LEGISLATIVE COUNCIL

Wednesday, March 17, 1971

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

QUESTIONS

GAUGE STANDARDIZATION

The Hon. C. M. HILL: Recently, I asked the Minister of Lands, representing the Minister of Roads and Transport, whether he could supply an interim report on the current position about the negotiations with the Commonwealth Government concerning the proposed standard gauge link between Adelaide and the Indian-Pacific route to the north. Has the Minister a reply?

The Hon. A. F. KNEEBONE: Because the Government is persistent in its desire to obtain the very best deal over standardization of the rail link to Adelaide, it has not been willing to blindly accept the recommendations in the Maunsell report. I am sure that all thinking South Australians would agree with the Government's attitude but, unfortunately, the Commonwealth Government does not appear anxious to accede to South Australia's reasonable requests. Discussions are still taking place at Ministerial level in an effort to achieve a satisfactory solution.

WEIGHBRIDGE

The Hon. L. R. HART: Has the Minister of Lands a reply from the Minister of Roads and Transport to my question of March 10 about the weighbridge at Cavan?

The Hon. A. F. KNEEBONE: The Highways Department has not weighed south-bound vehicles at the Cavan weighbridge during peak periods for several months. During off-peak periods, inspectors use their discretion and endeavour to eliminate, as far as possible, situations that could give rise to traffic hazards. This weighbridge will be duplicated and resited further north as part of the reconstruction of Port Wakefield Road, and this work should be completed towards the end of next financial year. Of the weighings made at Cavan, about 20 per cent of the vehicles are found to be overloaded and, of these, 25 per cent are subsequently prosecuted.

COOBER PEDY

The Hon. A. M. WHYTE: I seek leave to make a short statement before asking a question of the Minister representing the Minister for Conservation.

Leave granted.

The Hon. A. M. WHYTE: On March 9, I asked a question of the Minister of Lands, representing the Minister for Conservation, concerning the possibility of a Government take-over of and compensation for the pastoral property at Mount Clarence, which is a pastoral property in which the mining activities at Coober Pedy are centred. The Minister of Lands said that the Minister for Conservation would be visiting the area and would make an assessment of the proposition put forward. I have received further details from the proprietors of Mount Clarence in which they suggest that they would be willing to accept lenient terms. Has the Minister conferred with the Hon. Mr. Broomhill since he has returned and, if he has, can he say what the Minister thinks of the suggested proposition?

The Hon. A. F. KNEEBONE: True, the Minister for Conservation visited Coober Pedy and Andamooka last Monday. I have spoken with him, but not regarding the matter the honourable member has raised. The Minister will probably report to Cabinet on Monday next, and there will no doubt be a discussion on this matter.

RURAL RECONSTRUCTION

The Hon. R. A. GEDDES: Can the Minister of Lands say when it is expected that the Commonwealth Government will announce fuller details of the $12,000,000 in Commonwealth funds that has been allocated to rural reconstruction in South Australia, and does he still expect that the Bill giving the necessary authority for this money to be spent will be introduced in this session?

The Hon. A. F. KNEEBONE: During last week it was reported that the New South Wales Government and Queensland Government representatives had said that they thought the terms agreed on were not as good as, and that the difficulties in administering the scheme were greater than, they thought they would be. That report justifies what I said when I returned from Canberra, that is, that I had some misgivings about the scheme. Other Ministers returned to their States and said it was a good scheme, but now they are having second thoughts on the matter. As a result of this approach, a meeting of the officers of the various States was held in Canberra yesterday, and further submissions will be made to the Commonwealth as a result of that meeting. As a result of my representative (the Director of Lands) attending that meeting in Canberra, he was able to bring

back draft copies of the proposed agreement, which will enable the Government to prepare legislation, despite some misgivings regarding the scheme. The agreement will enable the Government to produce legislation which I hope to introduce in the next week or so, in the hope that it will have a swift passage through both Houses so that we can call for applications for assistance under the scheme. It will be only when applications are lodged that the seriousness of the position regarding rural properties both here and in other States will become evident.

The Hon. C. R. STORY: I seek leave to make a statement prior to asking a question of the Minister of Lands.

Leave granted.

The Hon. C. R. STORY: As some progress has been made with the Commonwealth Government regarding the scheme the Minister has just outlined, can he say what progress has been made in obtaining agreement between the State Governments and the Commonwealth Government? I believe that a previous reply on this matter disclosed that it was tied up with the milk equalization scheme to a certain degree. I believe, too, that people who would have been eligible under the dairy reconstruction scheme will not be eligible under the other scheme. So, it is fairly essential that both schemes come into operation at about the same time. Can the Minister of Lands say whether we are any closer to getting agreement between the States and the Commonwealth?

The Hon. A. F. KNEEBONE: Some time ago agreement was reached between the States and the Commonwealth; allowances had to be made for the milk equalization scheme and the setting up of standards within the scheme. This was agreed upon. The only thing that has been held up to this point has been the draft agreement, which is necessary so that we can frame legislation. However, that has come back to us now, so we have both draft agreements and we will be able to produce legislation for both schemes within the next few days.

COUNTRY ROADS

The Hon. A. M. WHYTE: Has the Minister of Lands obtained from the Minister of Roads and Transport a reply to my question of March 3 about the possibility of bituminizing the main streets of country towns that have much through traffic?

The Hon. A. F. KNEEBONE: My colleague reports:

On August 27, 1970, the honourable member was informed that construction of Coober Pedy streets would commence within 12 months and sealing would be undertaken shortly afterwards, depending on the availability of funds. The position still applies. It is intended that sealing of streets in other outback towns (namely, Andamooka, Kingoonya, Oodnadatta and Marree) will be undertaken progressively over a number of years as funds and resources become available, but no definite programme has yet been formed. The sealing of the main street of Penong will be carried out in conjunction with the sealing of the Eyre Highway between Ceduna and Penong and is expected to be completed in early 1973.

FISHERIES REGULATIONS

Order of the Day, Private Business, No. 1:

The Hon. F. J. Potter to move:

That the regulations under the Fisheries Act, 1917-1967, in respect of the preservation of prawn resources, made on September 10, 1970, and laid on the table of this Council on September 15, 1970, be disallowed.

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

That this Order of the Day be discharged.

I have moved this motion in the light of the decision of the Joint Committee on Subordinate Legislation to recommend no action in connection with this matter.

Order of the Day discharged.

MARKETABLE SECURITIES BILL

Second reading.

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

That this Bill be now read a second time.

It emanates from the Standing Committee of Attorneys-General. Honourable members may recall that the Marketable Securities Transfer Act, the precursor of the present Bill, was enacted by the South Australian Parliament in 1967. That Act was warmly welcomed in commercial circles for it led to considerable economies in the processing of transactions involving company shares and other securities. It was realized, however, even before that Act was passed, that there remained certain unresolved questions, both of Governmental policy and of legal detail, that might well require treatment in a subsequent enactment. This Bill, accordingly, seeks to deal rather more comprehensively with the various aspects of security transfer.

The basic object of the Bill remains the same as that of the present Act. It provides a system of security transfer in which the

signature of the transferee is dispensed with. There are, however, three major differences between the present Bill and the Act of 1967. First, the Bill enables "authorized trustee corporations" to utilize the statutory transfer system. An "authorized trustee corporation" is a corporation declared as such by the regulations. Since the existing Act was enacted in 1967, the standing committee has received from trustee companies and banking companies, which engage in a large volume of share trading on behalf of their various clients, a number of requests that the right to use the more expeditious system of statutory transfer be extended to them. This appeared to be a reasonable request and, accordingly, the present Bill contains provisions enabling the Government to extend the right to use the statutory system to bodies of this nature.

Secondly, the Bill provides a more expeditious method of splitting share parcels than is possible under the existing legislation. This is a technical matter that I shall explain in detail when discussing the provisions of the Bill. Thirdly, the Bill provides that the various undertakings to be imposed upon a broker utilizing the transfer system are to be imposed in every case by local South Australian law, whether or not he happens to be dealing in the securities of a South Australian or a foreign company. This follows a joint opinion of the Solicitors-General for Victoria and the Commonwealth on the question of brokers' warranties.

The provisions of the Bill are as follows. Clause 1 deals with the title and the commencement of the new Act. I might mention that it is hoped that the new uniform legislation can be brought into operation simultaneously in all States on the first day of July, 1971. Clause 2 repeals the existing Marketable Securities Transfer Act, 1967. Transitional provisions are enacted which will, in effect, permit existing transactions to be completed under the Act of 1967 notwithstanding the commencement of the new legislation. Clause 3 enacts certain definitions necessary for the purposes of the new Act. An "authorized trustee corporation" is defined as a body corporate that is declared to be an authorized trustee corporation under the regulations. A "beneficial owner" means for the purposes of the new Act a person upon whose behalf an authorized trustee corporation is holding a marketable security or right thereto. The definition of "corresponding law" draws attention to the fact that under subclause (2) it is envisaged that the corresponding Acts of the other States will be declared to be "corresponding laws" for the purposes of the new Act. A "marketable security" is defined as a share in or a debenture of a South Australian company or a prescribed corporation and includes a prescribed security. A "prescribed corporation" means either a corporation incorporated in the State which is not a company, or an unincorporated body with shares listed on the Stock Exchange. The inclusion of "prescribed securities" within the definition of "marketable security" enables the Governor to provide by regulation that the new Act will extend to interests to which Division V of Part IV of the Companies Act applies, for example, shares in a unit trust. Clause 4 provides that where a document constitutes a sufficient instrument of transfer under the new Act it shall be an adequate instrument to transfer the securities for the purposes of the Companies Act, or any other Act or law governing the transfer of the securities.

Clause 5 prescribes the form of a sufficient instrument of transfer for the purposes of the new Act. This clause is to be read in conjunction with the schedule to the Bill which contains the various forms referred to in the clause. The transfer procedure operates as follows:

(*a*) In the simplest case where A sells shares to B, and B purchases the whole parcel of shares, A signs part 1 of form 1 and B's broker completes part 2 of form 1. The completed form is forwarded with share scrip to the company for registration of the transfer.

(*b*) Where A sells a parcel of shares and they are purchased in separate allotments by B and C, A signs part 1 of form 1 and A's broker completes part 1 of form 2 for each separate transaction. Form 1 is forwarded to the Stock Exchange together with share scrip and the partially completed broker's forms. The Stock Exchange marks the broker's forms with a stamp indicating that the transactions disclosed in the forms are covered by share scrip which will be forwarded to the company. The form signed by the transferor and the share scrip is then forwarded to the company. The broker's forms are sent on for completion by the buying brokers and then forwarded to the company.

(c) It is possible that, after a parcel of shares has been split in the manner set out in the previous paragraph, a purchaser may dispose of his allotment before the relevant documents are forwarded for registration. This may entail a further splitting of his parcel. Under the present system it is frequently necessary for the shares to be registered in the name of the previous purchaser before this subsequent splitting of the share parcel can be accomplished. In order to overcome the delays that result from registration and reregistration where turnover of shares is rapid and share parcels are being divided up a new form (form 3) has been introduced into the schedule. This enables the Stock Exchange to certify upon presentation of a previously marked broker's form that the transactions comprised in the subsequent form are covered by share scrip. This will obviate the necessity for registration of the prior change in ownership of the shares by the company.

Forms 5, 6, and 7 are used in a corresponding way in relation to rights to marketable securities. It is to be observed that while in ordinary cases the statutory transfer system dispenses with the signature of the transferee, this does not apply where there is an uncalled liability upon the shares which is capable of enforcement by the company. In this case the transferee's acceptance of the shares and the attendant liability must be evidenced by completion of form 4. This requirement does not apply, however, to partially paid shares in a no-liability company because, in this case, the company cannot enforce payment of a call; the shares are forfeited if the call is not paid. Clause 6 is a corresponding provision relating to the use of the statutory transfer system by authorized trustee corporations. In this case the relevant forms for use by an authorized trustee corporation are forms 8, 9, 10, and 11. These forms correspond in function to forms 1, 2, 3 and 4 respectively.

Clause 7 prescribes, in effect, that a statutory transfer of securities shall have the same effect as a transfer at common law. The transferee is deemed to have agreed to accept the securities upon the same terms as they were held by the transferor and to be bound by the memorandum and articles of the company. Clause 8 provides for certain statutory undertakings to be imposed upon brokers and brokers' agents. The broker is deemed to have warranted the accuracy of the statements contained in the instrument of transfer; to have warranted the title of the transferor to the securities to which the transfer relates; and to have undertaken to indemnify the company, the transferee, and the transferee's broker against any loss that may arise from a forged or unauthorized transfer of the securities. These obligations apply whether the broker is dealing with the securities of a South Australian or a foreign company.

Clause 9 enables the company to which an instrument of transfer in the statutory form is presented to assume that a stamp that purports to be the stamp of the transferor's or the transferee's broker, or the stamp of a prescribed stock exchange, is such a stamp. In the case of an authorized trustee corporation the company is entitled to assume that the trustee corporation is in fact holding the securities on behalf of the nominated transferor, and that the transfer was not made by way of sale, gift, or exchange of the marketable securities.

Clause 10 defines the ambit of the operation of the new Act. The new Act is to have effect notwithstanding any other enactment or any instrument affecting the transfer of marketable securities. Thus the Act would override provisions in the memorandum and articles of a company requiring a specific form of transfer inconsistent with the provisions of the Act. Subclause (2) provides that the Act does not affect the terms and conditions upon which marketable securities are sold. Subclause (3) provides that a company still retains the right to refuse to register a transferee as a shareholder, provided that it has some legitimate ground of objection apart from an objection based upon the form of the transfer.

Subclause (4) provides that registration of a transfer pursuant to a statutory instrument of transfer shall be deemed not to be a breach of any memorandum, articles, trust deed or other instrument affecting marketable securities. Subclause (5) provides that the new Act does not prevent the use of any other form of transfer that is otherwise permitted by law. Subclause (6) provides that securities may be transferred in accordance with the new Act to a trustee or legal representative notwithstanding any law or the provisions of any instrument creating or affecting the trust or testamentary disposition.

Clause 11 provides that the omission from any register, certificate, or other document

relating to marketable securities of a statement of the occupation of the person who is, or is entitled to be, registered as the holder of the marketable securities, shall not constitute a breach of any memorandum, articles, trust deed, or other instrument or enactment relating to the marketable securities. Clause 12 provides that, notwithstanding anything in the memorandum and articles of a company, it shall not be necessary for any instrument of transfer (including instruments of transfer that are not executed in pursuance of the new Act) to state the occupation of the transferor or transferee or for the signature of the transferor or transferee to be witnessed.

Clause 13 sets out a number of offences relating to the illegal completion or purported completion of instruments of transfer under the new Act. Clause 14 empowers the Governor to make regulations. In particular he may by regulation declare that specified bodies corporate are authorized trustee corporations for the purposes of the new Act; that a nominated stock exchange is a prescribed stock exchange for the purposes of the Act; that an interest of a prescribed class under Division V of Part IV of the Companies Act is a prescribed security and hence a marketable security under the provisions of the new Act. I commend the Bill for the urgent attention of honourable members.

The Hon. Sir ARTHUR RYMILL secured the adjournment of the debate.

JUDGES' PENSIONS BILL

Second reading.

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

That this Bill be now read a second time.

It proposes some substantial rearrangements respecting judges' pensions for the future. Generally, judges in this State have been called upon to make contributions, varying with age at appointment, to pensions schemes which have been substantially subsidized by the Government. Those schemes provide in most cases for a retirement pension of 50 per cent of retiring salary and a reversion to a widow of 50 per cent of the pension entitlement of a retired judge. Latterly, senior public servants and others entitled to contribute to the South Australian Superannuation Fund have been permitted, by paying prescribed contributions, to qualify for pensions up to 60 per cent of retiring salary with a 65 per cent reversionary pension to a widow. Representations have been made to the Government to permit judges to qualify for similar maximum pensions.

It has been brought to the notice of the Government that judges in other States, except Tasmania, qualify for pensions without contribution. However, it would seem that, at least in recent years, when the rates of salary appropriate to judges in South Australia were being determined, regard was had to the fact that South Australian judges were called upon for pension contributions whilst judges in other States were not. It has seemed to the Government appropriate that non-contributory pensions be made available in this State as elsewhere, but that at the same time the level of judges' salaries should be reconsidered in the light of relief from contributions.

In the ordinary course, consistently with what has occurred with senior and professional salaries elsewhere, it may have been expected that judges' salaries would at this stage be increased by about 6 per cent. It so happens that the average rate of contribution which may have been expected from judges to qualify for pensions at the proposed improved rates would likewise have been about 6 per cent. Accordingly, the time is most opportune to make the change to non-contributory pensions, that change to be regarded as in lieu of the increased salary rates which otherwise would have been authorized.

The provisions of the Bill, as is normal in such cases, ensure that no individual shall as a consequence of the change suffer any reduction in his entitlements. Most judges, of course, will have significantly increased entitlements, though as is normal and proper with pensions (and particularly non-contributory pensions) the judge with relatively short service does not qualify for as extensive benefits as his brother judge who has longer service. The Bill naturally makes provision for continuation of existing pensions. Since these were increased in accordance with variations in living costs quite recently, they are continued at present rates. However, provision is made for such later adjustments as may be found necessary.

A new provision, in line with provisions in certain other States, will permit a judge to retire on an appropriate pension, provided he has served for at least 10 years, at any time after having reached the age of 65 years, notwithstanding that he may not be bound to retire until the age of 70 years. There is also a provision, which is not available to judges in other States, for an allowance to an orphan child upon a similar basis to that

available from the South Australian Superannuation Fund.

A special provision is made for the present judge appointed as Chairman of the Licensing Court. For some reason which is now not plain there has been no provision for this judge to contribute for a pension upon a basis comparable with other judges. He has consequently continued as a member of the South Australian Superannuation Fund as if he had remained a public servant, although other public servants appointed as judges received refunds of their earlier contributions to the fund and received the benefits of membership of the special schemes for judges. The high rates of contribution required to secure additional pension rights from the South Australian Superannuation Fund as the contributor nears retiring age have placed the judge of the Licensing Court in a relatively very unfavourable position as compared with other judges. Provision is made for this judge now to come within the non-contributory scheme and, provided he is prepared to pay to the Treasurer the refund of contributions which he would otherwise be entitled to receive from the superannuation fund, he is to be given credit for such a period of service as would entitle him to the new maximum benefits. This arrangement is, I am assured, acceptable to the judge in question. While it will be of considerable relief to him during the final years of his service, it does not on balance place him in any preferred position in relation to the rights of other judges.

To consider the Bill in some detail: Clauses 1 to 3 are formal. Clause 4 inserts the definitions necessary for the purposes of the Bill. Clause 5 excludes from the application of the Bill judges who are appointed within five years of the statutory retiring age for their office. Since those persons would be 60 years or 65 years of age, depending on the office to which it was proposed to appoint them, it is likely that they would have made appropriate provision for their retirement. It is, of course, quite unlikely that appointments of persons of this age would be made. Subclause (2) of this clause preserves the rights, if any, of any judge who is excluded by this clause to any pension under the Superannuation Act. Clause 6 sets out the right to a pension on retirement. As I have mentioned, the amount of this pension varies according to the length of judicial service of the individual judge.

Clause 7 provides for a pension calculated on a similar basis on retirement due to invalidity but in this case the judge is granted a period of "assumed service" covering the period he would, in the normal course of events, have served before retirement. Clause 8 provides for a widow's pension of 65 per cent of the judge's pension, in the case of the death of a judge in office. Clause 9 provides for a widow a pension equal to 65 per cent of the pension payable to a deceased pensioner-husband immediately before he died. Clause 10 provides for pensions in respect of "eligible orphan children". A description of this class of orphan will be found in clause 4 under the appropriate definition. Clause 11 is intended to ensure that no pension payable under this Bill will be less than the pension that would be payable to a judge as defined in this Act, the Supreme Court Act, the Industrial Code or the Local and District Criminal Courts Act as at present in force. Clause 12 provides for the continuation of pensions at present payable under the Acts mentioned in connection with clause 11. Provision is also made for variation of those pensions so long as the variation will not result in pensions lower than those provided for here.

Clause 13, in substance, will exclude from a pension a judge who was removed from office. Clause 14 is a formal financial provision. Clause 15 provides for the refund of contributions made under the Acts mentioned in connection with clause 11 in any case where the judge, his widow or orphan child is not entitled to a pension under this Act. Clause 16 is intended to ensure that no person can become entitled to a pension under this Act as well as a pension under the Superannuation Act. Clause 17 provides for the arrangements, adverted to earlier, in respect of a pension under this Act for the Chairman of the Licensing Court. Parts III, IV and V repeal the provisions of the Supreme Court Act, the Local and District Criminal Courts Act and the Industrial Code which provided for pensions for judges as defined in this Act. The schedule sets out the pensions payable pursuant to clause 12 of this Bill.

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

PUBLIC SERVICE ACT AMENDMENT BILL

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

ROAD AND RAILWAY TRANSPORT ACT AMENDMENT BILL

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

AGE OF MAJORITY (REDUCTION) BILL

In Committee.

(Continued from March 16. Page 4023.)

Clause 3—"Removal of disability of infancy from persons over the age of eighteen years"—to which the Hon. F. J. Potter had moved to insert the following new subclause:

(5*a*) This section shall not be construed as conferring any status necessary for the exercise of any electoral or voting rights in this State or the Commonwealth.

The Hon. R. C. DeGARIS (Leader of the Opposition): At this stage, I feel I should make a statement on what I propose to do regarding this Bill. As a result of reading press reports, one might think that Council members are somewhat confused over this whole issue. It is necessary to explain the action I am taking to re-explain the position that has developed in the Chamber on the Bills that have been before us: first, the Constitution Act Amendment Bill concerning the voting age and, secondly, the Bill now before us. Not only is the press somewhat confused, but even the Minister of Agriculture seemed to have some difficulty in understanding the processes of this Chamber. I know it is difficult for people outside to understand exactly the operations of this Chamber, where encouragement is given for every person as an individual to examine the various questions before him and to vote according to his own conscience.

In discussing this matter at the second reading stage, the Hon. Mr. Hill raised a very valid point (it was taken up by other speakers) regarding the Bill now before us and the Constitution Act Amendment Bill relating to the voting age, and of the complications to which this would lead in relation to the Commonwealth Constitution. Because both these Bills went hand in hand through this place, a complication was produced in regard to the Commonwealth Constitution. I congratulate the Hon. Mr. Hill on his speech, in which he said that, if certain parts of either Bill were passed with or without amendment, some protection by way of amendment should be introduced to cover the complicating factors in relation to the Commonwealth Constitution. This alone has added to the difficulty in relation to amendments coming before this Committee.

This place is not governed by any Party discipline; I refer to honourable members other than Labor Party members in this Chamber. There is no Party discipline whatever, and on a question like this a variety of opinions have been freely expressed in connection with both these Bills. The fact that honourable members have the opportunity to express their views freely has had a rather bewildering effect on those who do not fully understand the operations of this place. Both the Hon. Mr. Banfield and the Minister of Agriculture have made the point that both Parties advocated an age of majority of 18 years during the last election campaign. However, I believe that neither Party fully understood the ramifications of that policy in relation to the Commonwealth Constitution.

At this stage I do not intend to go through the various methods used to produce policy speeches, but one thing is clear: many responsible and thinking people, including many schoolteachers and headmasters in the community, are cautious in their approach to a blanket provision for the age of majority to be 18 years. To advance the mere argument that, simply because two Parties (one of which is bound to govern after an election) put forward policy speeches and one of those Parties was returned to the Treasury Benches, that should lead to the inevitable inclusion of the policy in the laws of the State is ridiculous. It must be remembered that the limited number of people who design these policies do so for a political benefit. Such an argument indicates the need not only to maintain the second House but to maintain a second House that is capable of producing a vote not influenced in any way by the pressures of the political organs of the major Parties.

The second reading of the Age of Majority (Reduction) Bill was passed by only 10 votes to 9. It became clear to me that a final result could be produced through both Bills that would not appeal in the final analysis to some honourable members. I do not support a reduction in the age of majority to 18 years, and I voted according to my beliefs. Further, I do not support a reduction in the voting age to 18 years, and I voted accordingly. However, above both these things, I believe that the two matters are irrevocably tied. Through all these amendments, every honourable member has voted according to his conscience. We must bear in mind that we are dealing with two separate Bills, although I believe that the age of majority and the voting age are irrevocably tied together. It would be foolish to produce any other situation.

With each honourable member approaching each issue as it came forward, we have produced a situation where voting is allowed at

18 years (voluntarily), but the age of majority is 20 years. This result has been produced because of the factors I have outlined. One reads comments aired by certain people that that this result is utterly ridiculous, and I am of that view, too. I am now explaining how in a perfectly democratic method of voting, where each honourable member is an individual, this result has been produced. I offer no criticism of any honourable member who has voted in any way as the matter has proceeded. This result has been produced without any pressure other than the honourable members' own powers of logic and reason and their fundamental beliefs. It has now produced a result that, to me, is unacceptable.

The age of majority and the voting age are tied together, and to produce a situation where a minor has the right to vote but is not looked upon as an adult is not justified. We have produced a result according to each honourable member's opinion, but that result is unacceptable to me. I wish to criticize the Premier's press statement; he is apt to lodge a criticism long before the normal democratic processes of this place have been gone through in their entirety. This place having produced a situation that is not acceptable to me, I have a democratic right under our Standing Orders to recommit the Bill and discuss further one of the clauses that I now favour changing, because of the situation that has been produced.

An amendment to clause 3 has been moved by the Hon. Mr. Potter, and I suggest that we now proceed through the Bill clause by clause without any honourable member moving any amendment that is on file. After the Committee stage has been concluded, I will then move that the Bill be recommitted so that we can go back to clause 3. I will then move in a certain direction and honourable members will know exactly how they can proceed with the other clauses. I hope that I have explained the situation and that honourable members will accept my explanation.

The Hon. A. F. KNEEBONE (Minister of Lands): I thank the Leader for his explanation of what he thinks should be done in regard to this Bill. Yesterday when we reached this position I thought it was necessary that we should report progress in order to consider the matter further. The plan suggested by the Leader seems to be wise, and I accept it.

The Committee divided on the Hon. Mr. Potter's amendment:

Ayes (15)—The Hons. Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, L. R. Hart, C. M. Hill, Sir Norman Jude, H. K. Kemp, F. J. Potter (teller), E. K. Russack, Sir Arthur Rymill, V. G. Springett, C. R. Story, and A. M. Whyte.

Noes (4)—The Hons. D. H. L. Banfield, T. M. Casey, A. F. Kneebone (teller), and A. J. Shard.

Majority of 11 for the Ayes.

Amendment thus carried.

The Hon. A. F. KNEEBONE: I move to insert the following new subclause:

(6*a*) Where a person died intestate before the commencement of this Act, the administrator of the estate of the intestate shall not be obliged to distribute any portion of the estate to any person entitled to participate in the distribution before that person has attained the age of twenty-one years.

I think this amendment is self-explanatory; honourable members will understand its purpose, which is to cover the situation of people dying before this measure comes into force. It is a wise precaution.

Amendment carried; clause as amended passed.

Clause 4 passed.

The Schedule.

Parts I to IV passed.

New Part IVA.

The Hon. A. F. KNEEBONE: I move to insert the following new Part:

PART IVA
AMENDMENT OF THE APPRENTICES ACT, 1950-1966

1. (1) The Apprentices Act, 1950-1966, as amended by this Act and by all Acts amending the same prior to the commencement of this Act, may be cited as the "Apprentices Act, 1950-1970".

(2) The Apprentices Act, 1950-1966, is hereinafter referred to as "the principal Act".

2. Section 5 of the principal Act is amended by inserting after the definition of "member" in subsection (1) the following definition:

"minor" means a person under the age of twenty-one years:.

This is in line with what was mentioned in the second reading debate, that reducing the age of majority to 18 years would not affect apprenticeships, which would still continue to the age of 21, and not 18.

New Part inserted.

Part V.

The Hon. C. M. HILL: I will not move my amendments to this Part at this stage. In view of what the Hon. Mr. DeGaris has

said, I will wait until the whole Bill is recommitted and then formally move the amendments in my name.

Part passed.

Parts VI to XVIII passed.

New Part XVIIIA.

The Hon. A. F. KNEEBONE moved to insert the following new Part:

PART XVIIIA
AMENDMENT OF THE INDUSTRIAL CODE, 1967-1970

1. (1) The Industrial Code, 1967-1970, as amended by this Act and by all Acts amending the same prior to the commencement of this Act, may be cited as the "Industrial Code, 1967-1970".

(2) The Industrial Code, 1967-1970, is hereinafter referred to as "the principal Act".

2. Section 5 of the principal Act is amended by inserting before the definition of agriculture" the following definition—

"adult" means a person of or above the age of twenty-one years:.

New Part inserted.

Parts XIX and XX passed.

Part XXI.

The Hon. M. B. DAWKINS: Honourable members will have on file the amendments I intend to move, but I will do as other members have done and leave these until the Bill is recommitted.

Part passed.

New Part XXIA.

The Hon. A. F. KNEEBONE: I move to insert the following new Part:

PART XXIA
AMENDMENT OF THE LONG SERVICE LEAVE ACT, 1967

1. (1) The Long Service Leave Act, 1967, as amended by this Act, may be cited as the "Long Service Leave Act, 1967-1970".

(2) The Long Service Leave Act, 1967, is hereinafter referred to as "the principal Act".

2. Section 3 of the principal Act is amended by inserting before the definition of "agreement" in subsection (1) the following definition:—

"adult" means a person of or above the age of twenty-one years:.

I think it is the best procedure to move all the amendments the Government desires at this time, so that they are all incorporated in the recommitted Bill.

New Part inserted.

Parts XXII to XXXIV and title passed.

Bill reported with amendments.

Bill recommitted.

Clauses 1 and 2 passed.

Clause 3—"Removal of disability of infancy from persons over the age of 18 years"—reconsidered.

The Hon. R. C. DeGARIS (Leader of the Opposition): I move:

To strike out "twenty" and insert "eighteen". I think I have previously made my position clear. It is rather humorous when one looks at the amendments the Government has placed on file and which were before the Chamber in the first consideration of the Bill in the Committee stage. I should prefer that the age of majority remain where it is and then we deal with matters that may require some alteration. If the Constitution Act Amendmen Bill is passed the age for voting will be 18 years, but the Bill now before us provides 20 years shall be the age of majority. The situation is confusing. I believe that, if a person is able to vote and take part in an election of a House of Parliament, the age at which he is permitted to do this should be the age of majority.

The Hon. A. M. WHYTE: I moved my original amendment because I believed we were faced with the choice of reducing the age of majority to 18 years or of rejecting the Bill entirely. I considered this matter seriously and after doing much research among people affected by the reduction in age, I formed the firm opinion that the age of 20 years would be acceptable to most parents and to the youth of today. It seems that the Government agrees that a youth of 18 years can accept full responsibility under the provisions of this Bill, but to become a carpenter or boilermaker is different. I believe that if these people wanted the age of majority to be 18 years they would have appealed to the Government, but they did not do so. The appeal has come from big business, which has capitalized on the youth of the world, and from politicians who wish to curry favour with young people. I have grave doubts whether there is any point in proceeding with my amendment, because I seem to have lost some support during the reshuffle. However, I am convinced that the age of 20 years would be acceptable to most of those concerned, and for that reason I oppose the amendment.

The Hon. G. J. GILFILLAN: I assure the Hon. Mr. Whyte that he has not lost full support and that I believe his reasons for making the age 20 years are still valid. The Constitution Act Amendment Bill is still unresolved and has to pass the third reading and be accepted by the House of Assembly in its present form before it becomes law. If it is not, the age of voting will revert to 21 years. This would provide the unusual situation in which there would be a difference of three

years in the provisions of two Bills dealing with the same principles. I believe that it is unwise to proceed further with this Bill while the Constitution Act Amendment Bill is unresolved. I support the Hon. Mr. Whyte in his action, because his reasons are still valid and in the best interests not only of young people but also of people throughout the State. Several Bills have been introduced aiming to protect the consumer, and to protect people from their own mistakes and from being exploited. In the past I have believed that adults should bear the responsibility of their actions. However, if the age of majority is reduced I believe that, as responsible legislators, we may have to rethink our attitude about protecting the public. I support the Hon. Mr. Whyte and oppose the amendment.

The Hon. M. B. DAWKINS: I continue to support the Hon. Mr. Whyte, because I believe 20 years is the proper age of majority.

The Hon. A. F. KNEEBONE: I cannot understand the Hon. Mr. Whyte's approach after what he said yesterday when speaking on another Bill. Apparently, he has contrary views on the two matters.

The Hon. A. M. Whyte: There is no result yet on the Constitution Bill.

The Hon. A. F. KNEEBONE: Yesterday, the honourable member said that if his amendment to the Age of Majority (Reduction) Bill had not been carried he would vote for the Government on the Constitution Act Amendment Bill. Now I am confused.

The Hon. C. R. Story: We cannot grasp your point.

The Hon. A. F. KNEEBONE: The Hon. Mr. Whyte is not being consistent. He said that if the age of majority were reduced to 18, he would be all for it.

The Hon. A. M. Whyte: You want me to give up my amendment.

The Hon. A. F. KNEEBONE: From what the honourable member said yesterday, I expected that he would give up. He did not make up his mind on the Constitution Act Amendment Bill until the present amendment had been carried. The Leader has shown sound sense in moving the amendment, which I support.

Amendment carried; clause as amended passed.

Clause 4 passed.

The schedule.

Parts I to IV passed.

The Hon. C. R. STORY: Mr. Chairman, I wish to speak on Part II.

The CHAIRMAN: We have passed that Part.

Part V.

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

In clause 3 to strike out all the words after "passage" and insert "has attained the age of twenty-one years, and".

A student studying architecture cannot qualify for registration as an architect until he is 21 years of age, whereas the Government intends that the age limit in the Bill be reduced to 18 years. The purpose of the Bill is to remove the 21 years of age qualification so that there will not be any age qualification in the Architects Act. This precedent was set by the Government when dealing with the Veterinary Surgeons Act.

The Hon. A. F. KNEEBONE: The wording of this clause was an oversight on the Government's part. As I realize the ridiculous situation that could be created, I do not oppose the amendment.

The Hon. R. C. DeGARIS: If the Architects Act is amended to reduce the age from 21 years to 18 years as a result of the amendment, why not delete the whole of Part V?

The Hon. C. M. HILL: I examined the Architects Act when considering my amendment. The amendment was prepared by the Parliamentary Draftsman with the Minister's consent. The Minister has just indicated that there are other points in the relevant clause.

The Hon. Sir ARTHUR RYMILL: I am confused over this matter. I understood the Hon. Mr. Hill to say that the purpose of his amendment was to remove the age limit altogether. However, I am not clear on what the amendment means.

The Hon. C. M. HILL: I can understand the honourable member's comment, because I had the same doubt myself as soon as I saw the amendment. As a matter of fact, I queried it in the same manner as the honourable member has now done. Indeed, the Minister queried it, too, when he first saw it. If the amendment is carried clause 3 of Part V will provide:

Section 32 of the principal Act is amended by striking out from subsection (1) the passage "has attained the age of 21 years and".

The Hon. Sir ARTHUR RYMILL: For many years the Legal Practitioners Act has provided that one has to be 21 years of age before he can be admitted to the bar. I have known some people who have passed their examinations and served their articles before reaching the age of 21 years, but they had

to wait until they reached that age to be admitted to the bar. If one obtains all the qualifications laid down by the university and, in respect of practical experience, by the profession, there should be no age limit at all. I would have thought that the Bill would be satisfactory, because it sets a minimum age of 18 years. Section 32 (1) of the principal Act says that the person must prove to the satisfaction of the board that he has attained the age of 21 years and is of good character and reputation. The Bill reduces that age to 18 years. On examining the principal Act in conjunction with the amendment I now find the amendment satisfactory.

The Hon. F. J. POTTER: I support the amendment. The Hon. Sir Arthur Rymill said that a person must be 21 years of age before he can be admitted to the bar, but I point out that that provision is in the Rules of Court, not the Legal Practitioners Act. If the provision were in that Act it would have to be referred to in this Bill.

Amendment carried; Part as amended passed.

Part VI passed.

Part VII—"Amendment of the Builders Licensing Act, 1967."

The Hon. R. C. DeGARIS: Under the Apprentices Act a person cannot become a boilermaker before he is 21 years of age, yet a person will apparently be able to hold a builder's licence when he is only 18 years of age. Can the Minister explain this rather strange situation?

The Hon. A. F. KNEEBONE: I do not know whether that is correct. When the Committee considers the Apprentices Act I will ask that progress be reported in order that I can consider the matter further.

The Hon. F. J. POTTER: If the Minister intends to report progress (and I hope he will) I suggest that the appropriate time for doing that is now, because we have already dealt with the Apprentices Act. If a problem arises under this Part and if the point made by the Hon. Mr. DeGaris is valid, we ought to know now before proceeding further.

The Hon. A. F. KNEEBONE: Because of the confusion about this matter, I move:

That progress be reported and the Committee have leave to sit again.

The Hon. C. R. STORY: If the criterion for reporting progress is confusion, and if we report progress every time we get into difficulties, we shall never get through this Bill. The Minister could perhaps have had some explanations for honourable members.

The CHAIRMAN: The Minister has moved that progress be reported, and the motion cannot be debated. If honourable members are against progress being reported, they can vote against the motion.

Motion carried.

Progress reported; Committee to sit again.

UNFAIR ADVERTISING BILL

Adjourned debate on second reading.

(Continued from March 16. Page 4024.)

The Hon. C. M. HILL (Central No. 2): This Bill is, in some respects, similar to the Bill on unfair advertising that came before this Council about two years ago. I remember that the Government of the day then agreed to the principle of the Bill. I indicated in this Chamber to that effect and that it was my personal feeling, too. I support the principle that in the times in which we live it is proper that some form of protection should be on the Statute Book in case instances occur of blatantly obvious unfair advertising. In such cases, there is a need to check a person or a company indulging in improper practices. It comes under the general heading of "consumer protection". I recall the Minister in his second reading explanation saying that the Bill had come about as a result of an investigation by the Law Society. I understand that Professor Rogerson was the Chairman of the committee that looked into the matter.

In fact, it comes within the general area of consumer protection to such a degree that it really should be part of the Government's consumer protection administration rather than be directly under the administration of the Attorney-General. I am not sure at this moment whether the Government has given the title of Commissioner for Consumer Protection (or something of that kind) to the former Prices Commissioner, but I understand it has developed or is developing that department to encompass all forms of consumer protection.

This form of legislation should come within and be under the control of a person such as Mr. Baker rather than the whole matter, as it seems to me, being handled directly by the Attorney-General. I may be wrong, and in fact the Attorney-General may intend to delegate this work to that department. What makes me consider it would be better if the emphasis was on the head of that department is that I think that, if that was so, a system of warnings might be implemented when this kind of offence occurred, in the first instance or instances, anyhow. It would be far more

effective than straightout prosecution, especially when, as under this Bill, the fine is as high as $1,000.

I read with some interest that in New South Wales, under its Consumer Protection Act, in one year 21 warnings were given and none of those offenders offended a second time. That is the kind of administration of a measure of this kind that is proper; it is effective and done without much publicity, and the problems that arise in this area are satisfactorily corrected by that means.

However, the Government has seen fit to introduce this measure as its method of placing this matter on the Statute Book. I stress again that legislation of this kind should be effective and achieve its aims if it is worth its salt. I have grave doubts, from the way this Bill is drawn up, whether it will be effective, because of the way in which it is worded. I am willing to vote for it at the second reading stage because I agree with the principle. I have heard honourable members say in their speeches that they intend to move amendments in an endeavour to improve the Bill. I shall listen with interest to them and take part in discussing them, if I think I should during the Committee stage, because there may be ways and means by which this legislation can be improved.

If it is not effective, it will become a kind of propaganda measure. Whilst this may have some deterrent effect on people who may be guilty of offences in respect of unfair advertising, it is not, in my view, the kind of legislation we should have on the Statute Book if it simply has a deterrent effect.

When I say I doubt whether it will be effective, I refer mainly to clause 3 of the Bill, which in subclause (1) states that people who advertise in an unfair manner will be prosecuted and, if they are found guilty, a penalty of $1,000 will be imposed. But then the same clause goes on to provide that an offender shall be able to have as his defence that at the time of the publication he believed on reasonable grounds that the statement or representation complained of was not an unfair statement. Then subclause (4) provides:

> It shall be a defence to a prosecution . . . for the defendant to prove that the unfair statement was of such a nature that no reasonable person would rely on it.

With clauses such as this in the Bill it will be very difficult indeed for a prosecution to succeed. I note that under this clause the Attorney-General must approve of the commencement of any prosecution for an offence. Whilst I believe this type of legislation is quite proper in the business world of today and the world in which we live, with such an affluent society and with a great number of people having considerable spending power, I consider that to make the legislation effective is very difficult.

I hope that during the Committee stage it will be possible to improve the measure so that the public, on the one hand, and those who advertise their wares, on the other, can be fairly and justly treated: but at the same time, if deceiving, misleading, untrue or inaccurate advertising is practised, then a check must be made.

I compliment those who advertise in this State upon the standard maintained. When we think of the number of advertisements seen and heard and viewed in the course of an ordinary business week in Adelaide, we appreciate the enormous amount of advertising projected into the public arena. Although there are times when we wonder whether an advertisement is unquestionably true and accurate, generally the standard achieved is high, and business people in this State deserve credit for that.

The definition of "goods" includes vehicles, vessels, aircraft, animals, and articles and things of any description, and rights in respect of goods. The definition does not include land. I do not know whether it would come under the definition of "things", but I do not think so. I would like to think the present Government considers it unnecessary to consider any action against those who handle the sale of land but, generous as I like to be towards it, I cannot bring myself to accept that it has changed its time-honoured practices and criticisms of land agents.

The Hon. D. H. L. Banfield: If there is nothing to fear, why worry about it?

The Hon. C. M. HILL: I can assure the honourable member there is nothing to fear. He probably, in his own heart, agrees with me that advertising by land agents reaches as high a standard as one could wish. Nevertheless, it is my duty to look at every possible aspect that comes to mind, and naturally this subject comes within this review. I ask the Minister whether land comes within the definition of "goods" and, if it does not, whether there is any reason why the Government has excluded it.

I mentioned earlier that a system of warnings would be an improvement to the machinery set out in the Bill. If the Attorney-General did approve a prosecution, and if a charge were

proven, it could well be that the offence would not warrant a fine of $1,000. I have no truck with anyone who breaks the law in this or any other regard, but it may be that in practice, if this legislation passes, a prosecution might be successful, and in cases such as these the courts have commented that there is no alternative but to impose the fine set out in the legislation, implying by that that it is considered that the offence does not warrant that penalty.

The Hon. D. H. L. Banfield: That is only a maximum penalty, isn't it?

The Hon. C. M. HILL: It does not say so; it simply says that the penalty is $1,000. If there were a system of warnings in which the Attorney-General could issue a warning, he might well find, as has been found apparently in New South Wales, that that offender does not commit a similar offence again. This is a very fair way to treat the matter. I have thought of ways and means of placing an amendment on file to incorporate this approach of a warning being given, but I think it would be very difficult to do that. However, I may raise the point later.

They are my general comments on the measure. I believe the South Australian public approves the principle of this type of legislation, because there is a great deal of buying of goods and accepting of services in our community today. We have a very high standard in advertising in our Adelaide and South Australian community, but there is always the possibility of the bad apple being found in the case. Whilst I think that this legislation will not be really effective, it might well be that before the Bill becomes law and when it gets into the Committee stage it can be further improved upon.

The Hon. D. H. L. BANFIELD secured the adjournment of the debate.

BUILDING BILL

In Committee.

(Continued from March 16. Page 4042.)

Clauses 36 and 37 passed.

Clause 38—"Surveyor may require conformity with Act."

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

In subclause (1) to strike out "surveyor" and insert "council".

This amendment involves the same principle as the amendments I moved successfully in earlier clauses, in which the council is given control in a matter such as this, rather than a servant of the council.

The Hon. A. F. KNEEBONE (Minister of Lands): For the reasons I have expressed earlier concerning similar amendments, I oppose this amendment.

Amendment carried; clause as amended passed.

Clause 39—"Unhealthy and unsightly buildings and structures."

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

In subclause (1) to strike out "or amenity". Under the provisions of the Bill the council inspector may decide on the architectural standards that should apply in the district, but I believe that he is not necessarily competent to make this decision. The use of the words "or amenity" introduces a new concept in the evaluation of a building by a council inspector or surveyor, and I believe that these people should not decide these standards. I believe that this is something that should be decided by an architect. The inspector or surveyor should not have the power to decide that plans for a building should not be accepted because the building would affect the local residents.

The Hon. A. F. KNEEBONE: The Building Act Advisory Committee opposes this amendment. Regulations under the Planning and Development Act include this type of provision but do not cover all areas. Therefore, it is necessary to include this provision in this Bill. Clause 3 also covers this situation in that referees have to be satisfied that the building structure does not adversely affect the amenity of the district. Therefore, people other than the surveyor decide this question.

The Hon. L. R. HART: How does the Minister come to the conclusion that provisions similar to those of the Planning and Development Act should be included in this Bill? As I have said earlier, there is a conflict between the provisions of these two measures.

The Hon. A. F. KNEEBONE: Regulations under the Planning and Development Act do not cover all the areas covered by this Bill and, for that reason, it is necessary to have them in this Bill.

Amendment negatived; clause passed.

Clauses 40 to 50 passed.

Clause 51—"Exemption."

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

To strike out clause 51.

When I indicated in my second reading speech that I would move to delete this clause, the Minister, in defending the Government's intention to have all buildings in the name of the Crown excluded from the provisions of the Act, said, as I recall, "When you were in Government you lived under those conditions: it

applied under the old Act, so why did you not change it when you had the chance?" That was the crux of the Minister's defence. The Building Act has been under review for many years. The purpose of this legislation is to provide uniformity throughout Australia in all the building codes and to bring the Act up to date. I do not accept the fact that the reason why this clause should stay in the Bill is that Governments have apparently lived under it in the past. The Government should not usurp power that affects the individual greatly. Why should all Government buildings be exempt from the provisions of this legislation? That principle is wrong. Now that the Act is being revised, Parliament has the opportunity to right this wrong. Is the Housing Trust exempt from the provisions of this legislation? The Committee should insist on the amendment.

The Hon. L. R. HART: Will the Minister explain what parts of the Bill will apply to the Crown?

The Hon. A. F. KNEEBONE: The reason why previous Liberal Governments did not do anything to bring the Crown under the provisions of the Act was that they knew the Act would eventually be amended. It is not this Government's policy to bring the Crown under the provisions of the Bill. The Housing Trust, which is a separate entity, comes under the provisions of the Bill. The interpretation of buildings and structures covers partly built buildings and structures.

The Hon. L. R. Hart: What about building work?

The Hon. A. F. KNEEBONE: I should think that the term would cover building work. It is not the present policy of this Government that the Crown should be brought within the provisions of the Bill.

The Committee divided on the motion:

Ayes (12)—The Hons. Jessie Cooper, M. B. Dawkins, R. A. Geddes, G. J. Gilfillan, L. R. Hart, C. M. Hill (teller), H. K. Kemp, F. J. Potter, E. K. Russack, Sir Arthur Rymill, V. G. Springett, and A. M. Whyte.

Noes (7)—The Hons. D. H. L. Banfield, T. M. Casey, R. C. DeGaris, Sir Norman Jude, A. F. Kneebone (teller), A. J. Shard, and C. R. Story.

Majority of 5 for the Ayes.

Motion thus carried; clause negatived.

Clauses 52 to 55 passed.

Clause 56—"Default penalty."

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

To strike out "surveyor" and insert "council".

This clause deals with serving upon a person who is in default a notice of that default requiring the person to remedy the default within the period allowed in the notice. The notice includes other conditions, too. I believe that the notice should come from the council itself, not from a servant of the council.

The Hon. A. F. KNEEBONE: I have opposed similar amendments and I oppose this one, too. The surveyor, being a servant of the council, acts under the council's instructions. Because of the additional time that would have to be taken if the amendment were carried, I oppose it.

Amendment carried; clause as amended passed.

Clauses 57 to 59 passed.

Clause 60—"Power to make by-laws."

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

To insert the following new subclause:

(2*a*) The powers conferred under paragraphs (*c*), (*d*), (*e*) and (*f*) of subsection (1) of this section shall not be exercisable in respect of any land that is included within an authorized development plan under the Planning and Development Act, 1966-1969.

The new subclause provides that, when any council wishes to introduce zoning regulations, it must first display them for public scrutiny. This sound practice is laid down in the Planning and Development Act and it is extremely democratic. It gives ratepayers a check on council by-laws, and I believe that it was only some form of error that caused the provision not to be in the Bill in the first place.

The Hon. A. F. KNEEBONE: Because the honourable member has convinced me by his eloquence, I accept the amendment.

Amendment carried; clause as amended passed.

Clause 61 passed.

Clause 62—"Building Advisory Committee."

The Hon. C. M. HILL: I move to insert the following new subclause:

(2*a*) At least one of the members of the committee must be a member of the Master Builders Association of South Australia, Incorporated.

The clause deals with the composition of the six-member committee that will be known as the Building Advisory Committee. It will be a committee that will have its role and responsibilities defined under this Bill. The Government has not indicated whence the six members will be drawn. During this debate, I attended a meeting of builders and other people concerned with another matter, but it was in some ways related to this matter: it dealt

with builders' licensing. There, the Master Builders Association indicated that it had not been consulted very much about the preparation of regulations under the Builders Licensing Act.

The Master Builders Association, as the senior building group in this State, should be involved more closely in legislation affecting the welfare of itself and builders generally. It is not unreasonable to expect that, when a Building Advisory Committee is formed under this measure, the Legislature will ensure that at least one member of the senior association of builders in South Australia will be a member of it. It may well be that the Government intends to appoint one or more members of the association to the committee, but in some other Acts (for instance, the Planning and Development Act) it is laid down that members of associations interested in a particular matter shall be a member of the advisory committee to be appointed. Also, members of a committee can be appointed freely by the Government with no such prerequisite. The wording here is too wide. The clause states:

The committee shall consist of six members appointed by the Governor on the recommendation of the Minister.

The Governor has the power only to appoint one of the members to be chairman.

The Hon. A. F. KNEEBONE: I do not agree to this amendment. It is most unwise that the committee should have representation from a specific body. At present, at least one member of the Building Act Advisory Committee is a builder. I wonder what the honourable member hopes to achieve by this. Mention has been made of the Australian Institute of Building. If the Bill is recommitted and provision is made for "chartered builders", is it right that one building organization and not another should be represented on the Building Advisory Committee? It is conceivable that both the Australian Institute of Building and the Master Builders Association could be represented on the committee. The matter is in the hands of the Minister, on whose recommendation the committee is appointed. It is only natural that there should be a wide diversification of representation without the Master Builders Association being specified. I do not know why the honourable member has nominated that association: there are other organizations of builders. Why should one have representation to the total exclusion of others? I strongly oppose the amendment.

Amendment negatived.

The Hon. L. R. HART: I move to insert the following new subclause:

(4a) A member of the committee shall be appointed for a term, not exceeding three years, specified in the instrument of his appointment, and, at the expiration of a term of appointment, shall be eligible for reappointment.

As the clause stands at present, the Building Advisory Committee is elected in perpetuity. I think its members should be elected for a definite term. No doubt, the architects of this Bill have been, to a large extent, the Building Act Advisory Committee. Without being unkind, I venture to say that they have some interest in having the members of this committee elected in perpetuity. However, I suggest that, in keeping with several other Acts providing for advisory committees, it is consistent that this committee should be elected for a definite term. There is a problem here of the initial period for which they are elected. There may need to be some method of staggering their appointments. Whether or not this can be done in the Bill I do not know; it may be able to be done by regulation, but the Minister can advise us on that.

The Hon. A. F. KNEEBONE: I accept the amendment.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments.

Bill recommitted.

Clause 20—"Appointment of referees"—reconsidered.

The Hon. L. R. HART: I move to insert the following new subclause:

(6) In this section "chartered builder" means a Fellow or Associate of The Australian Institute of Building.

During the earlier discussion of this clause I was successful in having inserted in subclause (2) the words "chartered builder". There was some confusion then about what that meant, so I move this amendment to clarify the situation. I think honourable members will understand the need to have this interpretation placed in this clause, and if any member wishes me to enlarge further on what a fellow or an associate of the Australian Institute of Building is, I would be happy to do so.

The Hon. A. F. KNEEBONE: I do not oppose the amendment, but I think it is in the wrong place. If it is to be an interpretation, I think it should be in clause 6.

The Hon. L. R. HART: My first reaction was that it should be in the interpretation clause, but on the advice of the Draftsman I have put it in clause 20.

Amendment carried; clause as amended passed.

Bill reported with a further amendment; Committee's report adopted.

CONSTITUTION ACT AMENDMENT BILL (VOTING AGE)

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

That this Bill be now read a third time.

The PRESIDENT: As this is a Bill to amend the Constitution Act and the Constitution of the House of Assembly, it is necessary that the third reading be carried by an absolute majority of the whole number of members of the Council. I have counted the Council, and there being present a majority of the whole number of members I put the question: that this Bill be now read a third time. For the question say "Aye", against "No". There being a dissentient voice, a division is necessary.

The Council divided on the third reading:

Ayes (11)—The Hons. D. H. L. Banfield, T. M. Casey, R. A. Geddes, L. R. Hart, C. M. Hill, A. F. Kneebone, F. J. Potter, Sir Arthur Rymill, A. J. Shard (teller), V. G. Springett, and C. R. Story.

Noes (8)—The Hons. Jessie Cooper, M. B. Dawkins, R. C. DeGaris (teller), G. J. Gilfillan, Sir Norman Jude, H. K. Kemp, E. K. Russack, and A. M. Whyte.

Majority of 3 for the Ayes.

The PRESIDENT: I declare the third reading carried by an absolute majority of the whole number of members of the Council.

Bill passed.

EVIDENCE ACT AMENDMENT BILL

Consideration of message from the House of Assembly.

In Committee.

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

That the Committee do not insist on its amendment.

The reason given by the House of Assembly for not accepting the amendment is that it substantially derogates from the utility of the measure. I regret that the Hon. Mrs. Cooper's amendment is not acceptable to the Government. It is necessary to keep the general purpose of the Bill in mind. That purpose is to render computer output admissible in evidence so that computers may be used, in place of conventional storage methods, as repositories for the accounts and other commercial records of banks and other commercial undertakings. The amendment provides that before computer output can be accepted as evidence the information on which the data was prepared must be available to all parties to the proceedings. This, unfortunately, frustrates the whole purpose of the Bill, because if the information has to be preserved in order to be available to parties to the proceedings, there is obviously no point in having a separate computer storage at all.

The Hon. JESSIE COOPER: The amendment returned from the House of Assembly is the one that I moved; it was merely to say that all information from which the data had been prepared should be available to all parties to the proceedings and that the parties should have reasonable time to verify the accuracy of the computer output by duplicate computation or any other reasonable process. Last October, honourable members gave this amendment very serious attention. No honourable member spoke against the purpose of the Bill, namely, to make computerized evidence acceptable in court; but many honourable members were concerned at the serious implications of accepting such evidence and of not being able to have the original information checked. The reason for asking the Council not to accept the amendment is that it substantially derogates from the utility of the measure. That may be so, but surely a Bill that will not stand up unless serious faults are left in it must fundamentally be a proposal for making a bad law.

The Hon. R. C. DeGaris: In other words, utility should not be the main concern.

The Hon. JESSIE COOPER: Quite so. If there is one purpose for which this Chamber exists it is to prevent bad laws being made. Recently, there has been much talk about computers and their method of operation and functioning, apparently designed to indicate that they approach the infallible. However, most of these discussions have only underlined the fact that they are prone to make mistakes. Much of the discussion on technicalities tends to confuse as well as to be unnecessary in considering the principle involved in the Bill. It is as if one spent hours in discussing the function of an internal combustion engine every time an amendment was made to the Road Traffic Act. Mistakes occur, and arrangements have to be made to check computer

findings; and that is what this amendment is about.

What we are really discussing is whether dockets and records of original entry in commercial financial practice should continue to be preserved in the future much as they are at present, even though the processing and the correlating of the information they contain is now being done by computers, not by clerks or ledger machines. There will be some cases where there may be no original written records, such as the recording of telephone calls and the charging of them to an accounting system entirely handled by computing machines. This amendment promotes no difficulty here, because the Bill states that records should be available where they exist. The amendment does not require any new burden of work to be undertaken.

This type of Bill does not relieve the private individual of the necessity for keeping records. All honourable members can think of the many Acts and regulations that require the keeping of decipherable records and so-called standard books of accounting, irrespective of whether computers are used in association with the office work or whether great-grandfather's quill pen is used. We have to keep records by law. It is a delightful vision, is it not, of an officer of a company facing the Commissioner of Taxation and telling him that his company has made a profit of $X for the year and that there are no supporting papers for his contention because his company has used a computer for its transactions and that in the interests of saving storage space the company has now discontinued its customary practice of keeping records. I know that is a facetious suggestion, but honourable members well know that the Taxation Act requires that proper decipherable records be kept. I hope that underlines my point that what is sauce for the goose is not sauce for the gander, namely, that the result of this type of legislation, if left unchecked, will be that Government departments will be able to keep their store rooms devoid of cumbersome piles of records, whereas private individuals and private businessmen, for a variety of statutory reasons, will be no better off than they are today. The fundamental matter in this Bill is that, without the amendment, a party to a dispute may well find himself in a position of having no way of disproving or testing the authenticity of computerized evidence. In my second reading speech I said:

Belief or faith in the mere infallibility of the outpourings of a computer's electronic frenzy should not, I believe, be sufficient for a court of law unless declarations of the machine are subject to cross-examination or checks of their truth.

We must not allow ourselves to be bemused and blinded by the scientific jargon of the practitioners who worship their latest god—a computer. As honourable members are aware, yet another example of the fallibility of a computer has recently occurred. I refer to the results of the recent Matriculation examination. A "small mistake" occurred, it has been said. But look at the consequences —the cost to the Government has been estimated at between $30,000 and $40,000. Further, 46 additional offers have had to be made to students who had been deprived of their rights. Likewise, places have had to be found at both of our universities and at the Institute of Technology. The Commonwealth Government has also been involved in extra expenditure. It was indeed a costly "small mistake" and one which brought many weeks of disappointment to many young students. What if there had been no records to check on this occasion?

Again, recently thousands of tons of the Westgate bridge in Melbourne fell, killing many men. This may yet prove to be another computer's "small mistake". Some day, if this legislation goes through without amendment, someone is going to spend two years in gaol because a computer has made another "small mistake" and because the evidence that brought the conviction about could not be checked, as the original records had been destroyed. However, I have put another amendment on honourable members' files. It has been designed to take the place of the amendment returned to us, and I believe it offers a very reasonable compromise in this matter. I therefore move:

At the end of the motion to add the following alternative amendment:

In new section 59b (2) (*b*) after "output" second occurring to insert "and that all information upon which the data was prepared was preserved for a period of at least twelve months after the day on which the data was prepared".

The Hon. A. J. SHARD: Whilst I must admit that possibly the amendment is a reasonable compromise from the Hon. Mrs. Cooper's viewpoint, I am not a legal man and I am informed that it adds nothing to the Bill. It would make necessary much storage of records, which my advisers tell me is unnecessary. I therefore regret that I cannot accept the amendment. I hope the Committee will support the motion.

The Hon. Sir ARTHUR RYMILL: I am very sorry to hear the Chief Secretary make that announcement on behalf of the Government. I only hope that, if the new amendment is carried (and I sincerely hope it will be), the Government in another place will reconsider the matter.

The Hon. A. J. Shard: I did not say "on behalf of the Government"; I said "my advisers".

The Hon. Sir ARTHUR RYMILL: I hope the Government will give the amendment full consideration, because it is the absolute minimum that is required to give this Bill some margin of safety. If the Government does not accept the amendment I will vote against the Bill; this is not a threat—I am merely expressing an intention. I will not go to a conference because there is nothing to confer upon. At times we have gone to conferences and said to the managers from another place, "We cannot see any latitude for a conference", and they have then given us a whipping for even going to the conference. On this occasion I can see no further room for a compromise.

If the amendment is not acceptable, I will vote against the Bill. It is not just bringing the law of evidence up to date in a changing world: fundamentally, the Bill is substantially against the whole concept of the laws of evidence that have been produced with the wisdom of the ages to ensure that the interests of all citizens are protected. The law demands that the best evidence, the primary evidence, shall be available; it enables secondary evidence (evidence other than the best) to be given only in certain limited cases. This Bill makes secondary evidence primary evidence, and it is a negation of all the laws of evidence that I learned at the university.

Mistakes have occurred, as the Hon. Mrs. Cooper has pointed out. She instanced the mistake connected with the results of the last Matriculation examination. If the examination papers had been destroyed, there would have been no redress for those Matriculation students who actually passed but were said to have failed. I am told on the grapevine that a simple human error was made; certain cards were fed into the computer twice. The operator had one set of cards in one position and another set in another position and, through a human error, fed one lot in twice; thus the computer merely rerecorded what had been recorded earlier and the other cards were not fed in at all. This meant that the students were said by the computer not to have passed because it did not have a chance of pronouncing on them. Under this Bill, unless we have some method of retaining the primary evidence for at least a limited period, who can say what has happened? No-one. Under this Bill, without the Hon. Mrs. Cooper's amendment, as I read it, the primary evidence can be destroyed straightaway. We merely rely on the computer, but we know that even computers themselves make mistakes, let alone those operating them.

I know of one computer that cost a certain Government (not the South Australian Government) a large sum of money recently through a series of mistakes being made. I have heard of these things happening in business. I do not claim any deep knowledge of computers but I have to deal or live with them in my daily life in many ways. I could not operate or programme one; I could not do anything about them, but I do have to deal with what goes into a computer and what comes out of it. Consequently, I do have some knowledge of those aspects of the matter.

So I repeat that keeping the primary evidence for 12 months is some, though not a complete, safeguard that will apply to most cases. The reason why the other place sent back this amendment was that it said that the amendment "substantially"—note "substantially"—"derogates from the utility of the measure." I read that to mean, as I assume the Hon. Mrs. Cooper does, that it does not enable the primary evidence to be got rid of and, therefore, does not enable the storage space to be dispensed with, and so on.

The Hon. Mrs. Cooper's new amendment accommodates that objection from the other place because, if it is carried, it will no longer "substantially derogate" from the purpose of this Bill. It will not completely do so—and I will explain that by saying that the amendment merely states that, from the time the data were prepared, the information from which they were prepared must be retained for 12 months. At that stage, a cause of action may not even have arisen, let alone be known to the parties. This amendment states that the information shall be retained for 12 months from the time the Limitation of Actions Act starts to operate, which may be 15 years hence; but that would be impracticable because it would derogate from the purpose of the legislation.

I assume the Hon. Mrs. Cooper has taken this into account in producing a practical amendment that should (I emphasize "should") satisfy another place as long as it gives the

amendment reasonable consideration. I repeat that I think this is the absolute minimum requirement we should make in introducing this novel legislation. It is by no means perfect but it would apply to most cases while, at the same time, enabling these immense masses of paper not to be stored and retained. So this is a practical amendment, which I hope this Committee will approve and another place will accept.

The Hon. V. G. SPRINGETT: Briefly, I support this new amendment. My contact with computers is in relation to medical matters. We are making increasing use of this type of machine. Normally, case histories and notes are stored for a limited time only, after which they are destroyed; but there is no limit to the storage of computerized records. It is appreciated that we must be careful, in respect of case histories, that what goes into a computer comes out of it correctly. It is reasonable that this Committee should ensure that the time limit recommended by the Hon. Mrs. Cooper for storage of records be acceded to.

Amendment carried; motion as amended carried.

CIVIL AVIATION (CARRIERS' LIABILITY) ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from March 16. Page 4018.)

The Hon. C. M. HILL (Central No. 2): I support this very short Bill, which was introduced by the Chief Secretary who indicated that the principal Act needed amendment because of a sequence of events that had taken place. He said:

The right to recover damages arising from travel on international flights is primarily regulated by the Warsaw Convention, made in 1929, and the Hague Protocol to that convention, made in 1955.

The Commonwealth Act, which is similar to the State Act, applies conditions not only to international flights but also to interstate flights. Our State 1962 Act complements that Commonwealth legislation.

Recently, the Commonwealth Act was amended in two ways and, whilst the State Act is worded so as to conform to such amendments, it is necessary in the circumstances to make these two relatively minor amendments to our State Act. The first concerns charter flights and the second concerns flights commonly known as joy rides, which are flights that start off from a certain point and finish at that same point—if people are lucky! Those two changes are incorporated in clause 3 of the Bill. That is the only provision that introduces changes, and accordingly I support it.

Bill read a second time and taken through Committee without amendment. Committee's report adopted.

BUILDERS LICENSING REGULATIONS

Adjourned debate on motion of the Hon. R. C. DeGaris:

That the regulations under the Builders Licensing Act, 1967, made on November 26, 1970, and laid on the table of this Council on December 1, 1970, be disallowed.

(Continued from March 10. Page 3897.)

The Hon. R. C. DeGARIS (Leader of the Opposition) moved:

That Order of the Day, Private Business No. 2, which was adjourned on motion, be now proceeded with.

Motion carried.

The Hon. D. H. L. BANFIELD (Central No. 1) moved:

That this debate be further adjourned.

The Council divided on the motion:

Ayes (6)—The Hons. D. H. L. Banfield, T. M. Casey, C. M. Hill, A. F. Kneebone, F. J. Potter, and A. J. Shard (teller).

Noes (12)—The Hons. Jessie Cooper, M. B. Dawkins, R. C. DeGaris (teller), R. A. Geddes, G. J. Gilfillan, L. R. Hart, Sir Norman Jude, H. K. Kemp, E. K. Russack, Sir Arthur Rymill, V. G. Springett, and C. R. Story.

Majority of 6 for the Noes.

Motion thus negatived.

The Hon. D. H. L. BANFIELD: There has been a great deal of discussion regarding this matter and whether the debate should be further adjourned. Members opposite know very well that the Government has already indicated its intention to withdraw the present regulations—

The Hon. R. C. DeGaris: No!

The Hon. Sir Norman Jude: Quite incorrect.

The Hon. D. H. L. BANFIELD: —and to bring down a further set of regulations.

The Hon. F. J. Potter: No.

The PRESIDENT: Order!

The Hon. D. H. L. BANFIELD: The position as I understand it is that the Government has announced its intention to withdraw the present regulations and to bring down a fresh set. This has been brought about because of representations made to the Government on the necessity to introduce builders licences as soon as possible, and the Government is prepared to amend the Builders

Licensing Act, and also the regulations, which are the subject of a motion for disallowance.

The Hon. F. J. Potter: That is different from what you said a moment ago.

The Hon. D. H. L. BANFIELD: It is not. There is a motion for disallowance of the regulations and the Government has given an undertaking that it is prepared to make alterations. The Chief Secretary said he thought he should comment on certain statements made by the Hon. Mr. DeGaris. I believe that regulations should operate until such time as other regulations are brought down. The regulations under the Builders Licensing Act, 1967, are to be cited as the regulations of the Builders Licensing Board. Why does the Opposition want the regulations disallowed? Hitherto, there have been only two speakers in this debate, but neither of them fully convinced me that there should not be any regulations. The Government has said that the regulations will be amended.

The Hon. Sir Norman Jude: How do you know what the new regulations will be until the new Bill has been introduced?

The Hon. D. H. L. BANFIELD: Why should the old regulations be disallowed if the honourable member believes there are some good points in them? The Builders Licensing Act was introduced as a result of prolonged negotiations between the various parties and, as a result of agreement between the parties, the Bill was introduced in 1967. Later, someone decided that he wanted to switch. Much switching has been going on.

The Hon. A. J. Shard: And much discourtesy!

The Hon. D. H. L. BANFIELD: Yes. I do not know to which section of the regulations the Opposition is opposed. An application for a builder's licence shall be made in the form set out in the first schedule. The application for a licence must be accompanied by a testimonial as to the applicant's character; the testimonial must be witnessed by a justice of the peace.

The Hon. G. J. Gilfillan: Is that provision in the new regulations?

The Hon. D. H. L. BANFIELD: The Hon. Mr. Gilfillan has had an opportunity to have his say. Perhaps there is some good in some of the regulations. The Opposition is not anxious to hear what the regulations provide. The Leader of the Opposition moved for the disallowance of the regulations on March 3, but I do not believe that any harm has been caused because they were not disallowed on that day. If the Leader had been keen to have the regulations disallowed on that day, or if there was some urgency for their disallowance, he would probably have been able to manoeuvre the debate to a stage where the vote could be taken on March 3. On March 10 further debate took place on this motion, but no vote was taken on that day. Because the Government asked that this matter be adjourned for another week, there seems to be some urgency in this matter. Why is this urgency so great?

The Hon. R. C. DeGaris: Don't tell me that you were stuck for words last Wednesday.

The Hon. D. H. L. BANFIELD: No. It was last week when the Chief Secretary undertook that the Government would amend the regulations. It was a time when the Government and the Opposition could have worked in harmony so that these regulations would have been in force until the Government had had an opportunity to replace them with new regulations, as the Chief Secretary undertook to do. I seek leave to continue my remarks.

Leave granted; debate adjourned.

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from March 16. Page 4019.)

The Hon. F. J. POTTER (Central No. 2): I support the second reading. This Bill is an important measure as far as the Local and District Criminal Courts are concerned, but it is not a matter that need delay the Council for long. It makes two small amendments. First, it helps administratively because it saves much paper work and time on the part of the Public Service Board which, hitherto, has had to deal in a normal administrative manner (which is always somewhat protracted) in making appointments to certain positions in the courts. The Public Service Board procedure has to be followed, but from time to time much trouble has been caused by the continual appointing and reappointing of police officers as clerks of court in country areas. This Bill provides that the rather lengthy procedure should be changed so that the matter is not considered by the board but dealt with administratively by the Attorney-General, who will apply a more simple procedure. That move will have the support of all members. In about 1964, I think, a similar arrangement was made concerning the appointment of local court bailiffs.

The other clauses correct two errors, the first of which occurred when the Act was passed in 1969, and the second having been

standing since 1926, in which a reference was made to section 165 of the Act instead of to section 166. The latter error has now been encountered by the Draftsman when undertaking the revision of the Statutes. Incidentally, I should like the Minister to say what the position is concerning the revision of the Statutes. This matter has been referred to previously by the Hon. Sir Arthur Rymill and me, but we have not yet received any information about it. I know that it is a difficult undertaking, but our annual volumes are growing in size each year and it is about 35 years since the Statutes were consolidated. This is an important task, because each year it has become more difficult to trace the various amendments to the Acts. Yesterday I was considering the Judges' Pensions Bill in order to compare it to the Parliamentary Superannuation Act, but I had great difficulty in following through the latter measure and the amendments to it. This is a simple Bill: I support it, and hope that it has a rapid passage through the Council.

Bill read a second time and taken through Committee without amendment. Committee's report adopted.

ADJOURNMENT

At 6.7 p.m. the Council adjourned until Thursday, March 18, at 2.15 p.m.