LEGISLATIVE COUNCIL

Wednesday, August 6, 1969

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

MINISTERIAL STATEMENT: NOARLUNGA FREEWAY

The Hon. C. M. HILL: I ask leave of the Council to make a statement.

Leave granted.

The Hon. C. M. HILL: My statement concerns the Noarlunga Freeway in the city of Marion. The Noarlunga Freeway in the Metropolitan Adelaide Transportation Study will serve as the main route to the rapidly growing residential, industrial and recreational areas to the south of Adelaide. The existing Main South Road is already congested and is completely incapable of coping with the massive increase in traffic that can be expected in future. The cost of widening the road, with its factories, hotels and shops, would be prohibitive, and the many intersecting side roads would still be a source of danger.

Access to the whole of the southern expansion of the metropolis will be dependent on a new route. Both goods and people have to be transported quickly and safely. The very lifeblood of our southern expansion depends on this new artery. The Government is firmly of the opinion that a freeway is essential in this area.

The Metropolitan Development Plan recognizes the need for such a facility and proposes a route between Morphett Road and Marion Road, running along the eastern side of Morphettville racecourse and south to Seacombe Gardens. The study after careful review considered that a route further east was more desirable and recommends a route between Marion Road and South Road.

In February of this year the Government, after consultation with the Marion council, pronounced in favour of the study route. However, in view of the public concern at this decision and the strong representations which have been made to the Government by citizens of the city of Marion, the Government proposes to ask the Metropolitan Transportation Committee to further review the merits of the two routes and to consider any alternative routes which may be submitted to the committee. While the committee holds many letters and submissions relating to this subject, further opportunity will be given for representations to be made to the committee. The Government will ask the committee to submit a report within six months.

QUESTIONS

FLAMMABLE CLOTHING

The Hon. V. G. SPRINGETT: Has the Chief Secretary a reply to my recent question concerning flammable clothing?

The Hon. R. C. DeGARIS: The Ministers of Labour of all States were disappointed to be advised at their conference last month that, because of the technical difficulties encountered by the Standards Association of Australia in preparing an Australian standard concerning the flammability of children's clothing, consideration of enacting legislation on this subject had to be deferred. In October last year a committee of the Standards Association circulated for comment a draft of a proposed Australian standard specification for fabrics described as of low flammability and a draft Australian standard method for the determination of the flammability of textiles from which clothing may be made. Subsequent laboratory tests gave unsatisfactory results on the latter standard. The committee came to the opinion that the draft standards which it had formulated were not suitable for publication in their present form and that a greater knowledge of the behaviour of burning fabrics was necessary before a meaningful standard could be prepared.

The Ministers of Labour decided therefore to approach the Commonwealth Minister in charge of the Commonwealth Scientific and Industrial Research Organization requesting that further research work be undertaken on the burning behaviour of fabrics which would give meaningful results under tests, adequate protection to the consumer, clear guide lines to the manufacturer and a basis for legislation. All Ministers agreed that a prerequisite to legislative action was the establishment of a proven and reliable standard for the testing of flammability of fabrics. In the meantime, the Ministers of all States have agreed to publish and distribute a draft code of safe design practice for children's night clothes, the preparation of which has just been finalized by the Standards Association. This code is intended to serve as a guide to manufacturers and home dressmakers and to be the basis for an educational campaign, but it is not suitable

as a basis for legal requirements. The code will be used in Government sponsored publicity throughout Australia and widely distributed when it is printed.

PORT WAKEFIELD CROSSING

The Hon. L. R. HART: I seek leave to make a short statement prior to asking a question of the Minister of Roads and Transport.

Leave granted.

The Hon. L. R. HART: My question concerns the Port Wakefield railway crossing. For a number of years now a "stop" sign erected at this crossing has required many hundreds of motorists intending to cross the line to stop. As most of the train services using this line have now been suspended, will the Minister of Roads and Transport look at the possibility of requiring the odd trains to stop rather than the many hundreds of motorists who use this crossing?

The Hon. C. M. HILL: What I had better do is look at the whole matter of the crossing. I appreciate there is a very heavy vehicular road traffic count at this point and that the trains in recent years crossing the road at this point have been decreasing in number. I shall investigate the matter and bring back a report for the honourable member.

RAILWAY REHABILITATION

The Hon. A. F. KNEEBONE: It was announced in this morning's newspaper that $8,500,000 would be spent on track maintenance, etc., as the result of recommendations of an independent committee. Can the Minister of Roads and Transport say whether this $8,500,000 to be spent in the next six years is in addition to the normal amounts of money provided by the Estimates for the Railways Department?

The Hon. C. M. HILL: Yes.

WESTERN TEACHERS COLLEGE

The Hon. M. B. DAWKINS: I seek leave to make a short statement prior to asking a question of the Minister of Local Government, representing the Minister of Education.

Leave granted.

The Hon. M. B. DAWKINS: I am sure all members have been gratified by the improvements that have been effected under both Governments in recent years in teacher training. The facilities that have been approved and the new college that has been built at Salisbury are all steps of advancement in the right direction. However, the members of families of some of my constituents are working under difficulties at the Western Teachers College, and I am sure that other members of the Council would be in the same position. I am aware of the difficulties that face the Government regarding the replacement of this college, but I should like to know whether the Minister of Education can announce any further plans to replace the present unsatisfactory set-up which serves as the Western Teachers College.

The Hon. C. M. HILL: I shall obtain a report from my colleague for the honourable member.

GOVERNMENT PURCHASES

The Hon. Sir ARTHUR RYMILL: Has the Chief Secretary a reply to the question I asked recently regarding preferences in Government purchases?

The Hon. R. C. DeGARIS: So far as the Supply and Tender Board is concerned, a preference is given in Government purchasing. The order of preference is as follows:

1. (*a*) South Australian manufacture over other Australian States and the United Kingdom,
   (*b*) South Australian manufacture over foreign,
   (*c*) Australian manufacture (other than South Australian) over foreign, and
   (*d*) Australian manufacture (other than South Australian) over United Kingdom.
2. Price is not the only consideration. All factors are considered in reaching a decision.
3. The place of manufacture is the determining factor.

The Hon. A. J. SHARD: If I heard the Chief Secretary correctly, the South Australian Government gives a local preference over other Australian States and the United Kingdom. Did this apply to the recent renovations that were carried out at Government House?

The Hon. R. C. DeGARIS: I am not aware of the situation to which the Leader refers, but I shall obtain a reply for him.

The Hon. Sir ARTHUR RYMILL: I ask leave to make a brief statement prior to asking a question of the Chief Secretary.

Leave granted.

The Hon. Sir ARTHUR RYMILL: I thank the Chief Secretary for his reply, but I think the last part of my question has been overlooked. It related to the degree of Australian ownership. As honourable members know, some companies operating in South Australia

and elsewhere in Australia are not Australian-owned. I listened to the reply given, but I did not perceive that that part of my question had been answered. Will the Chief Secretary obtain a report on that aspect?

The Hon. R. C. DeGARIS: I will get a further report for the honourable member, but I thought that the third point in my reply covered his question: it said that the place of manufacture is the determining factor.

WATER RESOURCES

The Hon. H. K. KEMP: Has the Minister of Mines a reply to my recent question about the escape of bore water in the South-East?

The Hon. R. C. DeGARIS: A hydrogeological survey of the artesian wells in the defined areas of the Lower South-East, Nos. 4, 5, 6 and 7, has indicated there are about 75 bores now flowing, and a further 33 that have ceased to flow in recent years. To control effectively the substantial wastage of water from at least a number of these wells poses a difficult drilling engineering problem, which has been aggravated by recent staff losses. It is proposed to set up shortly a training school in the South-East to work over a couple of selected wells to develop suitable repair procedures and train departmental staff and drillers.

PERSONAL EXPLANATION: HOUSE SALES

The Hon. C. M. HILL: I ask leave to make a personal explanation.

Leave granted.

The Hon. C. M. HILL: Recently, my attention was drawn to the fact that pamphlets in the name of Murray Hill Pty. Ltd. seeking properties for sale had been left in letter boxes of some houses that, on examination, appeared to lie within the routes of proposed freeways described in the Metropolitan Adelaide Transportation Study Report. I appreciated the concern of the householders who received such notices, and I immediately obtained an explanation from the management of Murray Hill Pty. Ltd. I have been informed that the firm, implementing an accepted promotional method of obtaining property listings, distributed about 10,000 notices throughout the suburbs. Although it was the management's intention that properties within proposed freeway routes were to be excluded from distribution, some forms were placed, in error, in letter boxes of some of those properties.

It has been reported to me that no properties were listed and submitted to the Highways Department as a result of the particular sales promotion exercise. Although when I became a Minister I entirely relinquished management responsibilities of the business, and resigned as a director, and although I no longer take part in the formulation of its policies, the company has agreed, in order to prevent misunderstandings, to discontinue the practice of distributing such notices everywhere. The whole matter has caused me personal concern, and I am glad to have the opportunity of making known to Parliament and the public what the facts are, and what action I have taken with respect to them.

PORT ADELAIDE BY-LAW: NUISANCES

The Hon. F. J. POTTER (Central No. 2): I move:

That by-law No. 20 of the Corporation of the City of Port Adelaide in respect of nuisances, made on June 27, 1968, and laid on the table of this Council on February 18, 1969, be disallowed.

The Joint Committee on Subordinate Legislation heard evidence on this matter on behalf of ratepayers in the affected areas, the ratepayers being limited companies that carry on business in the area affected by this by-law. It was unanimously agreed to recommend to this Council that the by-law should be disallowed. I think I ought to say at the beginning that the by-law exhibits a characteristic that seems to have crept in in other instances before the Parliamentary Committee on Subordinate Legislation this year; namely, that when confronted with a difficulty or an annoying problem the tendency is to produce a restrictive form of remedy to solve that problem. I think there have been at least two instances this year when the committee has had to deal with matters of this kind.

Having said that, perhaps I should say that the Corporation of the City of Port Adelaide had a problem; namely, there have been complaints from individual ratepayers living in residential houses that certain noises and smells were emanating from industry carrying on business not far from those houses. That is not a new problem for councils. It is probably one of the oldest problems confronting councils; indeed, an examination of the *Government Gazette* discloses that over a number of years councils having such problems have dealt with them by way of regulation or by-law. The most common by-law used for such a purpose is one reading something like this:

Whenever any noisome or offensive trade or business is so conducted or carried on as to be a nuisance . . .

then certain consequences follow, and the by-law deals with those consequences. The point I make is that the question of what is and what is not a nuisance is left to the courts to determine under the principles of the common law, and throughout the various regulations to which the attention of the committee was drawn by one of the witnesses it is apparent that this has been the format: namely, they have proscribed the matter of nuisance, but left it to the courts to apply the common law approach and determine in a particular case whether or not a nuisance exists. I will return to that matter in a moment, as the Corporation of the City of Port Adelaide decided in this regulation to adopt a somewhat novel approach to the question.

I have said complaints had been received by the council about certain noises and smells emanating from certain factories. Those complaints were referred to by witnesses from the council who appeared before the committee. I do not know that the committee was given specific instances of the noises and smells referred to, but it is important to note that the area concerned is one in which there are three major fertilizer plants, one major cement company, two paint companies, a ship repairing and engineering firm, a major supplier of cement blocks, and one or two other large engineering firms. These firms employ a large number of people. It is interesting to note that the area is not zoned at the present time as an industrial area; it is, in fact, not zoned at all. However, in the vicinity there are houses, some of which have been there for some considerable time, and other houses are being built from time to time.

The council has taken the opportunity to prepare zoning regulations under the new Town Planning Act. Those regulations have been posted and are in the public display period, and comments and criticisms have been invited from ratepayers in the district. Under that proposed plan for zoning, this whole area will become a general industrial zone: it is not to be a housing zone at all.

The complaints that have been made from time to time largely concern the question of doing repairs, sometimes emergency repairs to plant which are carried on into the late hours of the night, and the escape of fumes, sulphur and dust that fall on roofs, washing hanging on the line, and gardens, and things of that kind. I asked a witness who came from the council whether or not the council thought that something more could be done by individual firms than was being done to eliminate these so-called nuisances, and whether the council thought that the factories were being irresponsible about the whole matter. The reply given by him (I think the Town Clerk) was that the council felt that more could be done, especially in the case of breakdowns, and that it was thought that when there was a breakdown the plant should be closed forthwith until the breakdown was rectified. When the Hon. Sir Norman Jude asked, "What, and all the men put off?", the answer was, "Well, the breakdowns could be attended to within a matter of 24 hours."

I think that question and that reply highlight in one respect some of the difficulties that the council would have to face in the implementation of some form of restrictive regulation or by-law. It is, of course, acknowledged that factories of this kind, particularly engineering works, do in fact carry on noisy trades; this is inevitable. Instances were given to the committee of what is sometimes involved in a breakdown of plant and of how efforts have been made to minimize noise.

As I said, Mr. President, the council, when it was faced with these complaints from ratepayers, decided that it had better do something about the matter, so it produced the particular by-law that is now before this Council. Instead of following the normal pattern of saying, "Well, if you make a noise or carry out some offensive trade or business so as to constitute a nuisance you can expect some prosecution", the council started by saying:

If any person or body corporate commits any nuisance as hereinbefore defined the council may give notice in writing to such person or body corporate commiting such nuisance to abate the same within such time as is specified in the notice; if within the time specified in such notice the said person or body corporate does not comply with the requirements of such notice he shall be liable to a penalty.

In other words, it adopted the approach of not leaving the question of what is a nuisance to the courts to decide, applying the principles of common law, but attempted to define what it meant by a "nuisance".

This is a unique approach, for we find no precedent for it. Indeed, my attenion was later drawn to the existence of a Statute in England called the Noise Abatement Act under which, it was alleged, this kind of thing had been done. Well, on an examination of that

Statute I found that no attempt had been made to define what was meant by "nuisance", as this regulation now before us attempts to do. It still left the question of what was or was not a nuisance to be determined by the courts under the common law. However, it did provide a rather new procedural remedy insofar as a person who alleged that a nuisance had been committed could take out a complaint and have that complaint heard in a court, where the matter would be determined. In other words, it simplified the procedure. Instead of making it a civil action to be commenced by writ, with all the consequences that might flow from success or failure, a person in England can in fact now bring the question of an alleged nuisance before the courts under this simplified procedure. However, it still left the question of whether or not a nuisance existed to be determined by that court.

I come now to the manner in which the council's solicitors attempted to define "nuisance" when they drew up the by-law. I am not criticizing the solicitors in any way, because after all they were only doing what they were told to do. The by-law says:

"Nuisance" means and includes the conduct or action of any person or body corporate who makes or causes, permits or suffers to be made on premises any noise so as to cause discomfort or inconvenience to any person who for the time being may be in or upon any public street, place or building to which the public has access, or so as to be an annoyance to or detrimental to the health of any such person, or makes or causes, permits or suffers to be made upon any premises any noise so as to cause discomfort or inconvenience to any person for the time being residing in any dwelling house or other residential building, or so as to be an annoyance to or detrimental to the health of any person for the time being residing in such dwelling house or other residential building.

It then made some other definitions, too (with which I do not think we need deal at the moment), concerning smells as well as noise. It finished up by saying:

Nobody is to carry on or cause, permit or suffer to be carried on any offensive trade so as to be likely to be a nuisance or injurious to health.

Honourable members will see the wide implications of this regulation: one must not make a noise or cause a noise to be made in any factory that will cause discomfort or inconvenience to any person, whether that person is in a dwellinghouse near the factory or is even passing by in a public street.

It seemed to the committee that that was going altogether too far. As I said previously, it breaks new ground, and the committee considered that it was a text book case of a regulation that trespassed on rights established by law. One witness who appeared before the committee described it as follows:

The proposed by-law is so sweeping and there are so many matters left to personal judgment that we find, depending on whether a person or an organization is liked or disliked, that it may or may not be able to carry on with what it is doing. It may run into all kinds of trouble.

The committee was sympathetic to that point of view. That is all I need say about this by-law and the reasons why the committee decided to recommend to this Council its disallowance. I and, I think, all members of the Subordinate Legislation Committee sympathize with councils that get complaints from ratepayers, but I do not see how this method of tackling the problem, which is likely to interfere substantially with the operations of these firms and which is so wide in its scope, can be allowed to stand.

Representations were made fairly to the committee that, if the regulation had not attempted in this way to define a nuisance but had left it (as other corporations, and notably the neighbouring corporation of Hindmarsh, have) for the court to decide whether or not a nuisance had been created, there would not have been any objection to a by-law of this kind; but, because an attempt has been made to deal with the problem in this way, we think it would not be successful and would be oppressive.

The Hon. A. F. KNEEBONE (Central No. 1): I support the motion, but I want to say one or two things about it. The committee unanimously agreed that the by-law went too far, but I commend the council for its efforts to bring about some control of the nuisance that is evident from the evidence given. There is a nuisance, particularly from noise at night. The main point of the argument put by the council and Mrs. Rennie (the then mayor) was that people had complained of noise going on all through the night because of the nature of the industry. The committee agreed that the absence of zoning in this area probably created some of the problems.

I now refer to a report of a committee in England made at the time of the move for legislation known as the Noise Abatement Act, which was a result of a committee that investigated the problem of noise. The report is the Wilson Report, and I think it supports what the Subordinate Legislation Committee

is doing in moving for a disallowance. That report speaks about an annoyance caused by noise, and it indicates support for the Subordinate Legislation Committee in its thoughts on this matter, that to interpret the nuisance as any annoyance or discomfort to people is going too far; because the Wilson Report, in paragraph 34, speaks about annoyance caused by noise and its emotional effect being out of all proportion to its physical intensity.

It implies that even the creaking of a door can cause annoyance. In paragraph 35, it states that effects can depend more on the personality of the recipient than on the character of the noise. This type of reference in the Wilson Report supports what the Subordinate Legislation Committee thinks of the interpretation. The Wilson Report also states that there are no means of freeing a community completely from noise annoyance since noise may have an emotional effect out of all proportion to its physical intensity.

The Hon. C. R. Story: Which Wilson is this?

The Hon. A. F. KNEEBONE: This is not Harold Wilson; it is somebody who was the Chairman of that committee. I think that, in view of the complaints about this matter, the council should get to work immediately to draw up some other by-law that will be acceptable to the committee.

The Hon. V. G. SPRINGETT (Southern): In supporting the motion, I draw the Council's attention to two medical points in connection with noise. Noise has been described by some medical authorities as unwanted sound. It may be a creaking door; it does not have to be a large volume of sound. Sound is measured in decibels, and it is reckoned that beyond an intensity of 85 decibels one is reaching a situation where sound can be damaging. Obviously, buildings, factories or machine shops of any sort that emit noise above that level constitute a problem. The only way in which it can be dealt with is, as suggested, by each individual circumstance being investigated and dealt with by itself and not by making the law so impossible that people could not even have squeaky shoes without annoying somebody.

Motion carried.

HIGHWAYS ACT AMENDMENT BILL

The Hon. C. M. HILL (Minister of Roads and Transport) obtained leave and introduced a Bill for an Act to amend the Highways Act, 1926-1967, and to repeal the Anzac Highway Agreement Act, 1937-1940, and for other purposes. Read a first time.

BARLEY MARKETING ACT AMENDMENT BILL

Second reading.

The Hon. C. R. STORY (Minister of Agriculture): I move:

That this Bill be now read a second time.

It makes two amendments to the Barley Marketing Act to enable that Act to be reprinted under the Acts Republication Act, 1967. Clause 1 is formal. Clause 2 repeals section 5 of the principal Act, which deals with transitional provisions relating to a State Barley Board. These provisions have been rendered ineffectual by reason of administrative action taken to constitute a board under section 4. Clause 3 corrects a grammatical error in section 14(1) of the principal Act.

The Hon. A. F. KNEEBONE secured the adjournment of the debate.

ADJOURNMENT

At 3.2 p.m. the Council adjourned until Thursday, August 7, at 2.15 p.m.