inspectors to enter buildings and other places for the purpose of checking prepacked stock . . .

I agree that these are some of the most important provisions of the Bill or alterations that have occurred as a result of this re-writing of the Act. I hope that in some cases, at least, they are not used to excess, that councils do not rush in to give up their powers, that inspectors do not become too officious in the performance of their duties. I am aware that the Commonwealth passed an Act five or six years ago, the object of which was to secure uniform standards for weights and measures throughout the Commonwealth. This, in my view, is a most commendable goal. I am by no means always in favour of uniformity, certainly not for uniformity's sake, but in this instance there is much to be said for uniform standards throughout the country.

The Commonwealth law deals with the establishment of uniformity in these matters but it leaves the administration to the various States. While uniformity of standards may be achieved, the States are left to adapt them to the general working of their Acts. These matters of weights and measures in South Australia have been dealt with wholly by local government in the past, in most cases satisfactorily, but not in all cases. I am glad to see in the provisions of this Bill that the councils will retain those powers if they so desire. It is most important that where possible councils shoud retain their powers and administer them satisfactorily.

As honourable members will have gathered, I am not in favour of local government giving up its powers unnecessarily. However, it is also provided in clause 31 that, where a local government body finds difficulty in carrying out these duties, those who find difficulty in maintaining the work at the necessary standard because of the trouble they have in obtaining inspectors who are suitably qualified, or for any other valid reason, may relinquish the responsibility. They may give up this power if they so desire. Whilst I am in favour of this provision (I think that it may be necessary in some cases) I do hope that most of the councils which can do so effectively will retain the

responsibility of carrying on with these powers.

The financial provisions (contained in clauses 28 and 29 of the Bill) are satisfactory. The Government will not lose any revenue as a result of them, and it may gain in due course. I have noted on many occasions that fees have been put up, but I cannot see that this has happened here and I hope that this stability will continue. We have had frequent rises in costs in this State over the last two years or so, and I hope that we shall be able to level this off and preserve the *status quo* to some extent. I think it will be a good thing if the fees stay as they are.

It is intended to secure more trained personnel so that suitable inspectors may be used in districts where they have not previously been available; this should lead to greater efficiency in due course. It is possible under this Bill for several councils to appoint one inspector jointly. This provision, among other things, is in clause 15 and it is a desirable provision, particularly for smaller councils that would find it impracticable to appoint a suitably qualified person unless they were able to share him with other councils. If this course were not possible, the result would probably be that somebody would do the work part-time or it would be another job tossed into the lap of the district clerk, who is usually overloaded with responsibilities as it is. I believe that the ability of councils to share the use of an inspector will result in more uniformity in the administration of the provisions of the Bill, and this is a good thing. Untrained inspectors will gradually be eliminated, and this also is necessary in order to obtain better effect from the legislation.

Clause 19 provides, among other things, that a qualified inspector by permission of the warden may carry out minor adjustments in isolated districts. This also is a wise and necessary provision and it will save storekeepers and traders in distant localities both delay and expense and, probably, save some inconvenience to the clients of these businessmen.

Clause 13 provides for the appointment of a deputy warden. Here again I believe that this is commendable because it will remove delays and difficulties. The Bill provides new powers, some of which are enumerated in Part IV, clause 32, particularly paragraphs (*d*) to (*h*), and I am not opposed to these but I sound the warning that we must not clothe inspectors with too many powers. It has been my experience that inspectors are Australians like the rest of us but sometimes they become a little too enthusiastic. I would not think for a moment that they are an objectionable type of person but I realize (I have seen it myself) that inspectors can become a little too enthusiastic. By their very enthusiasm to clean things up they tend to overstep their responsibility on occasions. We should ensure that they do not become overbearing and officious.

Part V, which deals with the sale of goods, provides for the preservation of the *status quo*. All States are working on a uniform code and it has been agreed, I understand, that we shall continue with the *status quo* until the code is completed and available to be inserted in the various State Acts. I do not intend to say very much more. The Bill is necessary. It is complementary to Commonwealth legislation. The penalties, however, may be too high in some instances. Clause 47, which was mentioned by the Hon. Mr. Gilfillan, and also clause 54, which he did not mention, contain penalties that could be too high. Also, I wonder whether there are too many restrictions in the Bill.

The only other thing is that I want to underline the fact that we must not clothe the inspectors with too many powers. I am aware that it is difficult to know just where to draw the line. It is always difficult to do this because, if they are not given enough power, too many people kick over the traces, and if you give them too much power it is the inspectors who do so. In all sincerity I hope that we can draw the line in the correct position. There were several other matters that I intended to mention but they were dealt with by the Hon. Mr. Gilfillan. I shall be interested to hear what the Minister says in reply. I support the second reading.

The Hon. C. M. HILL secured the adjournment of the debate.

ROAD TRAFFIC ACT AMENDMENT BILL (GENERAL).

In Committee.

(Continued from March 8. Page 3499.)

Clauses 2 to 7 passed.

Clause 8—"Speed of vehicles carrying pillion passengers."

The Hon. R. C. DeGARIS: In the temporary absence of the Hon. L. R. Hart, I move:

In paragraph (*c*) to strike out "forty" and insert "forty-five".

The Hon. S. C. BEVAN (Minister of Roads): I oppose the amendment, which deals with the speed of motor cycles. Over a period speed limits have been increased from 25 miles an hour to 35 miles an

hour in built-up areas and on the open road when carrying a pillion passenger. I realize that the speed limit of 35 miles an hour has rarely been enforced. I am sure honourable members have observed motor cyclists with pillion passengers weaving in and out of traffic and they seldom adhere to the speed limit. I know that some motor cycle clubs have made representations that restrictions on speed tend to cause danger to other vehicles because they are forced to overtake the slower motor cyclist. I consider that the increase in speed to 40 miles an hour for a motor cyclist with a pillion passenger is adequate. I hope the Committee will not accept the amendment.

The Hon. L. R. HART: I am not impressed with the Minister's argument and I am not certain whether he is arguing against his own convictions. I believe 45 miles an hour would be an entirely safe speed for a motor cyclist with a pillion passenger. The modern motor cycle is a stable machine, capable of being driven at high speeds, even at a speed double 45 miles an hour. In fact, I believe a modern machine could be driven safely at a speed far in excess of 45 miles an hour with a pillion passenger. However, I realize that any speed limit must be reasonable, and this amendment would be an increase of only 10 miles an hour on the existing limit.

Slow-moving vehicles of any kind hinder traffic and a motor cyclist travelling at 40 miles an hour would be passed by many vehicles. With that happening continually the motor cyclist would be in danger, whereas at a speed of 45 miles an hour he would have some hope of remaining with the main stream of traffic. My first thought was for a limit of 50 miles an hour and in suggesting this compromise of 45 miles an hour I trust that the Committee will approve the amendment.

The Hon. Sir ARTHUR RYMILL: I am prepared to agree to the Hon. Mr. Hart's amendment for 45 miles an hour. I believe that the existing limit is too low, except on congested roads, and even 40 miles an hour is not frowned upon, especially on the Anzac Highway. On the open road motor cyclists without pillion passengers are governed by the ordinary speed limit of 60 miles an hour, as I understand it.

I am one of the honourable members of this Chamber who have driven a motor cycle with a pillion passenger and I regret to say that in the days when I rode a motor cycle pillion passengers were completely banned. I have not said whether I rode on the open road or on private property, nor do I wish to commit myself on that. I am trying to qualify myself as a person capable of giving firsthand evidence on this matter and I consider that in normal circumstances a speed of 45 miles an hour would not be excessive on the open road. A motor cycle with a pillion passenger, in my experience, is almost as safe as one without a passenger. It depends to some extent on the pillion passenger being in sympathy with the rider.

The Hon. A. F. Kneebone: It is difficult when the pillion passenger tries to keep the bike upright when taking a corner.

The Hon. Sir ARTHUR RYMILL: It could be, but I have observed that most pillion passengers are of the opposite sex and are usually clinging very well to the rider of the machine. In more serious vein, my attitude to the traffic rules has always been, and still is, that they should be as unrestrictive as possible. Recently suggestions have been made to increase the age limit of a licence holder from 16 to 17 years. I think a 16-year-old is probably safer on the road than a 19-year-old and I believe in giving experience to young people before they become silly. The same thing applies here, and I think restrictions should only be imposed when necessary. I support the amendment.

Amendment carried; clause as amended passed.

Clause 9—"Speed limit for motor buses and trailers."

The Hon. L. R. HART: I move:

In new section 53a (1) to strike out "fifty" and insert "sixty".

The speed being maintained at present on the open roads by passenger buses carrying more than eight passengers is 60 miles an hour, and a reduction to 50 miles an hour would place a restriction on this mode of transport. Many bus lines work on schedules based on their buses travelling at 60 miles an hour, and a reduction in speed would mean that one or two hours would be added to the travelling time on a long journey. I think we are justified in retaining the limit of 60 miles an hour because of the good safety record of bus drivers. I do not know of any recent accidents involving buses that have been caused by excessive speed. Buses have good braking and steering systems and can cruise easily at 60 miles an hour, which speed is necessary to enable them to stay in the flow of traffic. If the speed is reduced, other vehicles will frequently pass buses and danger will result.

The Hon. Sir NORMAN JUDE: I move to amend the amendment by adding the following new subsection:

(2) It shall be a defence to a charge for an offence under subsection (1) of this section if the defendant satisfies the court that the speed at which the vehicle was travelling was not dangerous having regard to all the relevant circumstances.

Although I support the views of the Hon. Mr. Hart, I doubt the advisability of accepting his amendment. The principal Act provides a speed limit of 60 miles an hour, with the proviso in the words of my amendment. Passenger buses in this State have an excellent record. Interstate buses travelling on main highways travel at about 55 miles an hour when they get away from the metropolitan area, and they are driven mainly by highly-qualified drivers who have to pass not only driving tests but medical tests. It is rather peculiar that the driver of a school bus can be any Tom, Dick or Harry who does not have to pass a special driving test, and he can take a bus out on a charter trip at the weekend. I think it is desirable to keep the speed limit at 50 miles an hour and to have the proviso I have suggested.

The CHAIRMAN: The honourable member's suggested amendment does not affect the amendment moved by the Hon. Mr. Hart. It can follow later. We will consider the amendment moved by the Hon. Mr. Hart.

The Hon. Sir NORMAN JUDE: Then I shall have to disagree with the honourable member's amendment, as I think it is better to leave the limit at 50 miles an hour, together with the *prima facie* clause.

The Hon. Sir ARTHUR RYMILL: I would agree to a combination of the two amendments. The Hon. Mr. Hart has moved for an absolute speed limit of 60 miles an hour and Sir Norman Jude has moved that the present absolute speed limit be made a conditional speed limit—that is, to be *prima facie* evidence of excessive speed—but he wants to remove any other limit. I would be prepared to support this if we had 50 miles an hour as the *prima facie* speed limit and 60 miles an hour as the absolute limit. Country members know that on roads like that to the South-East 60 miles an hour is a reasonable speed for a bus, but that speed is unsafe on the South Road.

The Hon. M. B. DAWKINS: I agree with Sir Arthur Rymill. On the open road 60 miles an hour is a reasonable speed, but some roads have many bends and then that speed would be too high. In the second reading debate I suggested 55 miles an hour, but I will not split hairs at this stage. I trust that the Hon. Mr. Hart will consider the suggestion made by the Hon. Sir Arthur Rymill, which I support.

The Hon. C. R. STORY: I am inclined to Sir Arthur Rymill's opinion and would support anything the Hon. Mr. Hart did to bring his amendment into conformity with those views.

The Hon. L. R. HART: Regarding the points that have been raised by the Hon. Sir Arthur Rymill and the Hon. Mr. Dawkins, we could say that 50 miles an hour was a dangerous speed in some circumstances. However, we have speed zones, for which speed limits are stipulated. Those speed limits take care of the possible difficulties that have been referred to by honourable members. We must also realize that the speed at which a bus travels is left to the discretion of the driver. If the driver observes that discretion, he travels at a speed consistent with the conditions. It could be said that any speed was excessive in certain circumstances.

Because we have fixed these speed limits, I do not think there is a need to limit speed to 50 miles an hour. Such a limitation would require the driver of a passenger bus not to exceed that speed in any area. We are tampering with something that has been carried on over the years without creating a traffic or accident hazard. Why should we be making the alteration? I do not know of any pressure for this alteration regarding the speed limit of passenger buses and I consider a speed limit of 60 miles an hour satisfactory to all concerned.

The Hon. S. C. BEVAN: I must oppose the amendment and support the provision as it stands. We are dealing with passenger buses carrying more than eight passengers. The record of passenger buses in this State has been comparatively clear, but this is not the only State in which such buses operate. I am concerned about safety and we know what would happen in an accident involving a bus that was travelling at 60 miles an hour, which is a mile a minute. I am concerned not about buses being capable of travelling at fast speeds but about the safety of the people in the buses, and subject to the control of the drivers. I have never driven a passenger bus but have been driving motor cars since I was 16 years of age, and I have driven commercial vehicles. Although I hold an A class driver's licence, I would not wish to drive a passenger bus containing 30 to 40 passengers at such a fast speed and be responsible for the safety of those passengers.

This provision has been sought by the Road Traffic Board and the police authorities because they are concerned about the safety of passenger buses being driven in this State. The principal clause in the Bill flows from discussions that have taken place at meetings of the National Road Safety Council. Each State in the Commonwealth has agreed that the speed of passenger buses should be limited to 50 miles an hour on the open road.

The Hon. Sir Arthur Rymill: Do you consider that we should follow all the provisions of the Code?

The Hon. S. C. BEVAN: I do not say that at all, but the Hon. Mr. Hart has asked why we should interfere with a provision that has been in operation for a period of years. The road safety councils and the people responsible for the National Safety Code desire uniformity. Passenger buses travel between South Australia and all the other mainland States and uniformity is desired so that all drivers of these buses will be aware of the law.

New South Wales would have twice as many passenger buses as South Australia and up to the present the speed limit for these buses in New South Wales has been 40 miles an hour. However, New South Wales has decided to increase the speed limit, in conformity with the Code. The speed limit there for tourist coaches and passenger buses is being increased from 40 miles an hour to 50 miles an hour. The amendment to the road traffic regulations in that State providing for such increase also increases the speed limit of 40 miles an hour in respect of any vehicle and trailer combination travelling outside built-up areas.

The Hon. Sir Arthur Rymill: Has the black L on a yellow background on the cover of the book you are holding got any significance?

The Hon. S. C. BEVAN: It could have. I could put various interpretations on that and also on the red P shown beneath. The New South Wales legislation has been amended to give effect to this increase to 50 miles an hour. The Hon. Mr. Hart asks why we are making the alteration. The speed limit of 40 miles an hour has been satisfactory in New South Wales for many years, so why should that State make any change? The change is being made because the States have been requested to have uniformity. What is the importance of a saving of one hour in a bus schedule, compared with the safety of 30 or 40 people?

The Hon. Sir Norman Jude: Is this a veiled attempt to bolster up railways traffic between the States?

The Hon. S. C. BEVAN: I appeal to the Committee to pass the clause at it stands and to restrict these buses to a speed of 50 miles an hour. Not long ago the Hon. Sir Norman Jude complained bitterly about the size of our Municipal Tramways Trust buses and their operation.

The Hon. Sir Norman Jude: They are limited to the metropolitan area.

The Hon. S. C. BEVAN: I am not disagreeing with the honourable member's contention, but I say that the restriction of passenger buses to 50 miles an hour has more force. I hope that the Committee agrees to the clause as drafted.

The Hon. C. D. ROWE: I was approached by a bus operator about this clause. He informed me that his present schedule, which has been in operation for a number of years, requires his drivers to drive at 50 m.p.h once they get on to the open road. On occasions they have to exceed that speed in order to keep to their schedule. He feels that his drivers travel safely at that speed. He is opposed, therefore, to this clause, because on occasions that speed has to be exceeded. He has a good record of bus operation. He operates on Yorke Peninsula, where we do not enjoy the luxury of a railway service—or, for that matter, many other luxuries. That service has operated efficiently for many years. I can see the force of the argument that a man driving a bus fully loaded with 30 or 40 passengers has to be careful if he reaches a speed of 60 m.p.h. I wonder whether we can compromise on 55 m.p.h. That would tie in with the schedules that many private bus operators have to maintain today. It would not allow them to go sufficiently above that speed so as to be a danger. I suggest a compromise of 55 m.p.h., which would not interfere with existing schedules but at the same time it would not place bus operators in the position where they had to break the law, which they have had to do for a long time.

The Hon. JESSIE COOPER: I support the last speaker in this matter, although I was going to support the Government. A point that has not been made is that the private motorist sometimes finds difficulty in trying to pass a bus on the open road. If a bus driver is doing 60 m.p.h., sometimes it is virtually impossible to pass him safely. The result is that the private motorist travels for miles getting covered with the filthy gas that the bus exudes —an unpleasant experience. If the speed limit is reduced to 50 m.p.h. well and good; if a

compromise of 55 m.p.h. is acceptable to the Government, I shall support it.

The Hon. A. M. WHYTE: I support the Hon. Mr. Hart's amendment. I do not think 60 m.p.h. is an unreasonable speed limit. Many buses today have to travel at that speed to conform to a time table. The bus service that does not keep somewhere near its time table does not serve the public very well. I know of a bus route of 500 miles, on which the buses average just over 30 m.p.h. for the whole trip; yet those drivers at times have to travel at speeds of up to about 60 m.p.h. If the average speed is reduced to less than 30 m.p.h. on a 500-mile trip, it will mean that few people will be able to afford the time to travel by bus on that route.

The Hon. Sir Arthur Rymill spoke of various speeds for various sections of the highway. I do not agree with this; we must have some faith in the intelligence and competence of the drivers. I do not believe that a bus driver would travel at an unreasonable speed on a road on which it was not safe so to do. Speed on the open highway is not always controlled by the driver's desire to travel at a certain speed: it is often controlled by the confusion and congestion caused by other motorists. Bus drivers run to a schedule, and they must be able to travel at such a speed as to reach the next bus stop on time.

The Hon. Sir ARTHUR RYMILL: I merely indicate that, as the Hon. Mr. Hart is not prepared to accept my suggestion, I propose to support the Government on this. The Hon. Sir Norman Jude comes along with his recommendation, which deserves consideration.

Amendment negatived.

The Hon. Sir NORMAN JUDE: My amendment comes after that.

The CHAIRMAN: All I have is what was handed in.

The Hon. Sir NORMAN JUDE: I read it out.

The CHAIRMAN: What is it to be?

The Hon. Sir NORMAN JUDE: After section 53a to insert a new subsection; then I referred to the *prima facie* clause that is already in the principal Act providing for 60 m.p.h., which applies to ordinary motor cars. I listened with considerable interest to the Minister referring to the National Traffic Code. I remind him that section 1001 (1) of that code says:

No person shall drive a vehicle (*c*) elsewhere at a speed exceeding 60 m.p.h.

In our wisdom, we in this State did not agree with the code there. I think we had the almost unanimous support of the Chamber at the time. Buses have to conform to a very strict number of tests, both for the bus and for the driver, whereas even motor cars do not have to submit to such tests.

One can have a "bomb" with a fast engine in it and drive about 60 m.p.h., and we have to find only a *prima facie* case against him. Because New South Wales has seen fit to go into section 1001 (2) (*c*), they may feel there that they have more of a case than we have, for their main highways are becoming very congested. I have often passed interstate buses travelling through the night down the Dukes Highway at 55 or 60 m.p.h and I may not have passed another transport for eight or 10 miles. I ask the Committe to consider carefully that we leave the clause as introduced but add the *prima facie* clause that will permit bus drivers to bring their average up on these long bus trips, as the Hon. Mr. Whyte has suggested. Then a *prima facie* case exists with them if they exceed the speed limit on the open highway. It is not in the interests of the bus proprietors to drive faster than necessary.

The Hon. S. C. BEVAN: I would like an opportunity to consider the remarks of the Hon. Sir Norman Jude.

Progress reported; Committee to sit again.

ADOPTION OF CHILDREN BILL.

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

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

That this Bill be now read a second time.

It consolidates and amends the law of South Australia relating to the adoption of children. For some time it had been recognized that the laws of the various States and the Commonwealth Territories relating to the adoption of children were badly in need of revision and these laws were carefully examined at several conferences of Attorneys-General and Ministers responsible for adoptions and of legal and welfare officers of the States and the Commonwealth. As a result of these conferences a number of improvements to the legislation were agreed upon and a model Bill was drafted, but in the course of the discussions it became clear that complete uniformity throughout Australia was neither possible nor desirable.

Every State and Commonwealth Territory, however, agreed to recognize adoptions effected in the other States and Territories and each State or Territory agreed that the legislation

dealing with the recognition of oversea adoptions should be uniform. In a number of other matters the States, whilst agreeing in general on welfare principles, decided to continue their existing procedures, incorporating such improvements to the legislation as are included in the model Bill and are capable of adaptation to those procedures. The Bill also contains provisions whereby approved private adoption agencies may make arrangements for placing infants for adoption.

This Bill is substantially based on the model Bill which was drafted after consideration by Ministers from all the States and the Commonwealth of the opinions and representations of persons who are well qualified and experienced in the field of adoption law and its administration. In most of the other States and the Territories of the Commonwealth, legislation based on the model Bill has already been enacted. Clauses 1 and 2 of the Bill are purely formal provisions. Clause 3 repeals the Adoption of Children Act, 1925-1965, but preserves the continuity of the regulations made under the repealed Act and other administrative records. It also recognizes and confirms the validity of adoption orders made under the repealed Act and provides that proceedings which were commenced under the repealed Act may be continued under that Act. It provides, however, that in relation to a disposition of property by a person who died before the Bill becomes law, an adoption order made under the repealed Act would have the same effect as if the repealed Act had continued in operation and not been repealed.

Clause 4 contains the definitions appropriate to the Bill. Clause 5 confers jurisdiction on an adoption court constituted of a special magistrate and two justices, one of whom must be a woman, to hear and determine applications for adoption orders. It will be noted that the Bill makes no change in the constitution of an adoption court. Clause 6 lays down that the court must not exercise its jurisdiction unless, at the time of the making of the application, the applicant or each of the applicants was resident or domiciled in the State and the child sought to be adopted was present in the court at such time or times during the hearing of the application as required by the court and is present in the State at the time when the adoption order is made.

Clause 7 provides that, unless there are exceptional circumstances to warrant the making of the order, an order must not be made in favour of any person for the adoption of a child if any court in or outside the State has previously refused to make an order for the adoption of that child by that person. Clause 8 provides that the power of a court to make an adoption order does not depend on any fact or circumstance not expressly specified in the Bill. Clause 9 provides in effect that a court must regard the welfare and interests of the child concerned as the paramount consideration when dealing with an application for an adoption order in respect of a child.

Clause 10 empowers a court to make an order for the adoption of any person who:

(*a*) was under 21 years of age at the time of the filing of the application in the court; or

(*b*) is of any age if the person had been brought up, maintained and educated by the applicant or applicants or by the applicant and a deceased spouse of the applicant as his or their child under a *de facto* adoption.

Clause 11 lays down a general rule that an adoption order must not be made otherwise than in favour of a husband and wife jointly. However, the clause contains certain exceptions to this rule and prescribes the consequences of making an adoption order in favour of the spouse of a natural parent of a child or the spouse of a parent of a child by adoption.

Clause 12 provides that an adoption order must not be made in favour of a person who or persons either of whom:

(*a*) is under 21 years of age; or

(*b*) if a male person, is less than 18 years older than the child, or, if a female, is less than 16 years older than the child,

unless such person or either of such persons is a natural parent of the child or there are exceptional circumstances that justify the making of the order. Clause 13 requires the court, before making an adoption order, to consider a report (if any) made by the Director or some other officer of the department and to be satisfied as to the fitness of the applicant or each of the applicants to fulfil the responsibilities of a parent of a child and that the welfare and interests of the child will be promoted by the adoption.

Clause 14 deals with the procedure governing applications for adoption orders. This procedure will be more fully prescribed by the regulations. The clause also provides for "secret" adoptions. South Australia has unique procedures dealing with the non-disclosure of identities of the parties and it is proposed that these procedures be continued. These procedures are at present provided for in

the regulations. Clause 15 provides that an applicant for an adoption order must give notice of the application to each person whose consent to the adoption is required and to each person who has the care or custody of the child. The clause further provides that a court may dispense with the giving of any such notice and may direct that notice be given to any other person.

Clause 16 provides that the court shall cause notice of any application to be given to the Director at least three weeks before the hearing and gives the Director the right to make a report in writing to the court concerning the proposed adoption and to appear before the court and tender evidence and to call, examine and cross-examine witnesses and address the court on the whole of the evidence. Clause 17 empowers the court to permit persons to be joined as parties to the proceedings for an adoption order for the purpose of opposing the application or opposing an application to dispense with the consent of a person. Clause 18 sets out the powers and duties of the court based on the appropriate provisions of section 5 of the existing Act.

Clause 19 empowers the court, on refusing an adoption order, to place the child in the care and custody of some fit person if the child is not already under the guardianship of the Minister of Social Welfare or the Director. Clause 20 empowers the Supreme Court to make an order discharging an adoption order and empowers that court to make the order if the child is under 21 years of age and the adoption order or any consent to the adoption was obtained by fraud, duress or other improper means or that there is some other exceptional reason why the order should be discharged. The clause further deals with the effect of a discharging order.

Clause 21 deals with the various consents that must be given before an adoption order can be made. Clause 22 provides that all consents must be general consents to the adoption by any person on whose application an adoption order may be made except where the applicant is a parent or relative of the child or at least one of the applicants is a parent or relative of the child in which case the consent may be for the adoption of the child by the applicant or applicants only. Where an application which relies on a general consent is refused, the consent could be used again for a further application for the adoption of the child. Clause 23 provides that a consent validly given in another State or Territory would be equally valid for the purposes of an adoption application in this State. Clause 24 prescribes the only circumstances in which a consent can be revoked, namely, by giving the Director notice in writing before:

(*a*) the expiration of 30 days after the signing of the instrument of consent; or

(*b*) the day on which the adoption order is made,

whichever is the earlier. Clause 25 deals with the forms of consents and their attestation. Clause 26 provides that a court must not make an adoption order in reliance on a defective consent. Clause 27 enumerates the cases where a court may dispense with a consent. Clause 28 provides that a court must not make an order for the adoption of a child of 12 years or over unless the child has consented to the adoption or the court is satisfied that there are special reasons, related to the welfare and interests of the child, why the order should be made without the child's consent.

Clause 29 provides that a child, for whose adoption all consents that are required have been either given by way of general consents or have been dispensed with, shall be under the guardianship of the Director until an adoption order is made in respect of the child, the instrument of consent, if any, is lawfully revoked, or a court of competent jurisdiction, by order, makes other provision for the guardianship of the child. Clause 30 is one of the most important clauses of the Bill. It lays down the general effect of an adoption order. Upon the making of such an order:

(*a*) the child becomes a child of the adopter or adopters as if the child had been born to him or them in lawful wedlock;

(*b*) the child ceases to be a child of any person who was a natural parent or a parent by adoption of the child before the making of the order, and any such person ceases to be a parent of the child;

(*c*) the relationship to one another of all persons (including the child and an adoptive parent or former parent or former adoptive parent of the child) shall be determined on the basis of the foregoing paragraphs, so far as they are relevant;

(*d*) any existing guardianship of the child is extinguished except in the case of a State child where the Minister of Social Welfare has agreed with the

applicant or applicants for the adoption order that he should continue to be the guardian of the child after the making of the order; and

(*e*) any previous adoption of the child ceases to have effect.

The clause provides, however, that the section does not deprive an adopted child of any vested or contingent proprietary right acquired by him before the adoption order was made and that, for the purposes of any law relating to a sexual offence, for the purposes of which the relationship between persons is relevant, an adoption order, or the discharge of an adoption order, does not cause the cessation of any relationship that would have existed if the adoption order or the discharging order, as the case may be, had not been made.

Clause 31 deals with the effect of an adoption order in relation to dispositions of property by will or otherwise, whether made before or after the Bill becomes law. The clause applies the provisions of subclause (1) of clause 30 to such dispositions except that those provisions do not affect:

(*a*) a disposition by any person who dies before the Bill becomes law;

(*b*) a disposition of property that takes effect in possession before the Bill becomes law; and

(*c*) any agreement or instrument (not being a disposition of property) made or executed before the Bill becomes law.

Subclause (3) of the clause empowers a person who has before the Bill becomes law made a disposition of property which has not taken effect in possession to vary the instrument by which the disposition was made if it was his intention to exclude adopted children from participation in any right under the instrument. Subclause (5) provides that nothing in clauses 30 and 31 affects the operation of any provision in a will or other instrument distinguishing between adopted children and natural children.

Clause 32 provides that unless the court, on the application of the adopter or adopters, otherwise orders, an adopted child shall, on the making of an adoption order, have the adoptive parents' surname and such other names as the court approves. Clause 33 provides that, on the making of an adoption order, the child acquires the domicile of his adoptive parents. Clause 34 renders it not obligatory for a trustee who has no notice of a claim by virtue of an adoption to ascertain whether or not an adoption has been effected before distributing real or personal property to or among the persons appearing to be entitled to the property, but this clause does not prejudice the right of any person to follow property into the hands of a person (other than a purchaser for value) who has received it.

Clause 35 deals with the power of a court to postpone the hearing of an application for an adoption order and to make an interim order for the custody of the child in favour of the applicants. Clause 36 provides that an interim order can remain in force for such period, not exceeding one year, as the court specifies and for such further period as the court may order, so long as it is not in force for more than two years in the aggregate.

Clause 37 empowers the court at any time to discharge an interim order and to make a further order for the care and control of the child. Clause 38 recognizes, for the purposes of the laws of this State, the adoption of a person in another State or Territory of the Commonwealth. Clause 39 recognizes, for the purposes of the laws of this State, the adoption of a person in another country, subject, however, to the safeguards contained in subclauses (2) to (8) of the clause.

Clause 40 provides that on the application of a person specified in subclause (2) of that clause the Supreme Court may declare that an adoption was effected under the law of a country outside Australia and that the adoption is one to which clause 39 applies. Subclause (6) provides that an order made under this clause binds the Crown, the parties to the proceedings and persons claiming through such a party as well as persons to whom notice of the application was given and persons claiming through such a person, but does not affect the rights of others or an earlier judgment of a court.

Clauses 41 to 54 deal with offences. Clause 41 expressly provides that Part V does not apply to acts occurring outside the State but, unless the contrary intention appears, the Part does apply in respect of acts done in this State in relation to adoptions or proposed adoptions in places outside the State. Clause 42 makes it an offence for a former parent of an adopted child to detain the child or take the child away with intent to deprive the adopter or adopters of possession of the child. Clause 43 makes it an offence to harbour a child on behalf of a person who is detaining the child or has taken the child away in contravention of clause 42. Clause 44 makes it an offence to give or receive any payment for or in consideration of or in relation to:

(*a*) the adoption or proposed adoption of a child;

(*b*) the giving of consent to the adoption of a child;

(*c*) the transfer of custody of a child with a view to its adoption; or

(*d*) negotiating or arranging for the adoption of a child.

The clause, however, exempts payments made with the approval of the Director or authorized by a court and payments in connection with an adoption outside the State if they are lawful in the place where the adoption takes place.

Clause 45 makes it an offence to publish certain advertisements or other matter relating to adoptions but exempts any advertisement authorized or approved by the Director. Clause 46 makes it an offence to publish names of persons involved in an application for an adoption order or to publish any matter from which the identity of any such person could be ascertained but exempts the publication of any matter with the authority of the court to which the application was made.

Clause 47 makes it an offence, without the Director's authority in writing, to negotiate or arrange for the adoption of a child or to transfer custody of a child with a view to its adoption but exempts negotiations or arrangements made by or on behalf of a parent, guardian or relative of a child for the adoption of the child by a parent or relative of the child or made by a private adoption agency. Clause 48 prohibits the wilful making of a false statement in connection with a proposed adoption. Clause 49 prohibits the personation of a person whose consent to the adoption of a child is required.

Clause 50 makes it an offence for a person to tender to a court a document purporting to be an instrument of consent to the adoption of a child signed by a person whose consent is required, knowing that the signature thereon is forged or was obtained by fraud or duress. Clause 51 makes it necessary for a witness to the signature appearing on an instrument of consent to the adoption of a child:

(*a*) to satisfy himself that the person signing the instrument is a parent or guardian of the child;

(*b*) to take such steps as are prescribed to satisfy himself that the person signing the instrument understands the effect of the consent; and

(*c*) to date the instrument or ensure that it bears the date when he signs the instrument as a witness.

Clause 52 provides that the Minister's consent is necessary before proceedings for an offence are commenced. Clause 53 imposes a general penalty for offences, not expressly provided for, of $400 or six months' imprisonment.

Clause 54 provides for the summary disposal of offences under the Bill. Clause 55 continues the Adopted Children Register, which had been established under the existing legislation. Clause 56 deals with the registration of adoption orders made in the State. Clause 57 provides that, when the Principal Registrar of Births, Deaths and Marriages has reason to believe that the birth of a child in respect of whom an adoption order or a discharging order is made is registered in a State or Territory outside South Australia, he shall send a memorandum of the adoption order or a copy of the discharging order to the officer in that State or Territory who is responsible for the registration of births.

Clause 58 prescribes the duties of the Principal Registrar of Births, Deaths and Marriages in this State when he receives from another State or Territory a memorandum or copy of an adoption order or a discharging order made in that other State or Territory. Clause 59 provides for applications for the approval of private adoption agencies for the purpose of enabling them to make arrangements with a view to the adoption of children.

Clause 60 enables the Director to grant or refuse such applications. Clause 61 requires every private adoption agency to have a principal officer, who shall be responsible for the agency. Clause 62 provides that the Director may revoke or suspend approval of a private adoption agency. Clause 63 grants a right of appeal to the Supreme Court to a charitable organization against a refusal, revocation or suspension of approval as a private adoption agency. Clause 64 requires the Director to cause notice of every approval of a private adoption agency to be published in the *Government Gazette*.

Clause 65 provides that an application under the Bill is not to be heard in open court and that persons who are not parties to the proceedings (excepting the Director) shall, unless the court directs otherwise, be excluded during the hearing. The section also gives the court power, in certain circumstances, to order a child or any other person to leave the court during the hearing or during the examination of a witness. Clause 66 requires the report of the Director made under clause 13 to be treated as confidential and not to be released to any person, including a party to the proceedings, except upon an order of a judge of the Supreme Court. Clause 67 provides that, except as

provided by the regulations, the records of any proceedings under the Bill are not to be open to inspection.

Clause 68 empowers a court, subject to the regulations, to make orders as to costs and security for costs as it thinks just. Clause 69 contains some evidentiary provisions designed to shorten court proceedings. Clause 70 provides for judicial notice to be taken of the signatures of certain public officials. Clause 71 enables the judges of the Supreme Court to make rules of court for regulating the exercise of the jurisdiction conferred by the Bill on that court. Clause 72 contains the necessary regulation-making power. The schedule sets out the Acts and provisions repealed by clause 3.

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

BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL.

Returned from the House of Assembly with the following amendments:

No. 1. Page 20, line 6 (clause 41)—After "engaged" insert "or any operation in which the police forces of the Commonwealth or the State are engaged as part of a United Nations force".

No. 2. Page 20, after line 31 (clause 41)—Insert following paragraph:—

"or

(*e*) if he is engaged on service outside the State in connection with any operation in which the police forces of the Commonwealth or the State are engaged as part of a United Nations force."

No. 3. Page 21, line 6 (clause 42)—After "Commonwealth" insert "or any police force of the Commonwealth or the State".

No. 4. Page 22, after line 41 (clause 47)—Insert—

"or

(*e*) any person is engaged in connection with any operation in which the police forces of the Commonwealth or the State are engaged as part of the United Nations force,"

No. 5. Page 23, line 14 (clause 47)—After "force" insert "or police force".

No. 6. Page 23, line 16 (clause 47)—After "force" insert "or police force".

HEALTH ACT AMENDMENT BILL (DISEASES).

Returned from the House of Assembly without amendment.

DOG-RACING CONTROL BILL.

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

LONG SERVICE LEAVE BILL.

The House of Assembly intimated that it insisted upon its amendments Nos. 1 to 25, to which the Legislative Council had disagreed.

Consideration in Committee.

The Hon. F. J. POTTER moved:

That disagreement with amendments Nos. 1 to 25 of the House of Assembly be insisted upon.

Motion carried.

Committee's report adopted.

The Hon. F. J. POTTER moved:

That a message be sent to the House of Assembly requesting that a conference be granted respecting certain amendments to the Bill; and that the House of Assembly be informed that, in the event of a conference being agreed to, the Legislative Council would be represented by the Hons. D. H. L. Banfield, G. J. Gilfillan, A. F. Kneebone, F. J. Potter and C. D. Rowe.

Motion carried.

ABORIGINAL AFFAIRS ACT AMENDMENT BILL.

The House of Assembly intimated that it had disagreed to the Legislative Council's amendment for the following reason:

Because the amendment would seriously hamper the continued existence and effective working of Aboriginal reserve councils.

ADJOURNMENT.

At 5.19 p.m. the Council adjourned until Tuesday, March 21, at 2.15 p.m.