LEGISLATIVE COUNCIL

Wednesday, November 19, 1969.

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

UNFAIR ADVERTISING BILL

Adjourned debate on second reading.

(Continued from November 12. Page 2898.)

The Hon. C. M. HILL (Minister of Local Government): This Bill, the second reading explanation of which was given by the Leader of the Opposition, is a relatively short one. As its title indicates, it deals with unfair advertising, and under this heading we must consider also the question of misleading advertising.

I am sure that all honourable members support any measure that is directed against unfair and misleading advertising. However, it is difficult to devise machinery to detect breaches and successfully to pursue action at law. The subject of this Bill was, in general terms, part of a measure introduced by the former Government in 1967. That Bill was not then proceeded with, and this specific matter directed towards unfair advertising has now been brought forward again.

Honourable members have a report, prepared by the Law School of the Adelaide University, that in many respects is very helpful on this subject. I understand that the Attorney-General's Department co-operated in the preparation of this report and that it was initially conceived by a conference of Attorneys-General. The report directs attention to the point that misleading and unfair advertising should come under some form of legislative control, and this Bill endeavours to achieve that purpose.

The Bill comprises only four clauses, the principal one being clause 3, which deals with the prohibition of misleading advertising. The Bill has been improved somewhat by amendments made in another place and, in its present form, it is acceptable to the Government. I am therefore prepared to support it. If, however, honourable members believe that it can be further improved and wish to move amendments, I shall be prepared to consider them. I support the Bill in its present form.

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

PROHIBITION OF DISCRIMINATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 12. Page 2898.)

The Hon. C. M. HILL (Minister of Local Government): This short Bill has come to us from another place, where it, too, was considerably amended. I am sure that no-one can support discrimination on grounds of race, country of origin or colour of skin. It appears that in Port Augusta some time ago an Aboriginal couple was refused the service of a drink in a particular part of a hotel; as a result of that incident this Bill was conceived.

It was thought that the incident that was claimed to occur at Port Augusta was sufficient to enable the Attorney-General, under the principal Act, to pursue successfully a case against the offender (if, in fact, he did offend on that occasion). However. it appears that, under the principal Act, it would have been very difficult to sustain an action against that person. Consequently, this Bill has been introduced. It clarifies, principally by definition, the meaning of the word "service" in this context. Clause 3 defines "service" as follows:

> "service" includes, without limiting the generality of the expression, any right, privilege or service, whether supplied alone or together in or in connection with or as an incident of the supply of any goods or services.

I understand that the story originated when someone in the hotel agreed to supply the couple concerned with a drink but added the condition that they had to drink in a certain part of the hotel. Because they were not given the opportunity to drink in either the lounge or the front bar, a condition was added, and that is how this allegation of discrimination developed.

It is proper that, when a matter such as this arises, and when an Act of Parliament exists but cannot be enforced because of what could almost be called a technicality, amending legislation should be promulgated to make perfectly clear the intention of the original legislation, which is what this small Bill does. The Government is prepared to support it. However, if any honourable members in their research on this measure have any amendments they would like to propose, I shall fully consider them. In its present form, I support the Bill.

The Hon. A. M. WHYTE secured the adjournment of the debate.

BULK HANDLING OF GRAIN ACT AMENDMENT BILL (DIRECTORS)

The Hon. C. R. STORY (Minister of Agriculture) obtained leave and introduced a Bill for an Act to amend the Bulk Handling of Grain Act, 1955-1968. Read a first time.

ROAD TRAFFIC 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 Road Traffic Act, 1961-1967. Read a first time.

The Hon. C. M. HILL: I move:

That this Bill be now read a second time.

There can be no doubt that the Road Traffic Act necessarily assumes the greatest importance in our highly mechanized society in which vehicular communication and transport have become a necessary part of economic existence and an indispensable adjunct to a way of life to which most people have become accustomed.

The Road Traffic Act was enacted in its present form in 1961 and it is inevitable that such a comprehensive piece of legislation should from time to time require amendment as experience with its administration increases and advances are made in traffic engineering. The science and the jurisprudence of traffic control are extremely dynamic in character and the Bill before the Council reflects some of the changes that are being wrought by new approaches in this field. The present amendments are of a widely divergent character. Consequently, I shall not attempt to give a synopsis of the Bill but shall turn immediately to discuss its provisions in detail.

Clauses 1 and 2 are formal. Clause 3 amends the definition section of the principal Act. The first amendment affects the definition of "dividing strip". The inclusion of "median strip" in the definition helps to clarify what is meant by a dividing strip. The term "median strip" rather than "dividing strip" is often used to describe the area between two carriageways, and is used in the Local Government Act for the same purpose. An amendment of "roundabout" is inserted in the principal Act. This is a precise definition of what constitutes a roundabout and is to be read in conjunction with section 72 contained in clause 17 of the Bill.

The definition of "traffic control device" is expanded to include safety bars, which are being used more extensively to control traffic at intersections and also to give advance warning of median strips. The definition of traffic control devices includes, *inter alia*, "safety islands" and "safety zones", but the definition does not at present comprehend a "safety bar".

This is the correct traffic engineering term for the device that is often referred to as a "rumble strip" or "jiggle bar". No definition is contained in the Road Traffic Act of what is meant by "the standing" of a vehicle, although it is referred to in a number of the sections dealing with parking. The Police Department has requested this definition to procure a more effective policing of the parking provisions of the Act.

Clause 4 amends section 11 of the principal Act, which deals with the constitution of the Road Traffic Board. The Act specifies that the Highways Department's representative on the board shall be a traffic engineer. The Commissioner of Highways is of the opinion that the present wording is too restrictive and limits the number of departmental engineers from whom he can nominate a representative to the board. Consequently, he has suggested the revised wording.

Clauses 5, 9, 20, 23, 25, 27, 30 and 33 permit the delegation of the powers of the board in certain areas. The delegation is permitted with respect to matters that may need immediate approval. The board normally meets fortnightly and many of its functions entail day-to-day approvals. Examples of these are: (1) permits for over-dimensional and overweight loads, of which approximately 200 are issued each week; (2) the erection of certain regulatory signs, many as a matter of routine (such as "keep left" signs) and others in cases of urgency (such as "stop" signs) to replace traffic signals put out of operation owing to accident or other causes; (3) the painting of standard pavement markings and legends on roads; and (4) the authorization of monitors to display "stop" banners at school crossings. (The monitors change from term to term and it is necessary to approve replacement monitors immediately.)

Traffic matters arise from time to time where urgent action is required by the Police Department and highways authorities, and it would be unreasonable to withhold board approval until the next board meeting. The Crown Solicitor has pointed out that the present wording of the Act does not permit the board to delegate its authority and has suggested these amendments to regularize a practice that has been in operation since the inception of the board.

Clause 6 gives power to the Commissioner of Highways to install traffic control devices, with the approval of the Road Traffic Board,

on any roads under his control. The Commissioner deems this necessary to enable a more efficient administration of his department and to ensure efficient traffic engineering practice. Only local authorities at present have the powers to install traffic signals, median strips and certain other kinds of traffic control devices, and it is necessary for the Commissioner of Highways to seek local authorities' concurrence for their installation on roads which are not the responsibility of councils. With the advent of freeways and expressways, which will be completely constructed and financed by the Highways Department, it will be necessary for the Commissioner of Highways to install these devices without the need to seek the co-operation of the councils.

Clause 7 amends section 22 of the principal Act which deals with direction lines and barrier lines. The purpose of this amendment is to extend the powers of the Commissioner of Highways or a council to allow it to install additional types of pavement markings along a road as well as at an intersection or junction for the purpose of guiding and regulating traffic. Examples of such markings are speed limit numerals on the carriageway, centre lines, lane lines, continuity lines and warning messages such as symbolic cross road markings. At present these are limited to areas within an intersection or junction.

Clause 8 enacts new section 23a of the principal Act. The Act at present empowers the Commissioner or a council to erect certain enumerated kinds of traffic control devices. There is no power to cover any residual kinds of device not specifically mentioned. The amendment overcomes this difficulty and provides that any such devices already installed with the approval of the board shall be deemed to be lawfully installed.

Clause 10 amends section 49 of the principal Act which establishes a number of speed limits. Difficulties have arisen in enforcing the speed limit of 15 miles an hour on a section of road between "school" signs. Under the existing wording of the Act it is necessary to prove that a child on that section of road was actually proceeding to or from the school to which the signs refer. The child could be proceeding past the school to attend another school in which case the speed limit of 15 miles an hour could not be enforced. Motorists could not be expected to know to which school the child was proceeding, and the substitution of "a" for "the" would allow the police to enforce the 15 miles an hour limit during the times children normally enter and leave schools, without the necessity to get a child's name as proof that he attended the school as well as the motorist's name.

Clause 11 amends section 51 of the principal Act which enacts a speed limit for motor cycles with pillion passengers. When the Road Traffic Act was amended in 1967 to permit motor cyclists carrying pillion passengers to travel at higher speeds, it was intended to allow them to travel at up to 45 miles an hour inside a municipality, town or township, if the roads were speed zoned as such, as well as travel at up to 45 miles an hour outside these areas. Furthermore, it is possible for a road outside a municipality, town or township to be a speed zone of below 45 miles an hour, in which case the motor cyclist must obey the lower limit. This amendment rectifies the present anomaly. Subsection (1*a*) is to make it clear that a motor cyclist carrying a pillion passenger must travel at a speed of less than 45 miles an hour if he is confronted with a signed lower limit.

Clauses 12 and 13 amend sections 53 and 53a of the principal Act respectively. This additional section has been included at the request of the Police Department to make it clear that the general speed limits specified in the Act for commercial motor vehicles and motor buses do not take precedence over lower speed limits prescribed at specific locations.

Clause 14 amends section 66 of the principal Act. This section requires drivers who are about to enter a road from private land to give way to any vehicle or person on that road. The present definition of "road" refers to "any area commonly used by the public". Off-street car parks to shopping areas, hotels etc., are commonly used by the public and consequently fall within the definition of "road" (for example, Arndale shopping centre, where buses run through the parking area to serve the shopping centre itself).

The entrances to and from the shopping centre with the abutting road constitute a junction and normal right-of-way rules apply. It was never intended that a motorist on the main road should give way to a vehicle leaving one of these parking areas, and more often than not the main road traffic is not prepared to give this right of way. This amendment is intended to remove the anomaly in the interests of safety

and clarity of the "give way" rule. The councils and Police Department have asked for this matter to be clarified.

Clause 15 amends section 69 of the principal Act. Under the existing provisions of the Act, an offence of failing to give way to other vehicles when leaving the kerb is not committed until the driver actually commences to drive. Once he has commenced to drive he is no longer about to drive. It is therefore necessary to add the words "or driving" in order to enforce the provision of this section.

Clause 16 amends section 72 of the principal Act dealing with giving right of way. A vehicle approaching an intersection and making a right turn is required to stand for traffic coming from the opposite direction. When a roundabout is installed in the intersection, the amendment in this clause and clause 17 will allow the motorist, irrespective of the direction from which he came, to proceed around the roundabout. The vehicle entering the roundabout will give way to him because he is on his right and within the carriageway of a roundabout.

Clause 17 enacts new section 72a of the principal Act. This new section clarifies the right of way at a roundabout. Vehicles approaching the roundabout must give way to vehicles within the carriageway of the roundabout. Generally speaking, this procedure is adopted by motorists at existing roundabout installations.

Clause 18 amends section 78a of the principal Act. This amendment clarifies the obligation for a motorist not only to comply with any sign or mark (arrows or legend) placed along a road but also to comply with any sign or mark installed at an intersection to control the movement or standing of a vehicle. This means that a motorist entering a lane to be used exclusively by turning traffic shall, on entering that lane, make the turn and not proceed through the intersection. Nor shall he leave his vehicle standing in an area which is indicated as a no-standing area by signs or marks. There are still a few intersections in the State where anomalies in the arrows placed at the intersections can induce a motorist to enter the wrong lane for the movement he wishes to make. These are now in the course of being modified.

Clause 19 enacts new section 83a of the principal Act. During the past few years, it has become common practice for itinerant vendors of oranges, kangaroo skins, watches and other commodities to set up temporary stands or to park their vehicles on the side of the road to sell these goods to passing motorists. Often the locations they choose are adjacent to intersections or on exceptionally busy roads. (Examples are South Road near the Clarendon turn-off and at Noarlunga where the Victor Harbour road bisects the Sellick Hill road).

Many hazards are created by vehicles stopping suddenly and parking indiscriminately on road shoulders and carriageways. Often the attention of the motorist is distracted by the owners waving their arms and stepping out into the road to display signs of the goods on offer. Many of these stalls, which comprise orange boxes with the goods being displayed on the top, are situated on the shoulder of the road and have young children in attendance. The shoulder area is part of the travelled way and is provided as an escape area in an emergency and a parking area in the event of a breakdown.

It is possible that the children could be endangered by the motorist and also that the motorist may be likewise endangered in taking evasive action to miss these stalls and children when using the shoulder. Pedestrians from the cars crossing the road also constitute a danger, and one fatality and a number of minor accidents have already occurred on the South Road due to the presence of the stalls.

Another dangerous practice is that of newsboys selling newspapers on carriageways or traffic islands at busy intersections. This practice is highly dangerous to the newsboys as well as to motorists taking evasive action to avoid them and can also affect smooth traffic flow at the intersections. A further dangerous practice is that of hitch-hiking while walking or standing on a carriageway. The hitch-hiker usually walks with his back to oncoming traffic, although this is an offence under the present Act.

This particular legislation is in force in Queensland, Victoria and Western Australia, and is under consideration in the other States. The proposed legislation is intended to stop persons standing on the carriageway for the purpose of selling goods or seeking a lift from a passing motorist, and to exercise control over itinerant traders operating on the carriageway or median strip. It is also intended to stop a motorist from inducing a person to sell him goods from the carriageway, for example, making a newsboy run out on the carriageway to sell him a newspaper.

This legislation does not prevent the selling of goods from the road reserve outside the carriageway or the standing of a vehicle for

the purpose of selling goods from a similar position. The control of itinerant traders on the road reserve outside the carriageway is the responsibility of local authorities. It also does not prevent newsboys from selling newspapers from the footpath. It is intended to exempt milk and bread vendors and greengrocers operating from vehicles from the provisions of this section.

Clause 21 amends section 127 of the principal Act. The Act at present defines a service brake as one which is applied by a foot pedal only. Some articulated vehicles are equipped with two independent braking systems, one of which is operated by a foot pedal acting on the wheels of the prime mover and the other by means of a hand lever operating on the wheels of the semi-trailer. The Police Department considers it dangerous for semi-trailers to be allowed to operate with a foot brake only on the prime mover. The provision of a braking arrangement on the wheels of the trailer unit will ensure increased safety by preventing jack-knifing.

Clause 22 enacts new section 137a of the principal Act. The sections of the Act referred to in this amendment relate to braking equipment, warning devices, mechanical signals, windscreen wipers and rear vision mirrors. With the many and varied types of powered implements and machines now available which come within the category of a motor vehicle, as defined in the Act, there is a need for the board to have power to grant exemptions, where justified, from the requirements of the above sections. For example, a power-driven lawnmower used for mowing lawns on a road reserve or a power-driven vibrating roller controlled by an operator on foot should not as a general rule be required to be equipped with two independent braking systems, a rear vision mirror and a warning device.

Clause 24: the draft regulations of the Australian Motor Vehicle Standards Committee now prescribe that the maximum width of a vehicle may measure up to 8ft. 2½in. This is equivalent to two and a half metres as fixed by the United Nations Convention on Road Traffic and which has been adopted as an international standard in many countries, particularly in relation to containers. With the large number of vehicles imported from overseas, the board is receiving increasing requests to issue overwidth permits to enable local authorities, Government departments and private concerns to operate these vehicles without the restrictions normally associated with special permits, that is to say, restricted travel in peak hour traffic and during the hours of darkness. At present mirrors may extend up to 6in. beyond a width of 8ft. This has been amended to allow the same latitude on the extended width by clearer description.

Clause 26 amends section 144 of the principal Act. Both the Police Department and the road charges section of the Highways Department are having considerable difficulty in locating the driver of a vehicle when he has committed an overloading offence, particularly if he lives in another State. It is desirable that both the owner of the vehicle and the person in charge of the vehicle should be fixed with responsibility for overloading offences so that the Act can be effectively policed and sanctions brought home to the person who is author of the offence if not the actual perpetrator. The Crown Solicitor is of the opinion that this is not possible at the moment in view of the manner in which the Act is expressed.

Clause 28 amends section 152 of the principal Act. This section makes it an offence to refuse to present a vehicle for weighing at the request of the police or Highways Department officers. The penalty of $100 is less than the penalty imposed by the courts for the overloading offence, consequently it pays the offender to refuse to be weighed in preference to being charged and penalized for overloading. Increasing the penalty will discourage this tendency of refusing to be weighed for gross overloadings.

Clause 29 amends section 157 of the principal Act. This is in line with an amendment made in 1967 to section 111 relating to lamps on vehicles and brings the Act into conformity with the provisions of the National Road Traffic Code relating to lighting up times.

Clause 31 amends section 159 of the principal Act. Every vehicle carrying passengers for hire is required to be inspected and certified by the Police Department safe to carry passengers. The Railways, Municipal Tramways Trust and taxi-cabs licensed under the Metropolitan Taxi-Cab Act are, at present, exempt. The Education Department carries out stringent safety checks and maintenance inspections on all school buses in the Government Motor Garage, and it has asked to be exempted from the need to be inspected by the Police Department as it now has become a formality only. An amendment is accordingly made.

Clause 32 amends section 160 of the principal Act. During the course of testing

motor vehicles by police officers for suspected defects, instances have occurred where damage has resulted to a vehicle or certain components of the vehicle have failed (for example, burst hydraulic brake hoses, broken hand brake cables, etc.). In one case the engine mountings were loose and, when the brakes were applied, the engine moved forward and damaged the radiator core. In order to absolve the testing officer or the Crown from liability for repairs in such circumstances, the amendment is made to the principal Act.

Clause 34 amends section 162a of the principal Act. It is intended to introduce the design rules for seat belts and anchorages as regards all vehicles first manufactured and registered after January 1, 1970. The amendment also prevents a person from selling a seat belt or fitting that has been previously used in a vehicle. Car wreckers have been found to be stripping crashed cars and selling the seat belts at low prices to the unsuspecting public.

When a belt has been subjected to strain imposed by the force of a crash, it loses its initial strength and consequently is most unlikely to afford the protection to its user that he would require in the event of an emergency. In any event, such a belt would not comply with the minimum specifications in relation to the breaking strain of its components at present prescribed under the principal Act.

Clause 35 amends section 163 of the principal Act. The Act at present requires vehicles over 35 cwt. and vehicles carrying passengers or goods for hire to have the name and address of the owner and the unladen weight of the vehicle painted on the side of the vehicle. In many cases this information is painted on the chassis, fuel tank or places that become excessively dirty, thus making it difficult to read. The amendment provides that the name and address be painted on the door or a part near the door away from possible coverage by dirt.

With the enforcement of the Road Maintenance (Contribution) Act, the sighting of vehicles on roads is one of the principal checks available that goods have been carried by a vehicle, and it is important that the name and address of the owner can be readily observed. This amendment will not affect taxis, which are exempted under the Act, and will affect only new vehicles first registered after July 1, 1970.

Clause 36 amends section 175 of the principal Act, which is an evidentiary provision. New paragraph (*ba*) provides for an allegation that a road is a public road within the meaning of section 66 to be *prima facie* evidence. The amendment further deals with provisions relating to the testing of weighbridges. When the original legislation was introduced, the word "after" was inadvertently substituted for "of" in the paragraph dealing with these devices. The Weights and Measures Act requires the testing of weighing instruments at least once in every two years. The insertion of the words "before or" immediately prior to the word "after" will rectify the anomaly.

Clause 37 inserts a provision in section 176 of the principal Act, empowering the Governor to make regulations governing the design or construction of motor vehicles. With the introduction of design rules governing the general structural design of motor vehicle bodies, it is necessary to be able to make regulations prescribing matters that affect the structural part of motor vehicle bodies. The present powers under section 176 to make regulations apply mainly to equipment or fittings to vehicles, and items contained in the design rules such as "forward field of vision" and "collapsible steering columns" are not considered to fit into the category of equipment or fitting but rather to be part of the "design of the body" of a vehicle.

The Hon. S. C. BEVAN secured the adjournment of the debate.

SOUTH AUSTRALIAN RAILWAYS COMMISSIONER'S 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 South Australian Railways Commissioner's Act, 1936-1965. Read a first time.

The Hon. C. M. HILL: I move:

That this Bill be now read a second time.

Its purpose is to improve the facilities available at the Adelaide railway station. It has become clear over the last few years that if the South Australian Railways is to compete effectively with other forms of passenger transport it must offer comparable amenities. Honourable members will be well aware that facilities for the supply and consumption of liquor exist at Adelaide Airport.

The Railways Commissioner is at present empowered to sell liquor in the railway refreshment rooms to persons having meals in those rooms. This Bill increases the range of liquors that may be sold by the Commissioner and enables him to sell by the glass to those who

may come to the refreshment rooms without intending to have a meal. The hours of sale are extended to 10 p.m. to bring the principal Act into line with normal licensing hours.

The provisions of the Bill are as follows: clause 1 is formal, and clause 2 amends the definition section of the principal Act. "Liquor" is defined as having the meaning assigned to it in the Licensing Act. A new subsection is inserted to provide that any amendments that may have been made to the principal Act by the Licensing Act are to be cancelled and the Act is to be construed on the assumption that no amendment was made by the Licensing Act.

The schedule to the Licensing Act, 1967, provided that "so much of the South Australian Railways Commissioner's Act, 1936, as amends the Licensing Act, 1932" was to be repealed. It is not clear what was intended by this as, in fact, the South Australian Railways Commissioner's Act did not amend the Licensing Act at all. It is thought that a court would probably interpret that part of the schedule to the Licensing Act as being meaningless but, in order to be certain, the amendment is made.

Clauses 3, 4 and 5 make formal amendments to the principal Act, bringing certain references contained therein up to date. Clause 6 repeals and re-enacts section 105 of the principal Act. The section is re-enacted in a form that permits the Commissioner to sell all forms of liquor and omits the restriction that liquor may be sold only in the course of a meal.

Clause 7 amends section 133 of the principal Act. The Commissioner is empowered to make by-laws providing for certain of the provisions of the Licensing Act to apply *mutatis mutandis* to any refreshment rooms from which the Commissioner sells liquor.

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

LAND ACQUISITION BILL

The Hon. C. M. HILL (Minister of Local Government) obtained leave and introduced a Bill for an Act to provide for the acquisition of land for works and undertakings of a public nature, and for purposes incidental to, and consequential upon, such acquisition; to repeal the Compulsory Acquisition of Land Act, 1925-1966; and for other purposes. Read a first time.

The Hon. C. M. HILL: I move:

That this Bill be now read a second time.

It is based on recommendations contained in the final report of the Land Acquisition (Legislation Review) Committee set up by the Government to examine a wide range of matters concerned with the compulsory acquisition of land; in particular, to review the Compulsory Acquisition of Land Act, 1925-1966; and, if thought fit, to make recommendations for a new Act.

It has appeared to the Government for some time that the present Act does not meet the needs of the public in that amongst other things it fails to provide the individual owner with proper notice of the acquisition or with an opportunity to make his views known to the authority in charge of the scheme or undertaking for which his land is to be acquired. The legal procedures governing the process of acquisition are cumbersome and antiquated (indeed, they are based on English legislation brought down in the last century and wholly inappropriate for registered land under the Real Property Act).

There are unnecessary delays in making available to the owner of the acquired land the compensation, or at least a fair proportion of the compensation, to which he will become entitled, and the cardinal section (section 12) containing the rules governing the assessment of compensation have revealed over the years a number of anomalies and uncertainties that ought to be cured and resolved. The Government committee recommended that the old Act should be repealed and new legislation brought down which corrects the faults of the old Act and which provides just, expeditious and simple machinery for acquisitions.

Before I analyse the individual clauses, it will assist honourable members if I advert to some of the new legislation's principal features. It is fundamental to the working of the new scheme that no land can be acquired by agreement or otherwise until a document of a description not previously adopted in South Australia (a notice of intention to acquire) has been served on all persons interested in the land to be acquired.

The giving of the notice is made to have three important results: first, it places on the acquiring authority the obligation of making a definite decision whether or not to acquire before embarking on the process of acquisition; secondly, it gives to the owner reasonably detailed knowledge of the land likely to be acquired; thirdly, it gives to the owner the right to obtain detail of the scheme for which his land is being acquired, to obtain explanations or particulars with respect to the scheme and to ask, for various important reasons, to have the scheme varied; fourthly, it freezes

the land, for the time being, in the hands of the owner, so that he cannot subvert the acquisition by dealings with the land before ownership finally passes; and, fifthly, it sets a date for the commencement of what will normally be a 12 months' period before the expiration of which the authority must make up its mind whether or not to proceed with the acquisition.

It should immediately be mentioned that if the authority fails to proceed within that period it must compensate the owner for loss suffered by having to hold the land. If the authority decides to proceed, a proclamation vests the land in the authority, converts all interests into claims for compensation, and constitutes the date with respect to which the compensation is assessed.

The proclamation embodies a notice of acquisition, which must be served on interested persons; contemporaneously with the notice of acquisition the authority is required to state a figure representing the value of the land and to pay the amount of that value into court. That important innovation makes it possible for every person with an interest in the land (and there will usually be only one owner or one group of joint owners) to apply to court for payment out, leaving any other disputed amounts (for example, a further sum representing value, severence or disturbance) to be agreed or litigated in due course.

The procedure ensures that persons interested will be able to have immediate recourse to a fund representing a substantial proportion, sometimes the whole, of the amount to which they will ultimately be adjudged to be entitled by way of compensation. After payment into court, the remaining issues in dispute (if any) between the parties can quickly be defined under the Act, and, at that stage, the proceedings will reflect the benefit to be derived from the new Land and Valuation Court, the subject of separate legislation.

One last general comment should be made. This Bill deals, and is intended to deal, only with procedures and compensation for taking land. The Land Acquisition (Legislation Review) Committee, which recommended this Bill, had before it some submissions relating to the need to provide compensation for losses suffered by persons whose land had not been taken for announced public works projects, but who, in some way (often indirectly), had suffered other losses or disadvantageous consequences either as the result of the announcement of a project or as the result of its execution. Those other losses or consequences are not, in the opinion of the committee and of the Government, susceptible of legislative cure of the kind embodied in land acquisition legislation.

Both the committee and the Government are firmly of the opinion that the solution to the problem of the special sort of losses referred to must be found either in administrative action or in legislation of a social nature specifically directed to the social problems involved, of which monetary compensation is only one. Whether administrative action is taken or social legislation is introduced, the adequacy of the solutions attempted will best be debated as separate issues in Parliament.

I will deal now with the individual clauses. Clauses 1 and 2 are formal. Clause 3 repeals the Compulsory Acquisition of Land Act, 1925-1966. Clause 4 deals with the arrangement of the Act. Clause 5 enacts certain transitional provisions. It provides that if, at the commencement of the new Act, a notice to treat has been issued under the repealed Act, the acquisition may be proceeded with under the old Act in all respects as if the new Act had not been enacted.

Clause 6 provides certain definitions necessary for the purposes of the Act. "Compensation" is defined as meaning compensation to which persons are entitled under the Act, and includes the purchase price of land purchased by agreement. The word "land" includes any interest in land. Thus, an acquisition of land could be an acquisition of an easement over land or any other right or privilege in relation to land. The acquisition is made by a person designated "the authority", who is the person authorized by the special Act to execute the undertaking authorized by that Act.

Clause 7 provides that the new Act is to be construed as being incorporated with every Act by which an undertaking involving the acquisition of land is authorized, and that the new Act, and any such Act, are to be read together as one Act. Clause 8 provides that the provisions of the new Act are to prevail over anything contained in the Real Property Act.

Clause 9 provides that the new Act is not to apply to the resumption of land pursuant to the Crown Lands Act or the Pastoral Act. Clause 10 provides that, where the authority proposes to acquire land for the purposes of an authorized undertaking, it must serve on all persons interested in the land, or such of those persons as, after diligent inquiry, become known to the authority, a notice of intention to acquire the land.

Subclause (2) provides that the authority is not to proceed with the acquisition of land until it has complied with this requirement. Subclause (3) provides that the notice of intention must define the subject land with reasonable particularity.

Subclause (4) provides that the notice of intention to acquire does not bind the authority to acquire the land defined in the notice but that, where any alteration or modification of the boundaries or extent of the subject land is made, the authority must serve on all persons upon whom the notice of intention has been served a notice of that alteration or modification.

Clause 11 provides that a person who has an interest in the subject land may, within 30 days after service of a notice of intention to acquire, require the authority to furnish him with reasonable details of the acquisition scheme. Subclause (2) provides that the details required under the clause may be furnished by written reply or by making available models, plans, specifications or other documents relating to the acquisition scheme.

Clause 12 provides that an interested person may request the authority not to proceed with the acquisition of the land, request any alteration in the extent of the land to be acquired or request that any part of the subject land be not acquired or that further land be acquired. Subclause (2) sets out certain grounds upon which such a request may be made, although it does not prevent a request made upon other grounds. Subclause (3) requires the authority to consider any request made under the clause and to reply to it within 14 days indicating whether it accedes to, or refuses, the request.

Clause 13 applies to land that has not been brought under the provisions of the Real Property Act. Where a notice of intention to acquire such land has been given, the owner of the land must not enter into any transaction in respect of the land without disclosing the fact that the land is subject to acquisition. Subclause (3) provides that, if a contract or agreement is entered into without such disclosure, it shall be voidable at the option of the person to whom disclosure should have been made. Subclause (4) provides that the authority may lodge a copy of the notice of intention at the general registry office and may require any person to deliver up any instrument of title to the Registrar.

Clause 14 deals with land that has been brought under the provisions of the Real Property Act. In this case the authority may serve a copy of the notice of intention upon the Registrar, and he is required to enter a caveat upon the title forbidding all dealings with the land without the consent in writing of the authority.

Clause 15 provides that the authority may, at any time after the service of the notice of intention to acquire, acquire the land by agreement. Subclause (2) provides that the authority may decline to proceed with the acquisition of the subject land. Subclause (3) provides that, where the authority determines not to proceed with the acquisition of land, it shall serve notice of that fact upon all interested persons.

Subclause (4) provides that, if the authority does not acquire the subject land within 12 months after service of the notice of intention to acquire or within such extended period as may be agreed or the court may allow, the authority shall be presumed to have determined not to proceed with the acquisition of the land, and the land cannot then be acquired without service of a further notice of intention. Subclause (5) provides that, where the authority determines not to proceed with the acquisition of the land or is presumed so to have determined, an interested person may claim compensation. The manner in which this compensation is assessed is covered in subclauses (6) and (7).

Clause 16 provides that the authority may, after the expiration of three months but before the expiration of 12 months from the day on which a notice of intention was last served in respect of any land, cause a notice of acquisition to be published in the *Government Gazette*. Upon publication of that notice, the land is vested in the authority. A copy of the notice of acquisition must be served on all interested persons.

Clause 17 requires the authority to serve a copy of the notice upon the Registrar, who shall make such alterations to or endorsements upon any instruments of title in his possession or power as may be necessary in view of the acquisition. Clause 18 provides that every person who immediately before the acquisition had an interest in the subject land that is divested or diminished by the acquisition of the land or the enjoyment of which is adversely affected thereby has a claim for compensation.

Clause 19 requires the authority to append to the copy of the notice of acquisition served upon the interested person under clause 16 an offer of the amount of compensation that it proposes to pay. To the extent that such an

amount is not disputed, it is binding upon the authority. Clause 20 requires the authority to pay the total amount of compensation stated in the offer into court within seven days. The court is empowered to invest these moneys where for any reason payment out of court is delayed.

Clause 21 requires a claimant within 60 days after service of the notice of acquisition upon him to state to the authority whether he acquiesces in the amount of compensation offered or claims further compensation. This period of 60 days may be extended by agreement or by order of the court. If a person fails to comply with this section, he is deemed to have acquiesced in the amount of compensation offered.

Clause 22 provides for the matters to be contained in a notice of claim served upon the authority. Where such a notice is served, the authority must within 60 days reply to the notice of claim. The authority may admit the claim, offer to increase or otherwise vary the compensation previously offered, or dispute the claim. If the authority admits the claim, it becomes liable to satisfy that claim in full. If the authority offers to increase or vary the compensation, the claimant must reply to that further offer and may acquiesce in it or may dispute the amount, in which case the claim becomes a disputed claim. Of course, if the authority disputes the claim, the claim is *ipso facto* a disputed claim within the meaning of the Act.

Clause 23 provides for a disputed claim to be referred to the court be either the authority or the claimant. The court is required to determine what amount should adequately compensate all persons interested in the subject land where a claim has been referred to it under the Act.

Clause 24 provides that, where an interest in possession in land is vested in the authority pursuant to the Act, the authority must diligently endeavour to obtain agreement upon the terms on which it will enter into possession of the land. If it fails to obtain agreement it may apply to the court for an order of ejectment, and such further orders as may be just in the circumstances. If a person is in possession of the land after three months, he is deemed to be in possession as a tenant at will. The court may determine a suitable rental in such a case.

Clause 25 deals with the principles upon which compensation is to be assessed under the Act. The compensation is to be such as adequately to compensate a claimant for any loss that he has suffered by reason of the acquisition of the land. The compensation is to be fixed as at the date of the acquisition of the land. Where the claimant's interest in the land is liable to expire or to be determined, any reasonable prospect of renewal or continuation of the interest must be taken into account. Certain other principles existing under the present Act are included in this clause.

Clause 26 deals with the application of compensation paid into court under the Act. Clause 27 gives the authority power to enter upon land for the purposes of an authorized undertaking. Clause 28 enables the authority temporarily to occupy and use certain land close to land acquired under the Act. Clause 29 empowers any person who has suffered loss from the entry upon, or temporary occupation of, his land to claim compensation.

Clause 30 empowers the authority to require the delivery up of documents necessary for the purposes of determining compensation. Clause 31 provides for service. Clause 32 provides that, where a claimant is under a juristic disability, the amount of compensation must be approved by the court. Clause 33 provides that, where an amount of compensation is increased by agreement or by order of the court, the authority is to pay interest on the amount of the increase at a prescribed rate from the date of publication of the notice of acquisition. Clause 34 provides that compensation offered, or ordered under the Act, may consist of the execution of works on the land of the claimant.

Clause 35 empowers the authority to sell, lease, or otherwise deal with or dispose of land acquired under the Act that the authority does not require for the purposes of the undertaking. Clause 36 sets out the principles on which the court shall order costs. Clause 37 provides that proceedings for offences under the Act are to be disposed of summarily. Clause 38 empowers the Governor to make regulations for the purposes of the Act.

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

CORONERS ACT AMENDMENT BILL

Second reading.

The Hon. C. M. HILL (Minister of Local Government): I move:

That this Bill be now read a second time.

It makes a number of miscellaneous amendments to the Coroners Act which have been recommended by the City Coroner. Clause 2 is designed to extend the territorial jurisdiction of the City Coroner to cover the areas

from which there is direct telephonic communication with Adelaide. All police stations within the area included in this clause are in the Adelaide outer telephone zone. Calls from those stations to the City Coroner's office in Adelaide, and from that office to those stations, are local calls so that operations can be carried out as expeditiously and cheaply as operations (as at present) within the Adelaide telephone zone. It further means that the operations would be carried out, controlled or directed by an experienced staff, and that inquests would be held by the City Coroner instead of local justices.

Clause 3 is consequential on the amendment made by clause 2. Clause 4 makes two formal conversions to decimal currency. Clause 5 (*a*) is designed to remove the requirement that death must be sudden before a coroner may intervene. At present a coroner's jurisdiction is limited to cases in which there is reasonable cause to suspect that a person has died a violent or unnatural death, or has died a sudden death the cause of which is unknown. But in cases of secret homicide there may be no reason to suspect a violent or unnatural death, and the cause may not be sudden, in fact, expected, though the cause is unknown.

Moreover, unless an autopsy has been performed, it is essential to the registration of a death and burial that the medical practitioner who attended the deceased in his last illness should give a medical certificate of the cause of death. If the cause is unknown, or if the deceased was not attended by a medical practitioner, or if the medical practitioner is absent or unavailable, no such certificate can be given: yet a coroner, strictly, cannot intervene unless the death is sudden.

Clause 5 (*b*) updates a reference in subsection (2) of section 10 to section 27 of the Bush Fires Act, 1933. Clause 5 (*c*) is designed to give power to the Attorney-General to direct a coroner to hold an inquest or to re-open an inquest. Previously if a coroner has neglected or refused to hold an inquest which ought to have been held, the only redress of an interested party was to apply to the Supreme Court for an order compelling him to hold one. This involved needless expense and delay.

If a coroner has held an inquest and pronounced his finding, no further inquest could be held. But after the finding fresh facts may come to light falsifying, or tending to falsify, the finding. Leading authorities have stated that it is desirable that a coroner should be enabled to re-open the inquest, so in both these cases it is practicable and desirable that the Attorney-General should be empowered to give the directions. It may be recalled that from time to time complaints have been made by interested parties that coroners have deemed unnecessary inquests which ought to have been held, and some time ago a question on the subject was addressed to the Attorney-General in Parliament.

Clause 6 is designed to exclude the innumerable small, trivial, and accidental fires in respect of which an inquest is obviously unnecessary. But in all cases it is required that the coroner should give notice to the Attorney-General that he has deemed an inquest unnecessary, with his reasons. Under the amendment, if an interested party is concerned to have an inquest held into the cause or origin of a fire, he can by virtue of clause 5 (*c*) of this Bill apply to the Attorney-General who can direct an inquest to be held.

Clause 7 is designed to provide that if there is reasonable suspicion that a death was violent or unnatural, this should be sufficient to justify exhumation. The word "grave" is too strong, and may defeat investigation into a crime. The fact that under the principal Act a body cannot be exhumed without the consent of the Attorney-General safeguards the position. Paragraph (*b*) is consistent with the amendment made by clause 5 (*a*).

Clause 8 is designed to give the Attorney-General power to direct evidence to be taken in shorthand and a certified transcription to have the effect of depositions. The provisions inserted by this amendment are based substantially on section 255 of the Commonwealth Bankruptcy Act. The facility of recording evidence at an inquest in this manner would be invaluable in many cases; for example, where the witnesses are passengers or members of the crew of a vessel passing through the State, or where evidence is taken from a witness who is a patient in a hospital, or in cases of congestion of business.

Clause 9 up-dates a reference to sections 32 and 33 of the Births and Deaths Registration Act, 1935-1947, which have been replaced by sections 34 and 37 of the Births, Deaths and Mariages Registration Act, 1966. Clause 10 strikes out the form "Warrant of Commitment" which is no longer appropriate, as a coroner now has no power to commit for trial. If clause 6 of this Bill is enacted the form "Coroner's Certificate where an Inquest on a Fire is Deemed Unnecessary", would be inappropriate and it is therefore struck out as a consequential amendment.

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

BULK HANDLING OF GRAIN ACT AMENDMENT BILL (QUOTAS)

Ajourned debate on second reading.

(Continued from November 18. Page 3035.)

The Hon. R. A. GEDDES (Northern): In rising to speak on this Bill I believe the whole concept of bulk handling in South Australia has changed from the provisions of the original Act of 1955 that the bulk handling authority should be the receiver of all grain, whether it be wheat or barley, to the point in 1969 where this Bill provides that the same authority may refuse delivery of any wheat. This, to me, is the biggest warning that can be spelt out not only to the primary producer but also to the nation in relation to the problems of the day.

The record of the financial stability of Australia in 1930 was highlighted at that time by record wheat production and booming speculative share markets, and following this era of 1930 came the depression that rocked Australia and the world into a period of economic insecurity, unemployment, and personal hardship. The scars of that depression will be remembered by many Australians, and certainly by the majority of members in this Council.

To the north of Australia we have millions of people in need of better food; to the south, those same people have a country with a surplus of food. Man can walk on the moon, but he can also promote primitive types of warfare; he can build motor cars capable of travelling at 100 miles an hour and provide credit finance to enable people to buy them; he is also asked to donate money for orphan children of this city. Man can do almost anything, but he cannot co-operate or co-ordinate, and he cannot plan. Therefore, we have the dilemma, as I see it, of South Australian Bulk Handling Company Limited for the first time being given authority that it may refuse to accept delivery of any wheat.

The company was formed by the grower, with growers' money (with a Government guarantee), to produce a degree of efficiency in the wheat industry by the bulk handling of grain so that grain could reach a terminal in a most economic and efficient way. However, the proposed restrictions on the industry will result in the clock being turned back thus creating a degree of inefficiency where cereals have to be stored on farms, and great wastage will occur. The fact that the industry itself and not Parliament has ruled that no more wheat be received in bags produces another host of problems, particularly in view of the reports of infestations of rust that seem to be creeping over large areas of the State.

Not only is there the problem of rust, but also the problem of inferior grain that may be anything below fair average quality. There are no means of storing it in any other way than by bulk handling at a time and place when the capacity of the silos will allow it. Therefore, I say again that this over-production and the boom share market that we now have in Australia are warning signs not only to the primary industry but to Australia as a whole, for history could repeat itself. The primary industries and Australia as a whole must take heed and closely watch costs of production. I support the Bill.

The Hon. A. M. WHYTE secured the adjournment of the debate.

WHEAT INDUSTRY STABILIZATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 18. Page 3035.)

The Hon. R. A. GEDDES (Northern): I rise briefly to support this Bill, which deals with how the authorities will handle quota wheat, the absorption of over-quota wheat, the domestic sales of wheat and the price for wheat not intended for human consumption which can be sold at a figure between the export price of $1.41 and the domestic price of $1.71.

The only thing wrong with this Bill is that its title implies that it stabilizes the wheat industry. One of the problems of over-production and of this quota system which the industry has had to impose on itself and which the Government has to give the necessary authority to operate is that the small farmer who has not been responsible for over-production in this State is the man who is being hit the hardest. I know it can be claimed that many people, both large and small, have been hit by this quota system that has had to be introduced. However, the man who has been making a living on 400 or 500 acres of land and for whom wheat has been a source of income is being allotted a quota of below 600 bushels on which to eke out an existence. This must cause a severe hardship to this type of person. The comments I made on the Bulk Handling of Grain Act Amendment Bill apply also to this Bill, and I support its second reading.

The Hon. A. M. WHYTE secured the adjournment of the debate.

WHEAT DELIVERY QUOTAS BILL

Adjourned debate on second reading.

(Continued from November 18. Page 3038.)

The Hon. M. B. DAWKINS (Midland): This Bill is the largest of the three Bills dealing with wheat quotas, and the Hon. Mr. Geddes has just spoken on two of these Bills. The Bill deals, amongst other things, with the setting up of the Wheat Delivery Quota Advisory Committee. As I said when speaking to one of the other associated Bills, this committee is to consist of 11 people, eight of whom are growers. The Bill sets out in detail the conditions and the powers of this committee; it provides for a quorum and for the filling of a casual vacancy and all the usual terms and conditions appropriate to the setting up of similar committees.

We see from clause 26 that this committee will be quite representative of the State as a whole. It is referred to as the "Former Committee" because it has been in action for some time. When I look at these names I see representatives of the Upper North, the Lower North, Eyre Peninsula, the Murray Mallee and the South-East. Therefore, all the wheat-growing areas seem to be represented. In addition to these eight gentlemen, who represent a cross-section of the wheatgrowers throughout the State, there are three experienced officers from the Agriculture Department, the Wheat Board and South Australian Co-operative Bulk Handling Limited.

This committee has had the unenviable task of allocating quotas and, like other committees, it has made quite a few mistakes, as is evident from the number of complaints we have received. However, I think it is only fair to say that in all probability not all these mistakes are of the committee's making. I think that, while the committee itself would have made some mistakes, it is probable that some would also have been made by the growers themselves in setting out the figures indicating their production over the last five years. I can quite imagine that some people have probably put down figures relating to bags when they should have put down figures relating to bushels; I believe that that sort of thing could have contributed to some of the errors that have been made and some of the inadequate quotas that have appeared.

It seems from these complaints that the appeals committee set up in Division 4 from clause 32 onwards, the correct name of which is the Wheat Delivery Quota Review Committee, is very much needed. As I have said before, I believe that the five-year period, which included the drought and, particularly in certain areas of the State, two other bad years as well, was not the best section of time to take, and that I would have preferred to see a seven-year period. Had that been taken, I think there may have been less complaints than there are at present, particularly in those areas which have seen difficult years over this five-year period. There is one other portion of the State at least which has had a very good period of five years and which would not be suffering to anything like the same extent.

Division 4 from clause 32 onwards sets up the review committee in a similar way to that in which the early part of the Bill establishes the advisory committee. In the clauses to which I have referred, the review committee is formed. As I have said, there is an urgent need for this committee to be appointed. Of course, the Minister cannot appoint it until the legislation has been passed. The committee will consist of three members, and the conditions and terms of their appointment are outlined in detail in the Bill. I can see nothing that is abnormal in these conditions, which provide for the replacement of a sick member, for a quorum and for various other matters. As I said yesterday when dealing with the other related legislation, we are faced this year with a harvest approaching 67,000,000 bushels, and had we had a normal season such as we have had in past years (and not so very long ago, either) of from 45,000,000 to 55,000,000 bushels, our problems may not have been anything like as great as they are at present.

We have what I described yesterday as a reasonable quota (I think my colleague the Hon. Mr. Hart described it as a not ungenerous quota) of 45,000,000 bushels, and this would not create very great difficulty in an average season. However, when we see this 67,000,000 bushels harvest which is now imminent we certainly have many problems to overcome. I have every sympathy with the committee in the work that it has done and also with the new committee in the work that it will have to do in the future. I have every sympathy with the Minister, who has applied himself to this problem in no uncertain manner. I congratulate the Minister on the work he is doing on behalf of the wheatgrowers in trying to straighten out a situation which is very serious indeed and which we have to try to overcome.

The need for this legislation is unquestioned. A Bill of this length should be carefully examined in Committee, so I do not intend to delay any longer its progress to that stage.

Of course, I reserve the right to make further comments then. I support the second reading.

The Hon. A. M. WHYTE secured the adjournment of the debate.

CROWN LANDS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 18. Page 3039.)

The Hon. C. M. HILL (Minister of Local Government): I thank those honourable members who have spoken in this debate. The Bill is one of a large group of Bills that must be married up with the Supreme Court Act Amendment Bill, which has already passed the second reading and Committee stages. The principal matter upon which a reply has been sought involves each of the Bills in the group. It is the matter of costs, which honourable members feared might be excessive to appellants, compared with the costs for which they are liable under the present appeal machinery, where appeals are taken to the Local Court.

It is obvious from the remarks of honourable members that their chief concern is with the litigant who wishes his case to be disposed of easily, quickly and cheaply. I think the emphasis can be said to be upon the word "cheaply". These matters have been definitely thought of, carefully considered, and provided for either by positive provisions in the Bill or by the rule-making power; by this I mean the power to make rules of court.

The Government believes that this legislation, properly supplemented by the sort of rules made and for many years used in the New South Wales jurisdiction, will provide a better tribunal than the various courts and arbitrators at present hearing cases under the Acts dealt with by the supplementary Bills. Litigation will be dealt with at least as quickly, cheaply and easily as it is at present.

In the first place, the Land and Valuation Court judge will over the years build up a structure of valuations throughout the State that will make the predictability of the value of any particular subject land much more definite. This, in itself, will tend to reduce litigation and, hence, cost, because valuers will have much more certain material upon which to act. Secondly, it is the function of the Land and Valuation Court judge to go anywhere in the State carrying his expert knowledge and his established system of values with him. He is, therefore, readily accessible. Litigants will not have to come to Adelaide.

Thirdly, as a study of the rules of court made in New South Wales discloses, it is comparatively simple to design sets of rules appropriate for all the different kinds of jurisdiction conferred by the legislation. These rules will concentrate on providing simple, cheap procedures for the smaller cases and only such procedures for the more important cases as are absolutely necessary to define the issues and to bring the matter into court. Under the rules it is expected that a graduated scale of fees quite separate from those in force for ordinary Supreme Court litigation will be established; it will provide for both small and large cases.

It will be possible, although this will be in the last resort up to the judge, to make provision for the hearing of the smaller, simpler cases wholly or in part by affidavit and perhaps by the Master or Registrar to some extent. The possibility of the Master or Registrar hearing minor cases will, of course, be up to the judge. It may be convenient to give an example of the way in which this simplified procedure for legal hearings will work.

Let it be supposed that the judge receives word that there are in a certain country district a dozen appeals against assessments. The practice in New South Wales has been (and it can obtain equally in South Australia) that the judge goes to the locality and, in chambers, sees either the appellants or their solicitors and discusses more or less informally the quickest way to dispose of the hearing. With their consent he often picks one case out as a test case. This case is then heard and determined, and it can be heard and determined almost immediately. The decision of that judge on that one case settles the whole dozen.

This procedure has the advantage of local justice, expert justice, cheap justice and expeditious justice. It is submitted that the Parliament and people of South Australia can, in all honesty, demand nothing more. I emphasize that I fully appreciate the concern that honourable members have expressed about this matter of cost. This issue worried me when I first saw this Bill and when the Government was discussing it with the architects of this scheme, the architects being the committee that the Government set up to review land acquisition legislation. At that time the question of cost was thoroughly discussed.

It was imperative in the interest of the appellants that they should not be faced with costs of the magnitude that is experienced in Supreme Court cases. The chief architect was the Solicitor-General, and I have again

discussed the whole matter with him since honourable members raised it in this Council. I am fully convinced that, in practice, the question of cost will not be the problem that, quite understandably, many honourable members have feared it will be.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—"Compensation."

The Hon. Sir ARTHUR RYMILL: I thank the Minister for the statement he has made in reply and I accept his assurances that the matters that were concerning me and other honourable members are well in the mind of the Government and will be properly dealt with in due course. Honourable members will realize that this matter will be out of the hands of this Parliament. The question of costs and so forth will be provided for by rules that will be made under the Supreme Court Act. Parliament will then have no say in the matter. The Minister has assured the Council that the Government is conscious of the difficulties involved and that it will apply such powers of supervision as it has in relation to costs. I realize that the rules of court will be made by the judges and not by the Government, and I am sure that, on the appropriate occasion when their attention is drawn to what has transpired in this Chamber, a satisfactory result will ensue. I support the clause.

The Hon. C. M. HILL (Minister of Local Government): I remind honourable members that this Council amended the Supreme Court Act so that the rules of court will not have to be implemented in the way they normally have been in the past. Indeed, they must now run the gauntlet of Parliament and must remain on the table of the House for 14 sitting days. Parliament will therefore have an opportunity later to peruse them.

The Hon. Sir ARTHUR RYMILL: I thank the Minister for that contribution. I agree that in these circumstances the amendment he referred to was a valuable one. I point out, of course, that Parliament has a power only to disallow the rules; it cannot amend them. However, at least it can exert that authority if it wants to. In view of the Minister's statement, I am sure it will not be necessary for Parliament to do anything in this respect.

Clause passed.

Title passed.

Bill read a third time and passed.

ENCROACHMENTS ACT AMENDMENT BILL

(Second reading debate adjourned on November 18. Page 3040.)

Bill read a second time and taken through its remaining stages.

HIGHWAYS ACT AMENDMENT BILL (VALUATION)

(Second reading debate adjourned on October 29. Page 2558.)

Bill read a second time and taken through its remaining stages.

LAND SETTLEMENT (DEVELOPMENT LEASES) ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 28. Page 2483.)

The Hon. S. C. BEVAN (Central No. 1): I support the second reading of this Bill, which is complementary to amendments made to the Supreme Court Act. It is a simple measure, which constitutes the Land and Valuation Court as a division of the Supreme Court. Any dispute regarding compensation, where the Minister of Lands or the Government resumes Crown land, will be decided by the newly-constituted court.

Bill read a second time and taken through its remaining stages.

LAND TAX ACT AMENDMENT BILL

(Second reading debate adjourned on October 28. Page 2483.)

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—"Objections."

The Hon. Sir ARTHUR RYMILL: This Bill, although it is one of a series, seems to me to be in a slightly different category from that of most of the other Bills, inasmuch as, instead of the proposed Land and Valuation Court superseding other courts, including the same court (or the generality of the same court) under the Land Tax Act, it supersedes a Valuation Board appointed under that Act, and this is a different matter altogether. Under section 45 of the Act, which section is to be repealed under the clause just passed, the board has been established, and up to now it has heard objections. I think there is probably a right of appeal, and I have been trying to find the Act to check on this, but I could not find it a moment ago, because I think another honourable member must have had it.

I should imagine that an appeal to a Valuation Board was the type of appeal where there would be practically no costs at all. In this case, the board is to be superseded by the Supreme Court. I am not suggesting that a litigant would get any lesser decision from the Supreme Court jurisdiction; on the contrary, in the nature of things the specialist judge may become an even greater expert than no doubt members of the board have been. I should like the Minister to say exactly what have been the procedures in the past under this Act and why, where we have had an expert board to which apparently appeals can be taken with virtually no expense, it should be superseded by the new court which I think is bound to involve additional expense.

The Hon. C. M. HILL (Minister of Local Government): As the honourable member has indicated, the present procedure is that a dissatisfied party has the right to appeal to the Valuation Board. If he takes the action that most appellants take, he must be put to some expense at present; he has the expense of obtaining an expert valuing opinion, and I imagine that in many cases he would have expenses in retaining a solicitor. I should think the present procedure before the Valuation Board would be similar to that which I envisage concerning the Land and Valuation Court. We come again to the method by which the judge decides through his rules of court to handle an appeal of this kind. I imagine that it will involve appeals of a fairly minor nature concerning perhaps someone living in the suburbs who objects to the assessment of the department in respect of the block of land on which his residence is built.

These appeals will be dealt with by the judge in chambers, and I understand it will be a much more informal approach. By that, I do not mean that the proper procedures will not in any way be carried out, but it will be a more informal approach than we have known judges to adopt previously on various matters dealt with in chambers. The possibility is provided for even the Registrar himself to make certain decisions on these matters. I have been assured that the practices that have been instituted by His Honour Mr. Justice Else-Mitchell in the New South Wales Land and Valuation Court result in the ordinary small cases being settled satisfactorily, the expense being reduced to a minimum. This does not mean, of course, that there may not be more expense here than is applicable at present.

However, by the same token, the service that the court is providing as a specialist court in the whole field of valuation must be somewhat reassuring to the appellant, who will know that his case is being heard by the best possible authorities. I do not think it is unreasonable to say that the service provided might be more expert than that provided by the Valuation Board.

The Hon. S. C. Bevan: That is, if a person can afford to go there.

The Hon. C. M. HILL: I will deal with that in a moment. If an appellant were put to more expense, but a reasonably small extra expense, before the court, I should think that he would be well satisfied to pay. If a person does not have the means to appeal, I wonder whether he has a great deal of property under assessment concerning which he wishes to appeal, anyway.

The Hon. S. C. Bevan: It could involve an ordinary private house.

The Hon. C. M. HILL: I realize that. I have done my best to explain the matter, and I stress again that we expect the procedures in this court to be simple and inexpensive to the person concerned. We believe that, when the court is established and is in practice, expense will not be the worrying issue that we understandably are fearing it to be at present. I remind the Hon. Mr. Bevan that this is not the final stage in the machinery process: we desire to have a close look at the rules of court when they come down and to examine, among other things, the fees stipulated in them.

The Hon. Sir ARTHUR RYMILL: This raises the point that I referred to yesterday. As I have now had further time to look at the principal Act, it seems to me that a person going to the Valuation Board established under the Act at present cannot be ordered to pay the other party's costs. In the normal order of things this will be different under the Supreme Court jurisdiction, because costs would normally be awarded to the successful party. If the litigant, who is trying to exert rights that he has been advised he has, fails, he will in the end be ordered to pay the Crown's costs as well as his own. This does not apply at the moment, and the Minister, judging by his explanation, does not overlook this important fact. Is he contemplating that there shall be a provision in the rules of court that a litigant reasonably exerting his right of appeal shall not be penalized by being ordered to pay the

Crown's costs unless the court certifies that his case was not justified?

The Hon. F. J. POTTER: This is an important point. At present, where there is an appeal from the Commissioner to the board and it is not likely that costs will be awarded, it would be wrong to transfer the jurisdiction to the new Land and Valuation Court with the possibility that costs would follow the event. In many cases where we are investing this court with the jurisdiction under these various Acts, serious consideration should be given to whether or not costs should follow the event, anyway.

A few days ago I said that in the days of the old landlord and tenant legislation it was provided that no costs were to be awarded unless the proceedings were vexatious or frivolous. That is a good provision that the Government should bring to the attention of the judge who will be constituting this new Land and Valuation Court. It will be within the competence of the judge making the rules of court to provide that no costs shall be awarded in those circumstances. In most of these jurisdictions where in the past a local court, a special magistrate, the board or an arbitrator has exercised jurisdiction, costs have never been a difficult matter. Although I have never practised (except for one instance) in this kind of jurisdiction, I do not remember costs ever being raised as an important issue. I do not know whether it has been customary to award costs even where there has been an appeal to the local court. The Government should consider suggesting that no costs should be awarded except where the appeal has been found to be made vexatiously or frivolously.

The Hon. Sir ARTHUR RYMILL: This matter should have been raised when we were discussing the Supreme Court Act Amendment Bill, which, I was assured, could be recommitted when it reached the third reading stage. I am happy for this Bill to pass, but will the Minister examine whether the Supreme Court Act Amendment Bill should not contain a provision similar to what I had in my private member's Bill that I mentioned yesterday—that, unless the court certifies that the appeal should not have been made by the private individual concerned, the Crown should bear its own costs? This is only common justice today.

In the past when money values were different from what they are today, hand-made law was less expensive; but we are now living in the machine age and everything is attuned to the machine level. Therefore, the costs of legal proceedings have risen considerably compared with other costs in the community. If the Minister will consider this matter in relation to the Supreme Court Act Amendment Bill, I shall be happy for these subsidiary Bills to go through. Where previously a litigant paid his own costs, which were relatively small, now he is likely to get involved in a much more expensive legal procedure.

The Hon. C. M. HILL: I draw Sir Arthur's attention to section 13 of the Land Tax Act Amendment Act, 1966, which states:

(6) The board may in its discretion order the payment by any party to any proceedings before it of such costs and charges as the board thinks fit and the payment of any amount specified in any such order may be increased in the manner provided for the enforcement of orders for the payment of money by the Justices Act, 1921-1960.

It seems that costs could be awarded by the board. If that is the case, we may be going a little too far if we further investigate the possibility of altering the principle. Is it really just that the appellant need not pay his own costs?

The Hon. Sir Arthur Rymill: I did not say that.

The Hon. C. M. HILL: Then does the honourable member think there could be circumstances in which the appellant should be forced to pay the Crown's costs?

The Hon. Sir ARTHUR RYMILL: What I said was that I felt that the provision should be (1) that in any event the appellant should be liable for his own costs if unsuccessful—and I have not challenged that; and (2) that he should not be liable for the Crown's costs unless the court certifies that he should not have brought the action, that it was capricious or that he had no good ground of appeal. Things must be made easier for people trying to assert their rights, and this is one way of doing it. The Crown has its department, which already pays for these matters.

Should not this be part of the rights of a citizen who pays his taxes that maintain that department? Should not that department support itself unless the appellant has brought an improper appeal? The principal Act was not amended to give the board power to order the payment of costs until 1966, and it is curious that that provision was brought in so recently. I think it should be reviewed. I do not want to delay these Bills, and I will accept the subsidiary Bills if the Minister will assure me that he will examine this matter before the third reading of the Supreme Court

Act Amendment Bill, which governs the whole procedure.

The Hon. C. M. HILL: I give that undertaking.

Clause passed.

Title passed.

Bill read a third time and passed.

LAW OF PROPERTY ACT AMENDMENT BILL (VALUATION)

Adjourned debate on second reading.

(Continued from October 28. Page 2483.)

The Hon. S. C. BEVAN (Central No. 1): I support the second reading of this Bill, which is complementary to other measures now before us dealing with valuations. It makes a small amendment to the principal Act in relation to valuations of property held in joint names.

The Hon. F. J. POTTER (Central No. 2): I support the second reading of this Bill, but I think it should be realized that it goes a little further than other Bills we have considered, in that something more than just a land valuation function is now being committed to the proposed new judge. The Bill commits to him the whole of Part VIII of the Law of Property Act dealing with the partition and sale of land, and this Part creates, at times, some difficult legal questions between conflicting interests, particularly between joint owners or owners as tenants-in-common. The portion of the Law of Property Act dealing with partitions is fruitful of litigation, and in relation to costs it may have to be looked at in a slightly different light. The overwhelming percentage of cases heard under the Part would involve not the Crown but private individuals, and would relate to conflicts between them on matters of sale and partition of land.

This Bill goes a little further than being merely a question of valuations. I see no objection to it, but previously matters under the Law of Property Act have been dealt with by any judge of the Supreme Court and, indeed, a limited jurisdiction has been exercised (if my memory serves me correctly) by the Master of the Supreme Court.

The Hon. C. M. HILL (Minister of Local Government): I thank honourable members for the points they have raised. With regard to the Hon. Mr. Potter's matter, as I understand it, the Bill takes from the Supreme Court some of its jurisdiction and vests it in the Land and Valuation Court, and costs may be lessened by the change.

The Hon. F. J. Potter: That would depend upon the new rules, I think.

The Hon. C. M. HILL: I agree. It must be agreed that valuation is a matter for a specialist. I think people who want disputes put before a court would be satisfied with a judgment handed down by the Land and Valuation Court, although I am not being critical of previous judgments made under this section of the Act and handed down by judges of the Supreme Court.

Bill read a second time and taken through its remaining stages.

LOCAL GOVERNMENT ACT AMENDMENT BILL (VALUATION)

Adjourned debate on second reading.

(Continued from October 28. Page 2484.)

The Hon. S. C. BEVAN (Central No. 1): The amendments contained in this Bill have caused me considerable concern. In speaking to the Supreme Court Act Amendment Bill, I said I thought it would be the primary duty of the proposed new court to determine compensation payable on the acquisition of land where that matter was in dispute. I had in mind that there would be many appeals against valuations on the acquisition of land for freeways, and that it would be the primary duty of the court to settle these disputes. As I understand the position, the court will be dealing with appeals by ratepayers against council assessments. A council may adopt the Land Tax Department's assessment or the Engineering and Water Supply Department's assessment, or it can make its own. It suits some councils to adopt the land tax valuation, whereas other councils prefer to adopt the waterworks valuation, perhaps because it is a little higher than the other valuation, and others prefer to make their own assessment.

In any event, if a ratepayer believes that he has been harshly treated in his assessment he can appeal against it. I have in mind the person who either owns his own house or has an equity in it and is therefore liable for the rates. I appreciate that his appeal would go to the assessment revision committee. However, under this Bill any further appeal would have to be to this Land and Valuation Court and, in those circumstances, I doubt whether an ordinary person would proceed with his appeal.

I know that the Minister is sympathetic regarding costs. He has said that, before the Supreme Court Act Amendment Bill is passed,

he will look closely into this matter to see whether something can be done about costs. If a council adopts the waterworks assessment, it is doubtful what the result of any appeal would be. However, if the Land and Valuation Court upheld an appellant's appeal against his assessment, it could have ramifications throughout an entire council area. The same thing could happen with an appeal against an assessment based on the waterworks valuation. In those circumstances, we could have a flood of appeals to this court, and goodness knows where we would finish up.

I think it would be much better if we retained the existing provisions with regard to local government rating. Many appeals by ratepayers have been settled after the ratepayers have discussed their assessments with the council concerned. As I am rather dubious about these amendments, I would prefer to see the existng procedures remain.

The Hon. C. M. HILL (Minister of Local Government): It is not very efficient from the point of view of the administration of justice if we have a specialist court set up yet are not prepared to channel to it the matters on which it should act. The present practice in local government (I am speaking in general terms, because I know there are some specific exemptions from this) is that a ratepayer who is dissatisfied can appeal to the assessment revision committee, and from my experience in local government I know that many appeals are satisfied at that level.

As the Hon. Mr. Bevan has pointed out, an appellant who is not satisfied can still take the matter further. At present, he can take it to the local court. I have already said that the costs involved in appealing to the specialist court to be set up should not be any greater (or only slightly greater) than the costs to which an appellant would be put if he went to a local court, which is not a specialist court. It seems that the honourable member's proposal to disregard the specialist court is not a good proposition. If the court is there, surely the appellant should have the opportunity to have his case heard by the specialist judge.

The practice in New South Wales (and we are hoping to model our practices largely on those in New South Wales) is that the judge moves down to the shire council concerned and the appellants who wish to have their cases heard before him group together and, in chambers, the judge sets about his job informally and efficiently and, I am told, settles the matters satisfactorily from the point of view of both parties. If that machinery works there, it should work here. We are setting up this court, and I therefore cannot support the honourable member in the concern that he has expressed or in his view that this specialist Land and Valuation Court should not be given the opportunity to operate in appeals under the Local Government Act.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—"Provisions as to appeals."

The Hon. Sir ARTHUR RYMILL: I find the position under this Bill a bit more in accord with my ideas, whatever the other eventualities may be, because, as the Minister has said, the assessment revision committee of each council still stands. This is the cheapest sort of proceeding. At present an appeal from this committee lies to the appropriate court, but under this Bill it will be to the Land and Valuation Court. This is the sort of likeness I was trying to draw in connection with the Land Tax Act Amendment Bill. Under the Land Tax Act there is a board and a right of appeal. I think this type of procedure is satisfactory. The only person who will suffer is a member of a council, because he must go directly to the court, not the Assesment Revision Committee.

The Hon. C. M. Hill: Surely, as a member of a council, he would accept the umpire's decision.

The Hon. Sir ARTHUR RYMILL: I do not think it is unheard of for a member of a council not to accept the umpire's decision. It is not unheard of that there are quarrels in various councils about various matters. However, I agree that this power is not often invoked, because it is a more expensive procedure. I have no quarrel with this provision.

Clause passed.

Remaining clauses (6 to 17) and title passed.

Bill read a third time and passed.

PASTORAL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 28. Page 2485.)

The Hon. S. C. BEVAN (Central No. 1): Under this Bill, which is complementary to the Supreme Court Act Amendment Bill, appeals will now go to the Land and Valuation Court. I support the second reading.

Bill read a second time and taken through its remaining stages.

PLANNING AND DEVELOPMENT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 28. Page 2485.)

The Hon. S. C. BEVAN (Central No. 1): I support the Bill. At present the principal Act provides that a dispute connected with the acquisition of land is to be heard by the Planning Appeal Board. In most cases this has proved to be a satisfactory set-up. In future when a person wishes to appeal against a decision of the board his appeal will lie to the Land and Valuation Court.

The Hon. Sir ARTHUR RYMILL (Central No. 2): I agree with the Hon. Mr. Bevan that this Bill is unexceptionable. At present an appeal from the Planning Appeal Board is heard by the Supreme Court, and the sole purpose of this Bill is to channel such an appeal from the generality of the Supreme Court into this specialized jurisdiction. Consequently, I have no objection to it.

Bill read a second time and taken through its remaining stages.

RENMARK IRRIGATION TRUST ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 28. Page 2485.)

The Hon. S. C. BEVAN (Central No. 1): This Bill deals with rates struck by the Renmark Irrigation Trust. At present appeals against assessments of the trust lie to the local court. I am concerned about the serious question of cost. If an appeal is lodged with the local court it will probably be heard in the area concerned. Where rates are involved, an appellant should not be involved in greater expense than if he appeals to the local court in his district. With those remarks, I support the Bill.

Bill read a second time and taken through its remaining stages.

SEWERAGE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 28. Page 2486.)

The Hon. S. C. BEVAN (Central No. 1): As this Bill has a rather obnoxious odour I support the second reading.

Bill read a second time and taken through its remaining stages.

SOUTH-EASTERN DRAINAGE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 28. Page 2486.)

The Hon. S. C. BEVAN (Central No. 1): In the past the rates of certain properties have been increased because of drainage and other improvements made to the land. Some disputes have arisen regarding such rates, and I imagine this will occur again in the future. In this respect, an appeal has in the past been made to the local court but, pursuant to the amendments contained in the Bill, such an appeal will now be made to the Land and Valuation Court. I draw the Minister's attention to the costs involved in such appeals. With these few remarks, I support the Bill.

Bill read a second time and taken through its remaining stages.

WATER CONSERVATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 28. Page 2487.)

The Hon. S. C. BEVAN (Central No. 1): This Bill, which is complementary to the Supreme Court Act Amendment Bill, deals with rates in relation to water districts. It amends the principal Act by providing that any appeals made thereunder shall now be made to the Land and Valuation Court instead of to the local court, as has been the case in the past. I support the Bill.

Bill read a second time and taken through its remaining stages.

WATERWORKS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 28. Page 2487.)

The Hon. S. C. BEVAN (Central No. 1): This, again, is consequential legislation. I support the second reading of this Bill.

Bill read a second time and taken through its remaining stages.

CRIMINAL INJURIES COMPENSATION BILL

Adjourned debate on second reading.

(Continued from November 18. Page 3046.)

The Hon. L. R. HART (Midland): This type of legislation has been introduced in Britain and New Zealand and, more recently, in the States of New South Wales and Victoria. In Britain and New Zealand it was introduced under national Governments whereas in New

South Wales and Victoria it was introduced under a federal system of Government. There is a difference between the two situations. A person suffering permanent injury from criminal or any other type of assault would be entitled to social service payments, which are the responsibility of the Commonwealth Government. I understand that any compensation payable under State legislation in respect of this type of injury would be in addition to the sickness and invalid benefits payable by the Commonwealth Government. I ask the Minister whether that is the position.

The $1,000 limit has been criticized as being inadequate. This depends on whether the victim is entitled to a pension from the Commonwealth Government in addition to the compensation that he may be awarded. This is important in relation to the amount of compensation payable. Will the Minister explain where we stand with the Commonwealth Government in regard to the pension that a person in these circumstances would be entitled to? We should consider this matter from the point of view of the taxpayers. Schemes of this nature are always vulnerable to exploitation. We are responsible for looking after the interests of the taxpayer as well as those of the assaulted person.

Also, whether a person so assaulted is entitled to income from other sources, and in particular from workmen's compensation should be considered. Other factors are involved that are not dealt with in this Bill. For instance, I have been concerned for some time about the person who is injured, not necessarily from criminal assault but because he is required by law to render assistance in the case of a road accident. If he does not, he is liable to a fine. However, in rendering such assistance, he himself may be injured. The circumstances of the injury would govern whether or not he was entitled to compensation. If, in rendering assistance to a road victim, he is injured by another motor vehicle, no doubt he will have a claim under third party insurance but, if he is injured by something other than another motor vehicle, it is doubtful whether he will be entitled to any compensation.

I have mentioned before the case of a person who rendered assistance in a road accident near Virginia; he was injured while doing so. He had gone to the aid of an accident victim and, in helping to extricate him, he was injured because a loaded gun in the vehicle discharged and shot him in two places, one being his elbow The accident occurred several years ago, but he is still incapacitated by this injury. In fact, he has been told by his medical advisers that he will have only about 45 per cent use of his arm and possibly only 50 per cent use of his fingers. It is questionable whether this person is entitled to compensation from third party insurance. The case at this point of time has not been concluded, but I raised the matter with the Minister of Local Government who obtained for me an opinion from the Solicitor-General. That opinion indicated that the injured person is entitled to sue for compensation under third party insurance, but the case has still to be heard. The solicitor appearing for this person is still doubtful whether a claim for compensation exists or whether it would be successful.

I believe that that situation was not considered when this Council passed legislation requiring that a person shall render assistance if he is at the scene of a road accident. The case I have quoted may not be an isolated one, although it is the only one that has been brought to my notice. However, I believe other similar situations could arise where people could be injured, perhaps severely, while rendering assistance in a road accident.

I wonder if some provision could be made in this Bill to deal with such a situation? It is something that the Government should consider, and in the case I have mentioned I believe the injured person, who was a shopkeeper at Virginia at the time of the accident, but who has had to give up his shop because he is not able to handle heavy loads, has suffered considerable financial loss and to date he has not been able to recover any compensation. I commend the Government for introducing this legislation. At least it is a beginning, and it will establish a principle. If time proves that the amount of compensation provided is inadequate, the Government can bring down amending legislation to increase it to an adequate figure. With those few remarks, I support the second reading.

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

ELECTORAL ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

CONSTITUTION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 18. Page 3046.)

The Hon. V. G. SPRINGETT (Southern): The contributions of honourable members of this Council to the debate on this Bill have

all been the result of considerable thought and deep concern, thought and concern for a balanced and fair representation of the people for the people within the Parliament of this State.

I would like to comment for a moment on the contribution that has so far been made to the Bill by honourable members of the Opposition in this Council. It has been as conspicuous by its almost total absence as was their colleagues' contribution to the debate on this Bill in another place. Perhaps I may add that there is one direction in which the honourable members, who are members of the Australian Labor Party, have been quite consistent: each day, when a member has sought leave to adjourn the debate to another day, a member of that Party has called for a division in protest against the motion. That surely indicates that the A.L.P. members in this Council are not anxious that further thought should be given, or information obtained, for the benefit of the public. Why is it desirous that the Legislative Council should follow the haste with which another place passed so important a measure? The effect of the changes recommended by the electoral commission are quite extensive, and even vast.

When one thinks of the effect of 47 districts for another place, out of which some 34 will be representing either metropolitan, urban, or adjacent to metropolitan seats, the paucity of the effective representation of the rural areas becomes most marked and even tremendous.

During the election campaign, when Party publicity was seeking to woo the electorate, many different cries were heard, and one was that Parliamentary representation should be gauged and measured by people and not by trees. If any measure is guaranteed to ensure that members of Parliament will represent trees it is that view and its associated catchcry of "one vote one value". The larger an area needs to become in order to achieve its quota of voters, the more impossible it is for its elected member to get around and serve his electorate properly.

Perhaps we get nearer the truth if we forget the cry "one vote one value" and replace it with the words "all men of equal worth and equal representation". As has been said by previous speakers in this debate, the effect of redrawing the boundaries for another place is essentially of importance to the members of that place. The way the division will affect the degree to which rival ideologies will make themselves felt, however, cannot escape the notice of all who have studied the proposed redistribution.

It has been stated in both Houses of Parliament that the boundaries redistribution is the result of a promise made at the last election campaign. It is true that the Parties offered radically different numbers as being required, nevertheless the Leaders of the two Parties concerned made their bids to the public, and ultimately compromised on a total of 47 seats for another place.

I think it is worth recalling that on more than one platform during that election campaign it was stated that voting for the spouses of those eligible to vote for the Legislative Council would also be introduced. I trust that that measure will not be forgotten, and perhaps it may even be introduced into this place in keeping with those promises made when the Parties were seeking Government. I can only say what has already been said about the effect of the boundaries as recommended: that they have a serious effect upon the Legislative Council. Many folk reveal their limited knowledge of the purpose and the functions of this Council when they say that all that is required is to make the Council a mirror image of the House of Assembly. How useless such a result would be. We must ensure at all costs that the Council remains independent from another place in its method of election because of the differences in its duties.

I think it is worth remembering that many things can be done in many ways to ensure such a difference in the way this House is elected as well as represented, and they have all been mentioned. However, I wish to draw attention to just one or two points. I think perhaps it can be regretted that a Bill introduced into this Parliament last session did not pass. That Bill would have resulted in four Council districts, two of those districts being country and two metropolitan. Such a measure would perhaps have been much fairer in the way the country people would have been represented in this State.

The Hon. S. C. Bevan: It would have been 18 L.C.L. members to six A.L.P. members. Do you call that good?

The Hon. V. G. SPRINGETT: There are those who consider the value of proportional representation as a method of voting. I am increasingly coming to recognize the importance of a referendum clause to ensure that no smart horse-dealing could lead to the loss of the Council at the whim or voting desire of any one person or Party against the public will.

Many other points have been raised by other speakers in this debate, and I see no point in elaborating on the matter now. However, when the time comes to vote I will be guided in my decisions by any relevant amendments that are before the Council.

The Hon. A. M. WHYTE secured the adjournment of the debate.

PREVENTION OF POLLUTION OF WATERS BY OIL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 18. Page 3049.)

The Hon. H. K. KEMP (Southern): The matter of oil spillage really opens up the question of conservation as it affects the sea and our rivers as far as they are navigable, and I wish to make one or two points on this subject. There has been a complete change in the utilization of the Murray River from its first days until the present time, although it is still an aqueduct and it is still carrying river steamers and many pleasure motor boats. Also, latterly it is carrying a tremendous number and a rapidly increasing number of small motor boats, many of which travel very quickly.

I think the Government should look immediately at the pollution that occurs from, amongst other things, oil from these sources. In fact, I believe that in the matter of the disposition of wastes from the river steamers no improvements have been made since the Murray was first used as a source of irrigation water, and I do not think this state of affairs should be allowed to continue any longer.

In the matter of sea conservation, there is need to look at the damage that can occur not only from the overall disposition of wastes, which is dealt with in this Bill, but also from the waste that is occurring on the foreshores through the unregulated use of such things as beach buggies, which are doing such a tremendous amount of damage in certain places.

The Hon. R. C. DeGaris: To the waters?

The Hon. H. K. KEMP: Not to the waters but to the land immediately adjacent to them. I consider that the Bill merits a quick passage, and I commend it.

Bill read a second time and taken through its remaining stages.

CHILDREN'S PROTECTION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 13. Page 2995.)

The Hon. V. G. SPRINGETT (Southern): As a reasonably civilized society we accept the responsibility that we have towards children. We accept that we have a responsibility for their upbringing, their education and their safety, yet, in common with animals, they find themselves the victims of the most outrageous acts of cruelty. We need Acts of Parliament to punish the perpetrators of cruelty to dumb animals and, unfortunately, the same standard of protection has to be provided for children.

Society as such may care for children but quite obviously many people as individuals do not. This occurs not just through carelessness or thoughtlessness but at times through the grossest calculated inhumanity, which in many cases can result only from a disturbed and disoriented mind.

This Bill is consequent upon the report of the law reform committee and the social welfare advisory council. It deals with what has so graphically been termed "the battered child syndrome". The Leader of the Opposition referred to the word "syndrome" a few days ago. In medical circles it means a combination of symptoms resulting from a single cause or occurring together so commonly as to make up a clinical entity, and the entity here is a bashed and battered child. The common factor in all these cases is maltreatment of tiny infants and children. Sometimes it may be associated with neglect, but not always. Many people who give special care to children do so because of their deep religious convictions.

I think it is worth recalling the Declaration of Geneva, which was revised in 1948. It provided that the child must be protected above and beyond all considerations of race, nationality or creed; the child must be cared for with due respect for the family as an entity; the child must be given the requisites for normal development, materially, morally and spiritually; the child that is hungry must be fed; the child who is sick must be nursed; the child who is physically or mentally handicapped must be helped; the maladjusted child must be re-educated; the orphan and the waif must be sheltered and secured; and the child must be the first to receive relief in times of distress.

Unfortunately, however, too many parents make materialism the test of their conduct towards their children; they place consideration of their own selfish comfort before consideration of the needs of their little ones; they are unmindful and ignorant of their responsibility; they take out their frustrations on their children; they bash and batter their children when those children are doing the only thing they know how to do—registering by crying. As a result, doctors have to treat broken limbs, bruised skin and damaged organs. No normal parent would ever so ill-treat a child if that parent was in a stable frame of mind. Whatever the cause underlying the actions of such parents we cannot escape the fact that the child must be protected and that safeguards must be provided. This Bill does not solve the whole problem—far from it. It will, however, help, and I am sure that all thinking persons will commend it. I hope that no-one in any walk of life will stand by and see wilful, deliberate cruelty being inflicted without trying to alleviate it. I support the Bill.

Bill read a second time and taken through its remaining stages.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL (ABORTION)

Adjourned debate on second reading.

(Continued from November 13. Page 2997.)

The Hon. C. D. ROWE (Midland): This Bill has brought more public attention than any other Bill we have had before us this session. The volume of correspondence, some for and some against the Bill, that I have received from numerous sources is the greatest I have received in respect of any legislation since I have been in Parliament. Some of the correspondence has been helpful to me, some has been entirely emotional and some almost hysterical. Consequently, to form my own opinion I have had to collect together much of the material published on this matter, sift through it, and find the facts. Having considered the whole matter as fairly as possible, I have concluded that I must oppose the Bill.

The first thing to do when considering any amendment to legislation is to find out what the present legal position is. It is unfortunate that so many members have made speeches on this Bill apparently without taking the trouble to find out the present position. As I understand it, the position has been decided in the *King v. Bourne* published in 1939, 1 King's Bench Division, at page 687. I make no apology for wearying honourable members by reading some material dealing with this case, because it is important. The headnote to the report on this case is as follows:

On a prosecution under s. 58 of the Offences Against the Person Act, 1861, for using an instrument with intent to procure miscarriage, the burden rests on the Crown to prove that the operation was not done in good faith for the purpose only of preserving the life of the mother, and, if in the opinion of the jury that burden is not discharged, the accused is entitled to a verdict of acquittal. The words "preserving the life of the mother" must be construed in a reasonable sense. They are not limited to the case of saving the mother from violent death: they include the case where continuance of the pregnancy would make her a physical or mental wreck.

In my opinion, that is a concise and clear statement of the law at present. The facts of the case were these:

The evidence called on behalf of the Crown proved that on June 14, 1938, the defendant performed an operation on the girl in question at St. Mary's Hospital, and thereby procured her miscarriage. The following facts were also proved: On April 27, 1938, the girl, who was then under the age of 15, had been raped with great violence in circumstances which would have been most terrifying to any woman, let alone a child of fourteen, by a man who was in due course convicted of the crime. In consequence of the rape the girl became pregnant. Her case was brought to the attention of the defendant, who, after examination of the girl, performed the operation with the consent of her parents. The defence put forward was that, in the circumstances of the case, the operation was not unlawful. The defendant was called as a witness on his own behalf and stated that, after he had made careful examination of the girl and had informed himself of all the relevant facts of the case, he had come to the conclusion that it was his duty to perform the operation.

He had satisfied himself that the girl was in fact pregnant in consequence of the rape committed on her. He had also satisfied himself that she had not been infected with venereal disease; if he had found that she was so infected, he would not have performed the operation, since in that case there would have been a risk that the operation would cause a spread of the disease. Nor would he have performed the operation if he had found that the girl was either feeble-minded or had what he called a "prostitute mind," since in such cases pregnancy and child-birth would not be likely to affect a girl injuriously. He satisfied himself that she was a normal girl in every respect, though she was somewhat more mature than most girls of her age. In his opinion the continuance of the pregnancy would probably cause serious injury to the girl, injury so serious as to justify the removal of the pregnancy at a time when the operation could be performed without any risk to the girl and under favourable conditions.

Mr. Justice Macnaghten, who heard the case, said in his summing up to the jury:

The charge against Mr. Bourne is made under s. 58 of the Offences Against the Person Act, 1861, that he unlawfully procured the miscarriage of the girl who was the first witness in the case. It is a very grave crime, and judging by the cases that come before the Court it is a crime by no means uncommon. This is the second case at the present session of this Court where a charge has been preferred of an offence against this section, and I only mention the other case to show you how different the case now before you is from the type of case which usually comes before a criminal court. In that other case a woman without any medical skill or medical qualifications did what is alleged against Mr. Bourne here; she unlawfully used an instrument for the purpose of procuring the miscarriage of a pregnant girl; she did it for money; £2 5s. was her fee; a pound was paid on making the appointment, and she came from a distance to a place in London to perform the operation.

She used her instrument, and, within an interval of time measured not by minutes but by seconds, the victim of her malpractice was dead on the floor. That is the class of case which usually comes before the Court.

The case here is very different. A man of the highest skill, openly, in one of our great hospitals, performs the operation. Whether it was legal or illegal you will have to determine, but he performs the operation as an act of charity, without fee or reward, and unquestionably believing that he was doing the right thing, and that he ought, in the performance of his duty as a member of a profession devoted to the alleviation of human suffering, to do it. That is the case that you have to try today.

Having said that, His Honour then went on to direct the jury, concerning the matters it should consider, as follows:

In this case, therefore, my direction to you in law is this—that the burden rests on the Crown to satisfy you beyond reasonable doubt that the defendant did not procure the miscarriage of the girl in good faith for the purpose only of preserving her life. If the Crown fails to satisfy you of that, the defendant is entitled by the law of this land to a verdict of acquittal. If, on the other hand, you are satisfied that what the defendant did was not done by him in good faith for the purpose only of preserving the life of the girl, it is your duty to find him guilty. It is said, and I think said rightly, that this is a case of great importance to the public and, more especially, to the medical profession.

I assure honourable members that what I am reading is a fair extract. Later, His Honour went on to say:

What then is the meaning to be given to the words "for the purpose of preserving the life of the mother"? There has been much discussion in this case as to the difference between danger to life and danger to health. It may be that you are more fortunate than I am, but I confess that I have found it difficult to understand what the discussion really meant, since life depends upon health, and it may be that health is so gravely impaired that death results. A question was asked by the learned Attorney-General in the course of his cross-examination of Mr. Bourne. "I suggest to you, Mr. Bourne," said the Attorney-General, "that there is a perfectly clear line—there may be borderline cases—there is a clear line of distinction between danger to health and danger to life." The answer of Mr. Bourne was: "I cannot agree without qualifying it; I cannot say just yes or no. I can say there is a large group whose health may be damaged, but whose life almost certainly will not be sacrificed. There is another group at the other end whose life will be definitely in very great danger." And then he adds: "There is a large body of material between those two extremes in which it is not really possible to say how far life will be in danger, but we find, of course, that the health is depressed to such an extent that life is shortened, such as in cardiac cases, so that you may say that their life is in danger, because death might occur within measurable distance of the time of their labour." If that view commends itself to you, you will not accept the suggestion that there is a clear line of distinction between danger to health and danger to life. Mr. Oliver wanted you to give what he called a wide and liberal meaning to the words "for the purpose of preserving the life of the mother." I should prefer the word "reasonable" to the words "wide and liberal." I think you should take a reasonable view of those words.

It is not contended that those words mean merely for the purpose of saving the mother from instant death. There are cases, we are told, where it is reasonably certain that a pregnant woman will not be able to deliver the child which is in her womb and survive. In such a case where the doctor anticipates, basing his opinion upon the experience of the profession, that the child cannot be delivered without the death of the mother, it is obvious that the sooner the operation is performed the better. The law does not require the doctor to wait until the unfortunate woman is in peril of immediate death. In such a case he is not only entitled, but it is his duty to perform the operation with a view to saving her life. Here let me diverge for one moment to touch upon a matter that has been mentioned to you, the various views which are held with regard to this operation. Apparently there is a great difference of opinion even in the medical profession itself. Some there may be, for all I know, who hold the view that the fact that a woman desires the operation to be performed is a sufficient justification for it. Well, that is not the law: the desire of a woman to be relieved of her pregnancy is no justification at at all for performing the operation. On the other hand there are people who, from what are said to be religious reasons, object to the operation being performed under any circumstances. That is not the law either. On the contrary, a person who holds such an opinion ought not to be an obstetrical surgeon, for if a case arose where the life of the woman could be saved by performing the operation and the doctor refused to perform it because of his religious opinions and the woman died, he

would be in grave peril of being brought before this court on a charge of manslaughter by negligence. As I have said, I think those words ought to be construed in a reasonable sense, and, if the doctor is of opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who, under those circumstances and in that honest belief, operates is operating for the purpose of preserving the life of the mother.

In my opinion, that is an adequate and a comprehensive statement of the Law on the matter at this time. Incidentally, Bourne's case was followed by another (that of the *King v. Newton*) in 1958, in which the principles of the former case were upheld.

Three principles are set out, the first of which is that the burden rests on the Crown to prove that the abortion was not done in good faith for the purpose only of preserving the life of the mother. In other words, the onus is not on the doctor to prove that he acted honestly but is on the Crown to prove that he did not and, if that burden is not discharged, the accused is entitled to be acquitted. The words "preserving the life of the mother" must be interpreted in a reasonable sense. They are not limited to saving the immediate life of the mother, where, perhaps, she could die in half an hour or an hour if the operation is not performed; they include the case where the continuance of the pregnancy would make her a physical or mental wreck. In other words, in considering whether he should perform an abortion and considering the physical threat to the mother's life, a doctor is also entitled to consider what the future physical effect on the mother will be.

I consider that to be an adequate statement of the law as it exists at the moment. It seems to me that one can safely leave the position there, because it makes it clear that the medical man who acts in good faith has proper protection. Numerous arguments have been advanced in favour of the liberalization of the law in this respect, and I propose to mention six or seven of them. I then propose to deal with the arguments that have been raised against reform.

One of the arguments used at present for liberalization is that the law is vague and uncertain and it leaves the medical profession and other people in doubt regarding what should be done. Different doctors and different hospitals take different views in relation to this matter. I consider that the decision in the case to which I have already referred answers that question, and that the law is sufficiently and adequately stated.

It is also said by some people that to deny people the right to abortion in any circumstances is a negation of their freedom of choice. Mr. Justice McCardie said in England in 1931:

I cannot think that it is right that a woman should be forced to bear a child against her will.

I do not accept that reasoning. This is not a negation of freedom of choice but of finding what a person's social responsibility ought to be in the modern generation in which he lives. It is also said that the law regarding abortion is openly flouted at present and, therefore, if we continue to place restrictions on abortion at will we will create disrespect for all laws.

I have never accepted the proposition that, if the law is openly flouted and it is known that it will not be obeyed, it will adversely affect the people if it is not amended to suit their circumstances. If I think that the law is right and just in the interests of the community, then I consider that those on whom the responsibility falls of maintaining it must face up to their responsibility. For instance, if we had an epidemic of burglaries which looked like getting out of hand, I do not think we should proceed to legalize burglary. I am not satisfied that the number of breaches of this law are as vast or as extensive as some people would have us believe.

It is also said that the present situation amounts to discrimination against the poor because, while abortion remains illegal, a large fee has to be charged to cover the person performing the operation against the possibility of detection, and this brings it within the scope of people with means and not within the scope of people who are poor. I cannot accept that reasoning. In all areas of life a man who has means has some advantage over a person who does not have means. That is not an argument that I believe justifies an alteration to the law.

It has also been said that in Australia at present there are about 20,000 women who are pregnant when they marry, such marriages commonly being known as shotgun marriages. It is said that if abortion were permitted marriage would be based on a firmer foundation than momentary passion. I do not think the answer to unwanted pregnancy is abortion. I have taken a great interest in social welfare of various kinds. I am a member of the board of management of the Central Methodist

Mission, which conducts its lifeline service 24 hours a day. In the course of that service we have brought to our notice, particularly in the evenings between 7 p.m. and 10 p.m. and also over weekends, the problems of young girls aged between 18 years and 22 years and up to 25 years who find themselves in this situation.

I am one of those who firmly believe that an abortion is not the answer to this problem. Other avenues are open that I think cause less mental stress and disturbance to the girl than does abortion. On the other hand, I am also aware of the fact that many young women today, because of the ease of contraception, indulge in pre-marital relationships, many of them believing that the man concerned will marry them. However, such a belief is often only a delusion. After giving up one or two years of their life to such a man, they find that he is looking for nothing more than physical satisfaction, and he disappears on the horizon. Modern methods of contraception can possibly save such girls from pregnancy but they cannot save them from the mental upset, anguish and torment that follow the disappearance of a man that they believe some day will be prepared to marry them.

The last argument to which I want to refer is that, because we do not permit abortion on a free basis, many psychological disturbances are bound to occur. A leading Melbourne psychologist said that attempts to prohibit abortion were just as destructive as attempts to prohibit the consumption of alcohol. Psychiatric damage to women forced to seek out backyard abortions was immense. Undoubtedly a woman finding herself in a condition whereby she wants an abortion must have some psychological upset, but I am not at all satisfied that the answer to that is that we should make it easier for her to obtain her wishes. It seems to me that the arguments raised against the so-called reform are very much greater. One argument raised is that abortion is murder. There are many views whether or not this is a correct interpretation. My own view is that certainly after the pregnancy has continued for two or three months we get close to a situation where an abortion would amount to a murder. In any event, that is not an argument that I believe can be dismissed very lightly.

The second argument against reform is that the present law is liberal enough. It may be said that as Bourne's case was decided in England, it does not apply directly to Australia. I cannot believe that any court in Australia would not follow that decision. As I have said previously, the principle set down in that decision makes the law sufficiently liberal to meet most of the circumstances in which abortion should be permitted. In any event, I stress what I have said previously, and that is that the Attorney-General of the day has to launch a prosecution before a prosecution can be undertaken. With his knowledge of the law and of Bourne's case, I cannot see that he would lightly place a person on trial unless he felt that the circumstances of the case justified it, in which case it is another matter.

The third reason against the reform is that abortions tend to encourage promiscuity in the form of pre-marital and extra-marital relations. Statistics suggest that about 75 per cent of abortions are carried out on married women who live with their husbands. I do not know whether those statistics are correct, but I am satisfied that, if abortion becomes free and easy and is only a matter of providing the necessary money, inevitably this will lead to greater promiscuity, in the same way as the widespread knowledge of and ease in obtaining contraceptives has led to a lowering of our standards, to a greater degree of promiscuity, and to many problems the extent of which younger people involved in social work know. It is said that if we agree to abortion on demand contraception will make abortion obsolete. It is also true that in Australia we need more people, and we have a very energetic and active migration programme with which I agree. In view of the state of the world today, we must look towards having a larger population in this country if we are to keep it and maintain the standards that are ours. I think it is a truism to say that a country's own stock are its best migrants. To be able to bring children up with the advantage of an Australian background and Australian standards and outlook is to render a service to the community. I do not think we want to become involved in a suicidal policy that will reduce the natural increase of our own people.

The last reason I want to refer to (and there are many others, but time is short) in support of the argument against abortion is that abortion does lead to a disrespect for human life. The right to human life is the most important thing on this earth. When this right is not respected other human rights are soon neglected. When the destruction of the unborn child is condoned, other human rights are

progressively whittled away until human freedom is completely lost. A man can protect his own rights only by conceding the same rights to everyone else, particularly to those who are not able to defend themselves.

I now wish to summarize my views. First, the basic principle of democracy is that every citizen must accept his responsibility in the community, and use the talents and abilities he has been given to the maximum of his capacity. If the community cannot stand up to this test, the advantages of democracy will be taken from us and we will lose the freedom we enjoy. That means, therefore, that we do not legislate to meet the standards of the lowest common denominator in the community but we insist on a standard that is attainable and is in the best interests of the community. It is in the best interests of all concerned if the citizens in the community conduct themselves in such a way that abortions are not necessary. This everyone should be encouraged to do. It means discipline, a sense of responsibility, an appreciation and control of our own personal actions and habits but, with all the advantages of modern science and modern education, this is a goal that should not be regarded as beyond our reach and towards which we should strive earnestly. In other words, we legislate to meet and to maintain a standard, not to reduce our standards to meet a declining morality and an increasing sense of irresponsibility.

I adopt this reasoning not only for the reasons I have stated but also because I believe that the future welfare of this country and its people is directly linked with the maintenance of the family and the family unit as the basis of our society. I have no doubt that the liberalization of the law on abortion will weaken the standing of the family as an integral and vital part of the maintenance of our democracy. It may be said that my views as set out above are divorced from reality and are too idealistic to meet the situation prevailing in Australia at present. I believe in the responsibility of people in the community and, indeed, in the responsibility of legislators to advance the standards of our people and to see that legislation is put on the Statute Book that will help to make the community more healthy and get rid of problems that detract and retard. If we are not prepared to operate on this basis and give a lead to people in these matters, we are doing a disservice to this democracy; and, after all, let us be satisfied that as far as I know there has never been a time in the history of the world when we have had a democratic system that has served the people better than that which serves our people today. This is a precious heritage handed down to us by people of principle who have stood up to difficulties; it is not for us lightly to pass over the standards that have been set for us.

It is for these reasons that I must oppose the Bill. I respect people who have other views but, if it eventuates that the Bill passes its second reading and goes into Committee, I shall submit certain amendments, at least to take away some of the bad effects that will accrue if the Bill passes in its present form. I oppose the Bill.

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

LAW OF PROPERTY ACT AMENDMENT BILL (COURTS)

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

LAND SETTLEMENT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 12. Page 2927.)

The Hon. L. R. HART (Midland): I wish only to refer briefly to this Bill, and particularly to support the amendment that the Hon. Mr. Dawkins has on file. We see from the principal Act that the original intention was that members from both Houses of Parliament should be on the Land Settlement Committee. There was no mention at that time of their representing a particular Party. During the term of the last Government the Act was amended to provide for members of both Parties being represented, and the number from each House was stipulated. In the event of a Party in a House not being in a position to nominate its number of members, provision was made for members from that Party in another place to be appointed to the Committee.

The Hon. Mr. Dawkins's amendment does not stipulate that the members of the committee shall be appointed from a particular House: all he wishes to do is to substitute "may" for "shall". When we look at the Acts Interpretation Act, we find that under "may" a power may be exercised, but under "shall" the power then must be executed. All this amendment does is to give the Government discretionary power to appoint members from particular Houses. We have heard from time to time suggestions that certain powers should be taken away from

the Legislative Council. Parliamentary committees do not act along Party lines: they act in the interests of good legislation. If we are to introduce into our legislation the requirement that a Parliamentary committee shall consist of so many members of each Party, we are reaching the stage where we shall introduce politics into Parliamentary committees, which has not been done hitherto. We should not work along those lines now.

The Hon. A. J. Shard: It was never in operation on Party lines.

The Hon. L. R. HART: That may be so, but Parties were adequately represented by act of courtesy.

The Hon. A. J. Shard: Why don't you face facts? It is an accepted practice that the Government of the day is entitled to a majority in a Parliamentary committee. If this amendment was accepted, that would not apply.

The Hon. L. R. HART: This is not written into any legislation. It is an accepted principle. In the past it has been the accepted principle but it is one that need not necessarily be accepted, because committees that have operated have not worked along Party lines, and by legislative action we should not introduce that principle. I make those remarks in support of the amendment of the Hon. Mr. Dawkins. I support the second reading.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—"Members of committee."

The Hon. M. B. DAWKINS: I move:

In new subsection (2a) of section 4 to strike out "shall" first occurring and insert "may".

According to the dictionary and to my interpretation, the word "may" is permissive and not obligatory. It expresses a possibility, but it does not express a command. Assuming that the Government in power will have four members out of the seven on the committee, it can, if it so desires under this amendment, secure two members from this Chamber and two from another place if the Opposition does not wish to appoint a Legislative Councillor. Section 4 of the principal Act states:

The committee shall consist of seven members of Parliament appointed by the Governor. Two of the members of the committee shall be members of the Legislative Council and five shall be members of the House of Assembly.

At present, because of the amendments inserted in 1965, there are six members from the House of Assembly and one from this Chamber. I believe that, unless this small amendment is carried, this situation could go on for a very long time. Of course, in the view of some people the fact that the Legislative Council has less representation on the committee would possibly be approved. However, I believe that this Chamber should have adequate representation and I know that the Party I represent endorses that belief.

The CHAIRMAN: Order! Order! I ask honourable members not to engage in audible discussion. *Hansard* is having difficulty in hearing speeches in Committee. I point out to members that when they are speaking they should address the Chair, thus giving *Hansard* the opportunity to hear them. I know that the Hon. Mr. Dawkins can hold his own, but I ask members not to indulge in audible discussion while a member is addressing the Committee. The Hon. Mr. Dawkins.

The Hon. Sir Arthur Rymill: The honourable member has a very good voice.

The CHAIRMAN: Order!

The Hon. M. B. DAWKINS: I apologize, Mr. Chairman, for not noticing sooner your call to order. I commend my amendment to the Committee.

The Hon. C. R. STORY (Minister of Agriculture): The Government accepts the amendment.

The Hon. A. J. Shard: The Opposition has no objection to it.

The Hon. Sir ARTHUR RYMILL: I will not vote against the amendment because I do not think it makes the slightest difference: I think the two words mean exactly the same in this context.

The Hon. C. R. STORY: For the benefit of honourable members, I point out that section 34 of the Acts Interpretation Act states:

Where, in any Act passed after January 1, 1873, the word "may" is used in conferring a power, such word shall be interpreted to imply that the power so conferred may be exercised or not, at discretion; and where in any such Act the word "shall" is used in conferring a power, such word shall be interpreted to mean that the power so conferred must be exercised.

I am sure members are very much better informed now.

The Hon. M. B. DAWKINS: I will just add further that I took counsel with the Parliamentary Draftsman on this point.

Amendment carried; clause as amended passed.

Remaining clauses (4 to 11) and title passed.

Bill read a third time and passed.

ADJOURNMENT

At 6.22 p.m. the Council adjourned until Thursday, November 20, at 2.15 p.m.