LEGISLATIVE COUNCIL

Wednesday, November 10, 1971

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

QUESTIONS

WEEDS

The Hon. C. R. STORY: I seek leave to make a short statement before asking a question of the Minister of Agriculture.

Leave granted.

The Hon. C. R. STORY: The Minister may have noticed in this morning's *Advertiser* a complaint by the Gumeracha District Council, which has taken the unusual action of serving notice on the Government for not cleaning up noxious weeds on Crown lands. I know that this has been a contentious subject for several years in the area. Has the Minister read the report and has he had correspondence or discussions with the council? Further, what action does he intend to take in the matter?

The Hon. T. M. CASEY: I have briefly read the report, but I have had no discussions with the council on a personal basis. I am sure the honourable member will be aware that most of the land involved in the area is Woods and Forests Department land. That department was requested some time ago (and I have already repeated the request) to clean up the weeds as quickly as possible to satisfy the council.

The Hon. C. R. STORY: Can the Minister say whether the Government is willing, in the circumstances, to ensure that an excess warrant will be made available to assist this council, which is obviously in some difficulty, after having spent about $3,500 of its money, in trying to clean up weeds on its own land, in excess of what local farmers have actually done?

The Hon. T. M. CASEY: I am unable to assess the situation at this time. However, I would be willing to meet the council to discuss the matter, rather than make a statement now.

AREA SCHOOL COURSES

The Hon. M. B. CAMERON: Has the Minister of Agriculture a reply from the Minister of Education to my question of November 4 about area school courses?

The Hon. T. M. CASEY: My colleague states:

The position with respect to internal certificates, as I think the honourable member will appreciate, has existed for a long time, and I believe some employers discriminate against students who have an internal certificate of the school in question, as opposed to those with the Public Examinations Board certificate. Indeed, there is a tendency by some employers to over-employ in the sense that they prefer P.E.B. qualifications for certain jobs, where such qualifications are not necessary. I do not think for one moment it is correct that certain jobs are closed to students who have gained internal certificates. The position in relation to a number of the cases mentioned by the honourable member has been checked in the period since I have been Minister, and I assure the honourable member that what he has indicated is not, in fact, the case. I think he will appreciate that for a considerable time the technical high schools have been graduating students who have only an internal certificate. So the position is not peculiar to area schools: it also occurs at high schools, as well as at technical high schools. Inevitably, no matter what the department tries to do, and even though the position has improved in recent years, some employers and some parents over-rate the value of P.E.B. certificates.

I believe that we will not get employers and the community generally to assess the position properly until we eliminate public examinations. I hope that I will soon be able to announce the formation of a committee to investigate the possibility of establishing alternatives to the P.E.B. Leaving and Matriculation examinations. When such alternatives can be introduced so that every student is more or less on the same footing, the kind of suspicion that exists to the effect that a student may miss out on a job because he or she has only an internal certificate will be groundless, and cases involving the preference of some employers for P.E.B. students, and the effect that has on students who have gained an internal certificate, will no longer exist.

SPEED LIMITS

The Hon. C. M. HILL: Recently, I asked the Minister of Lands, representing the Minister of Roads and Transport, whether some special consideration could be given to owners of heavy commercial vehicles who had infringed speed limits in regard to the question of penalty under the points demerit scheme. Has the Minister a reply?

The Hon. A. F. KNEEBONE: The honourable member's question concerned maximum speed limits being subsequently raised, people having lost points for breaches of the speed limit, and whether special consideration could be given because the law had been altered. I replied off the cuff to his original question, and I think the reply from my colleague is on the same lines as mine.

My colleague states:

It would be wrong in principle to legislate to reduce retrospectively the points awarded against offenders. The fact that the law is subsequently amended is not a ground for reducing penalties imposed for breaches of the previously existing law.

FREIGHT CHARGES

The Hon. M. B. CAMERON: I seek leave to make a short statement before asking a question of the Chief Secretary, representing the Attorney-General.

Leave granted.

The Hon. M. B. CAMERON: My question concerns the present freight charge on wines and spirits in country areas. This matter has arisen before and, in relation to beer, some action has been taken and freight charges have been reduced. I understand that the actual cost a dozen of carting wine and spirits to one country area that I know is 50c by rail and about 30c by road. That is not a significant difference, but the important point of my question is that the price charged over the counter for freight on spirits is between 22c and 30c a bottle compared to the actual freight cost of 30c a dozen. In other words, a profit of $3.30 a dozen is made on freight alone. A not quite so serious situation exists with wine, where there is a smaller freight charge, flagons being charged for at the rate of 18c each. It is spirits that are really causing concern. Will the Minister investigate this situation, which has existed for some years, to see whether something can be done to alleviate it? I know it will probably assist country publicans but, nevertheless, it is an additional charge on country people, which is not justified.

The Hon. A. J. SHARD: I will refer the honourable member's question to my colleague the Attorney-General and bring back a reply as soon as possible.

MEAT

The Hon. C. R. STORY: I seek leave to make a short statement with a view to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. C. R. STORY: It comes as some surprise, I think, to most of us when we realize that Australia at present has a short-fall of 15,000 tons of meat into the United States of America, whereas New Zealand has filled its quota and no doubt other countries have filled their quotas, too. In the serious position in which our industries, and particularly mutton and lamb, are at present, what knowledge does the Minister have of the present overall situation and how far can South Australian exporters be blamed for the quota not being filled?

The Hon. T. M. CASEY: This, of course, is a matter for the Australian Meat Board. I must confess I have been rather critical of that board on this matter, because it came to my notice several months ago that there would be a short-fall of meat exported to the United States. Honourable members will recall that at that time we were trying to push as much meat as possible into the United States because of the expected dock strike in that country, which we thought was inevitable—and it did happen. But the point I raised, which was a critical one, was that we had been endeavouring to open up new markets, particularly for meat, and in my opinion, whilst this was good in one sense, we had to ensure that we met the requirements of the quota that we had arranged with the United States of America. I believe this is still the best market to get into. I raised this point on one occasion even at an Agricultural Council meeting. I am afraid I cannot answer the honourable member's point about the loss that can be attributed to South Australia. However, I will endeavour to get some information from the Australian Meat Board and find out what the present situation is.

The Hon. H. K. KEMP: Can the Minister say whether the short-fall of 15,000 tons of Australian meat being exported to America (I think mainly in beef) is being made up by mutton and lamb from New Zealand?

The Hon. T. M. CASEY: I am unable specifically to answer that question. As I told the Hon. Mr. Story, I will try to obtain as much information on the matter as I can from the Australian Meat Board and include it in my reply.

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

Leave granted.

The Hon. L. R. HART: The Minister said he was critical of the Australian Meat Board regarding its obligations to provide meat for the American market.

The Hon. T. M. Casey: That is, fulfilling its contract.

The Hon. L. R. HART: One assumes the Minister means that we should neglect our opportunities to develop other markets besides those in America, bearing in mind that we supply about 90 per cent of the beef imported into Japan, which in the coming year is going to import about 100,000 tons of beef. Does the Minister believe that we should neglect those other markets in favour of the United States market?

The Hon. T. M. CASEY: The answer to that question is obviously "No". I think I covered this matter in the reply I gave to the Hon. Mr. Story. I said that, if we made a contract with anyone, that contract should be fulfilled to the best of our ability without our going elsewhere, fully realizing that we may not be able to meet the contract if we went elsewhere. I believe we should try to develop our markets all over the world. However, it is no good our signing a contract with a country knowing that we will not be able to fulfil it. I have said that I believe the American market is at this stage still the best meat market to get into; the Japanese market is also a good one. However, if we do not fulfil our contract with the United States, it stands to reason that purchases from us will be cut back the following year, and that could be detrimental to the meat industry throughout the Commonwealth. That was the point I made.

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

Leave granted.

The Hon. C. R. STORY: When I returned from overseas in May, 1970, and reported to the first session of this Parliament that there was much interest in Australian meat in Singapore, as was reported to me by the Australian Trade Commissioner there, I asked the Minister of Agriculture whether he would take up the matter with the relevant Commonwealth Minister who, after all, is responsible for the Australian Meat Board. Will the Minister say whether any action has been taken to ascertain whether the Australian Meat Board has fully exploited the opportunities available to it in Singapore?

The Hon. T. M. CASEY: I will endeavour to obtain information along the same lines as indicated previously.

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

Leave granted.

The Hon. L. R. HART: I thank the Minister for his reply to my question regarding imports of Australian beef into the American market. Is the Minister aware that the short-fall in imports of beef into American markets from Australia is beyond the control of the Australian Meat Board? This is borne out by a recent statement by the Chairman of the Australian Meat Board, Colonel McArthur, who said that Australia's performance in shipping meat to the United States during 1971 was such that our quotas of beef and mutton permitted entry into the United States would have been shipped by mid-October had it not been for the abnormal difficulties created by the industrial situation in the United States. On that basis it appears that Australia's short-fall in its deliveries of meat to the United States market was definitely beyond the control of the Australian Meat Board. Is the Minister aware of this?

The Hon. T. M. CASEY: Yes, and I think I indicated that in the reply I gave to the Hon. Mr. Story. I will follow that up by saying I had firsthand knowledge of this because, during a recent trip to Sydney, where I attended a Forestry Council meeting, I visited the Australian Meat Board and ascertained the situation at that time. That is how I was able to elaborate in my answer to the Hon. Mr. Story.

RED SCALE

The Hon. C. R. STORY: The Minister of Agriculture has been good enought to inform me that he has a reply to a question I asked on November 3 about whether, as a result of the merger of fertilizer companies, there would be any alteration in the assistance given for research into the control of red scale.

The Hon. T. M. CASEY: The company, Cresco Biological Services, which was set up to breed parasites of red scale on a commercial basis, is an independent subsidiary, and its operations are not expected to be affected by amalgamations between fertilizer companies involving Cresco Fertilizers. The operation of Cresco Biological Services will not affect the research programme of the Agriculture Department into red scale control.

TERTIARY EDUCATION FEES

The Hon. M. B. DAWKINS: About a fortnight ago I asked a question of the Minister of Agriculture, representing the Minister of Education, regarding tertiary education fees. Has the Minister a reply; if not, could he ascertain when a reply will be available?

The Hon. T. M. CASEY: I have not yet received a reply from my colleague, but now that the honourable member has mentioned the matter once again I will refer it to the Minister of Education to see whether a speedy reply can be made available.

GOVERNMENT INSURANCE OFFICE

The Hon. R. C. DeGARIS: I seek leave to make a brief statement prior to asking a question of the Chief Secretary, representing the Treasurer.

Leave granted.

The Hon. R. C. DeGARIS: Recently the Chief Secretary was able to give me 15 replies to questions asked on notice regarding the Government Insurance Office. Regarding questions Nos. 3, 4, 5 and 6 in relation to reinsurance, will the Chief Secretary inquire from the Treasurer and make available to the Council details of arrangements made in relation to reinsurance, particularly as to whether reinsurance has been made with foreign companies or foreign groups, or whether with Australian or South Australian interests? In relation to the reply to question No. 14, which referred to appropriate insurance cover being arranged for members of the commission who are not members of the Public Service, will the Minister ascertain what insurance has been arranged for such members who are not public servants and whether any extra insurance has been arranged in relation to those in the Public Service who may be serving on the commission?

The Hon. A. J. SHARD: I will refer the questions to the Treasurer and bring back a reply as soon as it is available.

SOFTWOOD PLANTINGS

The Hon. C. R. STORY: I seek leave to make a short statement before asking a question of the Minister of Forests.

Leave granted.

The Hon. C. R. STORY: I noticed in today's *Advertiser* a report of a reply to a question asked in another place that South Australia was not receiving the same percentage of the Commonwealth subsidy towards reafforestation as were some other States. Is it not a fact that South Australia itself voluntarily agreed to steady down its forestry plantings in about 1965?

The Hon. A. J. Shard: Would it be 1964? There is significance in the year 1965.

The Hon. C. R. STORY: As the question appears to have been almost answered by the Chief Secretary for the Minister of Forests, it is hardly worth my persevering. I believe that neither the Government of the day nor the landholders desired to buy up land at a very high cost to plant trees. It was therefore voluntarily agreed that South Australia would not require so much in the future. I may have misunderstood the situation. Can the Minister say what the reply given in the other place really means?

The Hon. T. M. CASEY: I think I can give the honourable member the information he wants. At the last Forestry Council meeting the Commonwealth Government said that it would reduce the amount of subsidy to all States under the new proposed five-year softwoods agreement. Prior to the meeting of the council, the standing committee met (that is standard procedure) and the allocation for South Australia was fixed at 1,230 acres for the next five years—a significant reduction on the previous allocation. All States suffered a reduction. At the last meeting of the Forestry Council I agreed to a reduction for South Australia because we are not in the same position as other States are in connection with the availability of Crown lands. Of course, I was not very happy about the overall reduction throughout the Commonwealth, because the softwoods industry is very important to this country. I said at the meeting that it would appear that the softwoods agreement was affected by an agreement with New Zealand whereby Australia would be importing more New Zealand timber in future to the detriment of the Australian softwoods industry. Since then the Commonwealth Minister for National Development has notified me that the Commonwealth Government has further reduced South Australia's allocation to 500 acres and that the reduction of 730 acres will be spread across the board to the other States. I disagreed with that, and the Commonwealth Minister has agreed to have another look at the situation.

TIMBER SALES

The Hon. M. B. CAMERON: On September 29, I asked the Minister of Forests the following question: can the Minister say what is the trend in sales of timber products from the State sawmills at Mount Gambier, Mount Burr and Nangwarry? Is there a downward trend and, if so, what is the reason for it? Could the Minister provide an up-to-date reply?

The Hon. T. M. CASEY: I shall check up on that matter for the honourable member.

RECLAIMED WATER

Adjourned debate on the motion of the Hon. H. K. Kemp:

That, in the opinion of this Council, the Government should give urgent attention to the immediate release of reclaimed water from the Bolivar treatment works for the replacement of underground water supplies in Virginia and adjacent districts.

(Continued from November 3. Page 2690.)

The Hon. E. K. RUSSACK (Midland): I support the motion. Over the years much has been said about reclaimed water from the Bolivar treatment works. Whilst I do not intend to go into the technological details of the project, I should like to refer to the Santee recreation project in California, which was deliberately planned to use reclaimed effluent. After progressive use of the lakes for boating and fishing, an adjacent area was used for swimming. No health hazards have been demonstrated by the findings. On one occasion a test was made, and it was found that the lake had been contaminated by ducks. After the ducks had been removed, the water returned to its previous satisfactory state. That could apply to difficulties in the effluent system in this State. Following the experience connected with swimming in 1965 at the Santee Lakes, a list of 3,200 registrants was checked against the morbidity records. Although there were 15 reports of illnesses from this area, none was connected with the swimming participants. So, in America through research and investigation it appears that no real health hazard has resulted from reclaimed water.

We know that the development of the metropolitan area was very swift and expansive following the Second World War. Many market gardeners had to move from the metropolitan area and find suitable areas in the plains north of Adelaide, around the Little Para River and the Gawler River. In those areas people had been gardening with great success, because of the climatic conditions and the good underground water that was obtainable at no great depth.

The Metropolitan Development Plan, which was prepared to forecast the probable expansion in the area and guide the future development of Adelaide and its surrounding areas, suggested that the displaced market gardeners would establish themselves on the plains, and the plan was marked accordingly. A large area of the plain north of Adelaide, with the township of Virginia as its centre, was marked as an area where subdivision of land into 10-acre blocks should be permitted, and the Bolivar Sewage Treatment Works was sited in the position where quantitites of good quality reclaimed water would be available. This plan has been put into effect, and many blocks of 10-acres have been acquired by some of the people who moved to the Virginia area. Many sought employment in nearby secondary industries until they could establish themselves. In about 1959, the Government set up a committee to investigate the possibility of using reclaimed water for irrigation, and a report of the Committee of Inquiry into the Utilization of Effluent from the Bolivar Sewage Treatment Works was laid on the table of this Council on July 12, 1966. In a special report a member of the committee, Mr. Hodgson, stated:

The proposals herein covering the treatment and disposal of the sewage are complete in themselves. It is considered, however, that the utilization of the effluent for irrigation purposes, as and when required during the dry months of the year, is worthy of consideration and investigation by the appropriate authority and that generally speaking in a country like South Australia, which is deficient in water supplies, this large volume of relatively good water should not go unused if it is suitable for use.

The report suggested that a committee of experts including officers from the Lands Department, the Agriculture Department, and the Engineering and Water Supply Department should be appointed to report on possible uses of effluent for irrigation. Later, the report stated:

Possibly the biggest disappointment to the committee has been its inability to suggest ways in which the relatively large volumes of the better quality winter flows can be used. It feels certain, however, that these winter flows must ultimately be utilized and that this presents a challenge for the future.

I suggest that the time to accept this challenge has arrived and that it is evident that it was in the minds of those responsible for the siting and establishment of the works that this water would ultimately be used for irrigation. I suggest that this report proves that this was the case, and that the works were sited in a place where it would be suitable for reclaimed water to be reticulated into the gardening areas and used for that purpose.

With people moving into the Virginia area and taking up market gardening, naturally there was a greater drain on the underground water resources. A total of about 10,000 acres is now irrigated by ground water for all aquifers; of this total more than 9,000 acres is irrigated from about 800 bores from

the deep aquifers, and 1,000 acres from about 200 bores terminating in the shallow aquifers. Meters have been installed at about 1,000 irrigation bores, a task that was completed by November, 1970. The withdrawal for the first complete month was 542,000,000gall. It has been definitely determined that since 1967 the decline in the falling level of this underground water has been arrested, but it has not yet been determined whether this position will continue. As we know, 1967 was a particularly dry year, and it was then that action was taken so that the water would not be used indiscriminately. Quotas were introduced, and since then there have been cuts in the quota, but it is encouraging to know that a desirable level has been maintained in recent times because of the introduction of quotas, few and only necessary new bores being sunk, and because we have enjoyed good rainfall in the past few years.

The present situation in the area is such that the underground water is being maintained at a satisfactory level. I stress again that I realize that the details of production in this area have been referred to before in this House, but I consider that it is important for us to constantly realize the extent of the industry and the activities in this area in which water is so necessary. About 4,500 acres of vegetables is grown in this area, and it is estimated that more than 1,550 families are directly engaged in primary production. These figures were established about 18 months ago, but they are actual figures and they have been obtained from a reliable source. In the area many vegetables are grown: beans, celery, onions, cauliflowers and cabbages, carrots, lettuce, outside cucumbers, almonds, flowers, trombones, triamble, and other vegetables.

On one occasion celery was sent to the Philippines (that occurred when American servicemen were present in that area), and large quantities of tomatoes are sent to other States as well as supplying the local market. Had there been ideal conditions and water available, I consider that the marketing of celery to the Philippines could have been further exploited and continued. The potential is there, and there would be a great potential in other industries if water was available. From a really reliable source I understand that drying of vegetables could have been undertaken, and that this would have developed into a rather lucrative industry, but there was not sufficient water to grow the necessary quantities of vegetable.

The Hon. L. R. Hart: Especially onions.

The Hon. E. K. RUSSACK: Yes, especially onions. It was my privilege several months ago to inspect the experimental farm that has been established by the Munno Para District Council. I returned to it recently. On my first visit, there were tomato plants in the glasshouses that had just been planted; on my last visit those plants had grown to the top of the glasshouses and were bearing prolifically. The tomatoes were of good quality. Also, there was an area of good quality onions. These vegetables and fruit had been grown by the use of the reclaimed water.

The experimental farm has been organized by the Munno Para District Council in cooperation with some enthusiastic market gardeners, who have spent much time on it. They are confident and wish to prove (and I think they have proved) that this water can be used successfully and is not detrimental in any way. Even if it is detrimental to vegetables that come into direct contact with it, it can be used without fear on fruit and vegetables that do not come into contact with it.

The Hon. C. R. Story: The greatest disciple would be Mr. Bob Sanders.

The Hon. E. K. RUSSACK: Yes—Mr. Bob Sanders, Mr. Ron Baker, Mr. Nicol, and Mr. Robinson, a few well known men who not only have entered into this project for their own private satisfaction but are also community-minded and public-spirited men, some of them being councillors.

The Hon. C. R. Story: And most of them are without vested interests.

The Hon. E. K. RUSSACK: Yes.

The Hon. M. B. Dawkins: Some of them have been sitting in the gallery from time to time, too.

The Hon. E. K. RUSSACK: They all have confidence in that area; they appreciate the situation and know that, for any further expansion or even maintenance of the present situation to take place, they must have additional water. That water could and must come from the source of which we are speaking. The reclaimed water is flowing at the rate of more than 20,000,000gall. a day from the treatment plant into St. Vincent Gulf. Over the past few months in particular, there seems to have been developing a weed in the sea known as cabbage weed, or ulva, which is beginning

to create quite a nuisance. Reference was made to this in the press a week or so ago, when it was stated:

The plant, cabbage weed (ulva), is regarded by scientists as a reliable pollution indicator. Residents and fishermen at St. Kilda, about three miles from the effluent outlet, say it is upsetting the life cycles of crabs and fish, choking fishing nets and posing a possible threat to the area's mangrove swamps.

I point out that it is obvious from this report that this is happening in an area where fishing is active. If the reclaimed water is detrimental to the growing of vegetables, will it not be detrimental to anyone eating fish where the fish have been swimming in a part of the sea into which the effluent or reclaimed water is flowing? A little later, the article states:

Dr. H. B. S. Womersley, reader in botany at the University of Adelaide, said yesterday that the nitrates and phosphates in the effluent caused the rapid growth of the cabbage weed. Factors indicated that a process called eutrophication was occurring at St. Kilda. . . . Dr. Womersley said that ways to prevent a recurrence of the problem were: piping the effluent two or three miles out to sea, where it could be dispersed more readily—

I suggest that would be a very costly installation. The article continues:

treating chemically to reduce the phosphates; diverting the effluent for use on nearby agricultural areas.

The industry, as I have stressed, is most important to this area. In this State we have developed over the years by the introduction of industry into the State, by attracting industry; but here we have an industry already established that is waiting for water so that it can further expand and develop. The people in this area are at a standstill. Many have invested their whole life's savings. Banks have advanced much money but at the moment there can be no further development. In fact, if there is any further cut in the water quota, there will be a decline and many growers will be forced to cease operations, which would be a serious matter.

The people of the area have confidence: they believe they will be able to use this water. The Minister of Works (Hon. Mr. Corcoran) has been reported as saying that he, too, is anxious to see the effluent used for irrigation but the Government does not want to spend $2,000,000 on reticulation only to find that in five years' time the water is no good. Over the last decade there has been investigation by this Government and by private concerns, and I know the problem is still being examined and processed.

The Hon. L. R. Hart: It was examined by the previous Government, too.

The Hon. E. K. RUSSACK: Yes.

The Hon. L. R. Hart: And by Sir Thomas Playford's Government.

The Hon. E. K. RUSSACK: The Playford Government was the Government that had the foresight to establish these treatment works; it set up the committee of investigation that submitted its report in 1966. It submitted recommendations that could be of much assistance. Because of the foresight of the Playford Government and other former Governments, we have reached the point of a possible expansion of a great market gardening industry in the Virginia area. For this reason, I urge the Government to investigate immediately the possibility of using reclaimed water in this area. As the water is already being used by certain people for specific purposes, I am certain that it can be used in greater quantity to replenish the underground water which is being used and which is the lifeline of this area. I support the motion.

The Hon. R. A. GEDDES secured the adjournment of the debate.

DISTINGUISHED VISITORS

The PRESIDENT: Order! I notice in the gallery distinguished visitors from the United Kingdom Parliament, in the persons of Mr. R. L. Mawby, M.P., Mr. P. M. Hordern, M.P., Dr. the Hon. S. C. W. Summerskill, M.P., Mr. T. Oswald, M.P., and Mr. M. Shaw, M.P. I invite the leader of the delegation, Mr. Mawby, to take a seat on the floor of the Council and ask the Hon. the Chief Secretary and the Hon. Mr. Story to escort the distinguished visitor to a seat on the right of the Chair.

Mr. Mawby was escorted by the Hon. the Chief Secretary and the Hon. Mr. Story to a seat on the floor of the Council.

CIGARETTES (LABELLING) BILL

Adjourned debate on second reading.

(Continued from November 3. Page 2693.)

The Hon. A. M. WHYTE (Northern): I have no opposition to the Bill. I have made a series of inquiries throughout the tobacco industry and retailers associations, none of which seem to mount any opposition to it. They say that, although this labelling can do no harm, it will probably not do much good, and that it may increase the cost of cigarette smoking for consumers. However, there is no real evidence that this will happen.

The Hon. D. H. L. Banfield: What do they think it will cost?

The Hon. A. M. WHYTE: They have not estimated that, because they are not sure of the type of label that will be used. The Bill will come into operation by proclamation, but only if three other States agree to pass complementary legislation. I understand that Queensland has already accepted similar legislation and that New South Wales and Victoria have similar legislation before their Parliaments which, it appears, will be accepted and proclaimed. There seems to be no real opposition from the industry, and I have none myself. If the honourable member who introduced the Bill were able in any way to prevent me from smoking or to lessen my desire to do so, I should be pleased to receive his assistance. I doubt whether anything in this legislation will help at all.

The Hon. A. J. Shard: Would you like me to get you some journals to read that might help you?

The Hon. A. M. WHYTE: I have studied many such publications. This legislation is similar to the seat belt legislation which, although it is good, should not necessarily be made compulsory. I reiterate that I do not oppose the Bill.

The Hon. C. R. STORY (Midland): I support the Bill. As most honourable members know, I was an inveterate smoker, and for over 12 months I have realized that the cessation of smoking has improved my health considerably.

The Hon. D. H. L. Banfield: You are looking better.

The Hon. C. R. STORY: I thank the honourable member for his interjection. He is very observant. Although I can see no harm in what the Bill is attempting to do, I do not know how much good it will do. Knowing the interest that the Hon. Mr. Springett has exhibited in anti-cancer activities since he has been a member of this Council, I realize that no more suitable person could introduce the Bill into this Chamber than he. Eventually, I believe the Government will spend much more money on promotion in attempting to convince people, particularly young people (I do not think it is much good starting on people of my age), of the hazards of cigarette smoking.

The Hon. A. J. Shard: You're only a baby yet.

The Hon. C. R. STORY: They convinced the Chief Secretary to stop smoking years ago.

The Hon. A. J. Shard: I never started it. I was taught properly in my childhood.

The Hon. C. R. STORY: The Minister's interjection reflects on another Bill that the Council was debating yesterday. This is a good measure, which I wholeheartedly support. I only hope that it is a forerunner to what will happen throughout the Commonwealth in relation to television and radio advertisements for cigarettes. I realize that this is big business, and that some interests will lose much money if advertising of this nature is prohibited. At the same time, it must also be realized that British and American tobacco interests are investing heavily in this State's wine industry, so we must watch the two-way take.

The Hon. V. G. SPRINGETT (Southern): I thank honourable members for their contributions to the debate. It has been suggested on more than one occasion that this Bill will not do a great deal of good. Although it probably has a limited influence, the most important aspect of a measure such as this is that no-one taking a cigarette packet into his hand will be able to say that he has not been warned of the possible risk he is running when indulging to excess in smoking. There is, no doubt, a relationship between these matters. There is no longer any scientific controversy regarding the risk created by cigarette smoking.

Reference has been made to television and radio advertisements. Such advertisements are potent and costly and, because of the cost involved, it is virtually impossible for anti-smoking interests to undertake this form of advertising. The cigarette companies have unlimited funds compared with the funds at the disposal of anti-cancer organizations. A few weeks ago, a conference on cancer education was held in London, at which I understand one speaker said he looked forward to the day when smoking would be done only by consenting adults in private. I thank honourable members for their attention to the measure.

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

ACTION FOR BREACH OF PROMISE OF MARRIAGE (ABOLITION) BILL

Read a third time and passed.

FILM CLASSIFICATION BILL

Third reading.

The Hon. A. J. SHARD (Chief Secretary) moved:

That this Bill be now read a third time.

The Hon. C. R. STORY (Midland): I rise mainly to say that I was disappointed yesterday when the Minister in charge of the Bill (and I regret that I have to say this in his absence from the Chamber) challenged me that I had said I would do my best, as the person who was the first speaker, to get this Bill through expeditiously. The Minister accused members on this side, or at least implied, that we were doing something to hold up the Bill. The Bill did pass through all stages yesterday. I want to place on record that the Council did not delay unduly the passage of the Bill, but merely sought a short adjournment whilst the Government was sorting out its own Bill.

Bill read a third time and passed.

REGISTRATION OF DOGS ACT AMENDMENT BILL

Second reading.

The Hon. A. F. KNEEBONE (Minister of Lands): I move:

That this Bill be now read a second time.

It is designed to overcome a serious deficiency in the provisions of the Registration of Dogs Act. The principal Act at present provides for the destruction of bitches which are found at large and on heat, for the impounding and subsequent destruction (if unclaimed) of stray dogs, and for the destruction of dogs found worrying any sheep or cattle. It does not, however, provide for the destruction of stray dogs which are found to be a danger to human life. A number of incidents have occurred in which children have been terrorized and exposed to risk of injury by stray dogs, and the purpose of the present Bill is to provide sufficient powers to enable these situations to be adequately dealt with.

The provisions of the Bill are as follows: Clause 1 is formal. Clause 2 inserts a new section 20a in the principal Act. This section provides that where a dog is at large in any public place, or in any premises not belonging to, or occupied by, the owner of the dog, and an authorized person forms the opinion that the behaviour of the dog suggests that it constitutes a danger to the public, he may, if the dog cannot be safely seized and removed, proceed immediately to destroy the dog or arrange for its destruction. Subsection (2) provides that an authorized person is a member of the Police Force or any other person authorized in terms of the new provision.

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

MOTOR VEHICLES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 9. Page 2786.)

The Hon. G. J. GILFILLAN (Northern): In rising to speak to this Bill, I must say at the outset that I am rather confused about its aims. I have read with some interest the Minister's second reading explanation, and I have tried to follow the logic of his statement regarding the new system of making third party insurance for motor vehicles a compulsory insurance through the Motor Vehicles Department rather than the existing practice where a motorist must insure his vehicle first. I am not concerned about whose policy this procedure was; I am only concerned about the effect it will have on the motoring public.

In the second reading explanation it is claimed that this system will make insurance and registration more convenient to the public, will streamline the process, and will reduce costs. My own personal experience as a country member (and I find this is shared by people living in the metropolitan area) is that under existing conditions it is common practice for an insurer wishing to register his motor vehicle to enclose in the one envelope two cheques and the renewal notice from the insurance company, together with the renewal notice from the Registrar of Motor Vehicles, and to post all the documents to the insurance company, with the result that shortly afterwards the registration disc arrives and can be placed on the vehicle. It takes only the one action of sending the two cheques and the two forms to the insurance company. Under the proposed system, that person will be expected to prepare a cheque and send it to the Motor Vehicles Department to cover both his third party premium and his registration fee. Further, he will have to send a cheque to his regular insurance company to cover his comprehensive policy. I cannot see how that will benefit anyone very much.

The fact that the third party insurance policy must be put through the Motor Vehicles Department will in many instances lead to inconvenience. Further, there will be the risk that a person may take out third party insurance and perhaps overlook the need

to renew his comprehensive policy; that could be disastrous if a serious accident occurred. So, the principle of having the facilities for paying third party premiums available at the Motor Vehicles Department is good, but I cannot see that it should be compulsory to use those facilities.

The Hon. A. F. Kneebone: It would be very costly to have two systems.

The Hon. G. J. GILFILLAN: I believe that the Registrar of Motor Vehicles will charge the insurance companies for providing the service.

The Hon. A. F. Kneebone: The insurance companies are happy with the arrangement.

The Hon. G. J. GILFILLAN: If that is so, why would there be an additional cost in running two systems? The insurance companies will still have to make third party insurance available to clients for other types of vehicle insurance that do not involve registration; for example, insurance of farm vehicles, tractors and other exempted vehicles. The companies will still have to provide comprehensive policies. So I fail to see where there is any gain in connection with convenience to the public. There may be gain to the Motor Vehicles Department, but that has not been made obvious in the Bill or in the Minister's second reading explanation. Why should the system be made compulsory? I know that some honourable members are concerned about some of the provisions in the Bill.

Agents and sub-agents of insurance companies get commissions, but clause 34 prohibits an approved insurer from making a payment in the nature of a rebate or commission to any person in respect of any policy of insurance. Clause 12 provides for the recovery of moneys due to the Registrar on cancellation of registration where short payment is made or a cheque is dishonoured. If a person fails to comply with a direction under new section 43 (6) he may be fined up to $100. I am aware that on cancellation of registration the disc must be destroyed. It is humorous that a person whose cheque has bounced may be liable to a $100 fine. The person would need to have a careful check with his bank before posting the cheque! Why has a choice not been left to the motorist, particularly a country motorist, so that, if he wishes, he can insure in the old way?

The Hon. A. F. Kneebone: This is a move towards decentralization.

The Hon. G. J. GILFILLAN: That is not in the Bill.

The Hon. A. F. Kneebone: This is a move towards it.

The Hon. G. J. GILLFILLAN: I cannot see why compulsion has to be provided for. I realize that there are different interpretations of the words "shall" and "may". New section 99a provides that an applicant "must" at the time of his application pay to the Registrar the premium, yet new section 99a (2) provides:

The applicant shall, in his application, select an approved insurer to be the insurer in terms of the policy of insurance—

that implies that he must do so—

and if he fails so to select an approved insurer the Registrar may . . .

I cannot understand why the system would not work efficiently if a choice was left to the person taking out the insurance. Third party insurance will have to be available where registration is not required for some vehicles. Many people who insure vehicles do not realize that third party policies do not cover them for property damage or for personal injury: such policies cover them only in respect of passengers and the driver of another car. That should be spelt out clearly in notices sent to motorists stating that their third party policies are due for renewal. Thousands of motorists have only one type of insurance (third party insurance) in the mistaken belief that they are covered more widely than they really are.

In this Bill, as in the existing Act, provision is made for the issue of a 14-day permit to allow a person to drive a vehicle. This permit is in the prescribed form, is issued, and is placed on the windscreen of the motor vehicle awaiting the arrival of the registration disc, after an application has been made to the Registrar. It can be issued by the Motor Vehicles Department, or it can be done by a police officer, under the terms of this Bill, when he is satisfied that payment has been sent to the Registrar for the necessary third party insurance and registration fees. I cannot understand why the permit is confined to the short period of 14 days. We live in a world in which postal services are becoming more difficult and in which many mail services have been closed and others have been re-routed. With the time taken for many people to send an application to Adelaide and have it returned (particularly if there is any hitch in Adelaide), 14 days is not long enough. A senior police officer has suggested to me that the period

should be 28 days, as this would be more effective. This alteration would not cost the State anything, because the period of registration for which the person is paying applies from the date of the issue of the permit, anyway. Whether it is 14 days or 28 days, it is only a time in the registration period during which the person does not possess the registration papers or disc. I cannot see anything detrimental in extending this period, and it would be more convenient to people living in areas in which postal problems have occurred. I support the Bill.

The Hon. A. M. WHYTE (Northern): From my investigations of this Bill I believe it has some merit, and will simplify the system by which people can register a vehicle and take out third party insurance in one operation. This may not be a great advantage for country people, because at present most of them leave this operation to their insurance company, stock firm, or bank. However, the ease of this new procedure is something that the Motor Vehicles Department has been seeking for some time, and I believe it has gone to much trouble to obtain the best possible system. It has consulted various insurance companies and considered many proposals and, from my investigations through these companies and discussions with the Registrar, I believe that, although the system is not perfect, it is the best that can be achieved. I trust that it will function in the manner hoped for by the Registrar and will alleviate some of the unnecessary delay that occurs at present.

Some people are confused about what is a renewal certificate, what is an insurance certificate, and what is merely a notice of renewal, and this has caused confusion and delay in registering motor vehicles, and has also cost some people time and money. If we can short circuit any unnecessary delays we are saving the State money and preventing unnecessary inconvenience to people who tend to make these mistakes. I think insurance companies readily accept the introduction of this legislation, because they will be saved considerable inconvenience in having to rewrite documents for people who have not understood what a certificate was and what a renewal notice was. To the best of my knowledge there is no reason why this Bill should not be proceeded with, and I support it.

The Hon. A. F. KNEEBONE (Minister of Lands): I thank honourable members for the expeditious way they have dealt with the Bill. I knew that some members had queries concerning the interpretation of some clauses, and I was able to arrange for the Registrar to explain some of the administrative difficulties with the previous legislation and the reasons for introducing these amendments. I am pleased that members have seen fit to proceed with the Bill this afternoon.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—"Permits to drive pending registration."

The Hon. G. J. GILFILLAN: I thank the Minister and the Registrar for making information available to me, as some of my queries have been answered satisfactorily. I understand that, following my comments about people being unaware of the lack of cover involved with third party policies, it is likely that notices will be sent to individual insurers advising them in which aspects they are not covered. This will be a great service for the safety and convenience of the public. I believe it will be more appropriate to consider the question of a 14-day permit in other legislation. The compulsion to pay third party premiums together with the registration fee need not interfere with existing practices, where insurers and people wishing to register motor vehicles have this transaction done through their insurance company. Although the word "must" is used in this clause in respect of insurance, the insurance company as such by agreement with the insurer can act as his agent. So the points raised have been satisfactorily explained, and I am grateful for the information given.

Clause passed.

Remaining clauses (5 to 35) and title passed.

Bill reported without amendment. Committee's report adopted.

STAMP DUTIES ACT AMENDMENT BILL (INSURANCE)

Adjourned debate on second reading.

(Continued from November 9. Page 2786.)

The Hon. G. J. GILFILLAN (Northern): I briefly refer to this Bill, because it is consequential on the provisions in the Motor Vehicles Act Amendment Bill. The Bill allows for a proper transitional period of adjustment for stamp duties that are to be collected for motor vehicle registration and third party insurance premiums. Naturally, when such an extensive alteration is made to allow third

party insurance to be dealt with by the Registrar of Motor Vehicles, such an amending Bill as this is necessary. I support the second reading.

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

MINING BILL

Adjourned debate on second reading.

(Continued from November 4. Page 2742.)

The Hon. A. F. KNEEBONE (Minister of Lands): I thank members for their thoughtful and constructive comments during the debate on this important measure. As I mentioned in my second reading explanation, I believe this Bill to be a very significant development in mining legislation in Australia, and members have regarded it in this light in many of their comments. I agree also that, being a highly technical Bill, many of its provisions are better discussed in Committee. Nevertheless, as members have raised many points of interest and have requested elucidation on matters which are not clear to them, I will attempt very briefly to deal with some of their comments.

The Hon. Mr. DeGaris drew attention early in his speech to clause 19, which provides that where a person is divested of his property in minerals he may, within two years, apply for the declaration of a mine as a private mine. The Bill makes it clear that the Minister shall thereupon declare the mine to be a private mine; that is, the right to such a declaration is protected in the Bill. There is provision for such a declaration to be revoked by the Governor, provided that a warden's court has determined that appropriate grounds exist for the revocation. I point out that the grounds for revocation would be based on a consideration of whether the mine is being "effectively" operated, not "efficiently" operated as Mr. DeGaris suggested and furthermore, it would be for a warden's court to make the appropriate recommendation to the Governor. There is, moreover, a right of appeal to the Land and Valuation Court against the decision of the court to make such a recommendation.

The Hon. Mr. DeGaris is concerned with what he considers to be the illogical arrangement whereby the rights to minerals are resumed by the Crown but, notwithstanding this, royalty is still to be paid to the former owners. In the second reading explanation, it was carefully explained that the reason for the resumption of minerals is not the desire of the Government to obtain royalty but simply to ensure that valuable minerals are accessible in the public interest. There is no desire by the Government to interfere with, or derogate from, benefits which may accrue from the private ownership of minerals so far as the owners are concerned.

It was carefully explained in the second reading explanation that this Bill does not effectively derogate from these rights either in respect of monetary value of them or in respect of the protection of the owner in the matter of entry into his land. The Bill provides that a former owner of minerals or any person who may lawfully establish rights derived from the original owner may apply for the payment of royalty. This means legally that it is necessary for former ownership to be established before royalty is paid and covers the case where mineral rights have been sold or otherwise disposed of. There are current cases where mineral rights were disposed of many years ago to people or companies who are no longer traceable. Under the Bill, it is necessary for such companies or people to establish their rights before royalty can be claimed. Subclause 7 of clause 19 sets out this arrangement, which it appears Mr. DeGaris had some difficulty in understanding.

Several members have expressed concern at the possibility that a former owner of mineral rights might, through ignorance, fail to lodge a claim for royalty when a mining operation was undertaken on land to which his rights formerly applied. This situation could possibly arise if the mineral rights or subsequently the rights to royalty were severed from the land by a positive act on the part of the former owner, or alternatively, when the land was sold subsequently to the resumption of minerals by the Crown, and the former owner of the minerals and his heirs dispersed. This problem, of course, already applies to some extent under the existing Act in cases where the mineral rights have been severed from the land and sold to other parties.

However, I believe it to be a problem which may in odd cases be regarded as causing a hardship and I therefore intend to move in Committee the inclusion of an additional clause, requiring the Director of Mines to establish a register of persons to whom the right to royalty applies. Any person who values this right and wishes to transfer it or assign it shall be entitled to register this arrangement. The amendment also appears to meet the objection voiced by some members that the resumption of minerals would take

from the land something affecting its value for sale purposes. Clearly, the owner of the land can negotiate with a purchaser to include the right to royalty in the sale or otherwise and, if included, to arrange for the transfer to be registered.

The Hon. Mr. DeGaris also asked a question about the status of existing agreements. These are covered in two ways in the Bill: under subclause (5) of clause 5, where provision is made that any authority to enter in force immediately before the commencement of this Act shall continue for 12 months after the commencement of this Act; and under subclause (5) of clause 19, which provides that any contract, agreement, etc., in operation immediately before the commencement of this Act shall apply to the minerals recovered. Furthermore, the right to apply for a private mine provides a further protection for pre-existing agreements, etc.

Some concern has been expressed that the resumption of minerals by the Crown will affect the value of the land, and it has been claimed that in fact some land has been acquired and paid for at an augmented price because of the minerals therein. I seriously question whether any such transaction has been effected in consideration of the mineral rights contained in the land other than perhaps in respect of extractive materials such as stone or sand, etc. In this respect, I draw the attention of honourable members to clause 75, which provides that in the case of such materials the Bill does not remove from the owner the rights to them; in fact, the Bill specifically leaves with the owner the sole right to peg such extractive materials and, therefore, the sole right to make arrangements in respect of them. In other words, any value in extractive materials which was a consideration in the purchase of or dealing with land will be unaffected by this Bill. Moreover, the Bill extends this privilege to all freehold landowners, not only those formerly owning mineral rights.

The Hon. Mr. DeGaris has expressed some concern about the provision for the Minister to delegate to the Director of Mines some of his powers and functions. I can give a categorical assurance to honourable members that such delegation will relate solely to minor administrative functions and provision will be made in regulations to ensure that this is so. The Minister will certainly not delegate his power in respect of the granting of exploration licences, mineral leases, etc., and the conditions relating thereto. In the matter of precious stones, the omission of "diamond" has been deliberate because, unlike most other precious stones, mining for diamonds must be a highly organized engineering operation. Should an application be received for the mining of diamonds, the Bill has enough flexibility to permit the granting of a lease with special dimensions and conditions to meet the case, whereas other precious stones are adequately accommodated in Part VII of the Bill.

The Hon. R. C. DeGaris: I think the point I was making has been overlooked. My point was that we can include diamonds by proclamation but we cannot exclude some of the stones that are there. However, we may be able to handle that in the Committee stage.

The Hon. A. F. KNEEBONE: Yes. There has always been a difficulty in defining "cultivated land" for the purposes of the Mining Act. In actual practice, there has never been a serious problem arising from this cause. This Bill provides, as in fact does the existing Act, that the payment of compensation can be determined by the Land and Valuation Court, if necessary. There have been various attempts in other States to define "cultivated land", and several definitions have been examined. All have the difficulty finally of providing marginal anomalies and it has seemed best to leave the matter in the present form.

The Hon. Mr. DeGaris expresses concern in respect of clause 14, which refers to the misuse of information. This clause as presently drafted covers all persons involved in the administration of this Act, whether they are covered by the Public Service Act itself or otherwise.

The Hon. R. C. DeGaris: They are not all necessarily employed by the Mines Department.

The Hon. A. F. KNEEBONE: Not necessarily.

The Hon. R. C. DeGaris: That is the point I was making.

The Hon. A. F. KNEEBONE: The Bill covers all persons involved in the administration of this Act, whether they are covered by the Public Service Act itself or otherwise. Accordingly, there is no reason to exclude other employees of the department if honourable members feel this to be desirable. In the matter of the publication of information obtained by the Mines Department in the course of its investigations, the Hon. Mr. DeGaris requests that this be published within

12 months. He is aware, of course, that the department publishes twice yearly a volume now known as the *Mineral Resources Review;* and it also publishes a series known as reports of investigations and bulletins as well as information pamphlets, maps, etc. It has always been the practice of the department to publish as fully and as frequently as possible. The frequency of publications is largely governed by the capacity of the Government Printer to handle the material. To overcome the inevitable delays in publication, it is departmental practice to place its reports on open file and make available schedules of reports on open file.

The question of the jurisdiction and responsibility of the Warden's Court has been questioned. It is true that the Warden's Court appears to be in an anomalous situation whereby it is required to exercise a judicial function while at the same time the officers of the court, namely, the wardens, are technically responsible to the Director of Mines. This situation has been met in some other States by removing the wardens from the Mines Department and giving the function of the wardens to magistrates who are responsible to the Crown through the Attorney-General. The merits of these two different procedures can be debated at some length. It can be said that the arrangement operating in this State has functioned effectively for many years, and I am not aware of any administrative or legal objections arising from the performance of the Warden's Court. For this reason, the present procedure has been retained. It is believed that the provision of an appeal against the decision of a warden to the Land and Valuation Court provides the best of both worlds insofar as the wardens are well equipped, by virtue of their long association with the mining industry and their specialized knowledge of the Mining Act, to deal effectively with the great majority of the disputes and decisions arising under the Act. In the event of any matter coming before them upon which the parties are dissatisfied with their judgment, the parties are able to appeal to the Land and Valuation Court.

Concerning the encouragement of mining (Part XI), the Hon. Mr. DeGaris suggests that the Minister should report annually to Parliament on the extent of assistance provided. This procedure already pertains under the present Act for other matters and would, in fact, be adopted administratively. If honourable members prefer it, there is no objection to the requirement becoming part of the Bill. The protection in favour of the owner that is provided under the present Act in respect of stone ordinarily used for road-making purposes on freehold mineral land, and in respect of sand, gravel, stone and shell on private land, has been extended to include all extractive minerals on all freehold land. The Hon. Mr. DeGaris suggests that there should be a definition of mineral lands in the Bill. The present Act does not, in fact, contain such a definition, as it has previously seemed adequate to include the definition in the regulations. There would, of course, be no problem involved in including the definition in the Bill if honourable members preferred this, but I would suggest that the current arrangement is in fact quite satisfactory.

In the matter of compensation, the Hon. Mr. DeGaris questions the adequacy of the compensation payable to an owner. I believe the matters he has raised would be proper considerations for the Land and Valuation Court and I believe, accordingly, that the Bill covers the situation. Honourable members will have noted that many of the provisions in this Bill relate to matters of conservation and protection of the land. As I mentioned in the second reading explanation, there is a sharp conflict of interests on the opal fields arising from these considerations and the Bill has endeavoured to steer a practical and sensible middle course between the demands for complete restoration, which I agree is hardly applicable in the opal fields, and the other extreme of uncontrolled destruction of the surface of the ground. Accordingly, provision has been made for backfilling of bulldozer cuts to the extent that this is appropriate in any particular case. It has been explained to this Council and to the opal field interests that this power will be used with the utmost discretion. There will not be a wholesale demand for immediate and complete backfilling of bulldozer cuts, but there will be a requirement for the responsible and sensible use of bulldozers and, where appropriate to the situation, a proper restoration of the ground to a condition where there is some long-range possibility of regeneration.

The Hon. Mr. DeGaris has questioned the cost of the backfilling operation; I can only say that an estimate of an average cost would be difficult to determine. In some cases, backfilling could be carried out as an

integral part of the operation itself so that filling could be placed back as the excavation proceeded. As an exercise in this matter, the Mines Department carried out a backfilling operation at Coober Pedy. The original excavation was 150ft. long by 30ft. wide by 16ft. deep. The backfilling was satisfactorily carried out in about five hours. Although this did not involve complete backfilling but satisfactory contouring of the waste into the cut, it did involve the relocating of about 40 per cent of the fill material. The Government is examining other ways in which the pastoralist concerned can obtain some relief from the very evident loss of a substantial part of his run for grazing purposes. However, it must be realized by all honourable members that the opal industry in terms of its intrinsic value needs the support and encouragement of this Council. At the same time, every effort must be made to limit the damage which it is capable of doing.

The Hon. Mr. DeGaris has raised the particular status of salt as a mineral and has suggested that it be included in the extractive materials clauses. The existing Act provides for a special category of mineral lease for salt and this has been quite a satisfactory arrangement. With the rationalization of mineral tenements under the Bill, salt has not been provided with a special tenement; however, it is intended when regulations are drafted to provide special-sized tenements and special conditions covering salt mining. The question has been raised of transitional arrangements between the proposed new Act and the existing Act in respect of quarries operating on freehold land under private arrangements. Under the Bill, the quarry operating on freehold land will qualify for declaration as a private mine. The Bill also provides that royalty of 5 per cent is payable on all extractive materials whether won from private mines or otherwise, so there would appear to be no anomaly in this respect. The Hon. Mr. DeGaris is technically correct when he points out that there will be a theoretical period of time during which, after the proclamation of this new Act, a quarry operator on private land could be regarded as operating illegally until the mine was declared to be a private mine. I assure the quarry operators and honourable members of this Council that this matter will be dealt with expeditiously and, of course, the technicality involved will be covered by administrative common sense.

The Hon. Mr. DeGaris suggests that clause 60 appears to override the Mines and Works Inspection Act regulations, under which an operator is required to submit detailed plans for approval by the Minister. These regulations are aimed particularly at larger-scale mining operations where long-range plans are applicable. In the case of short-term, what might be called ephemeral operations, such as opal mining, the regulations under the Mines and Works Inspection Act are hardly appropriate, and for this reason the power to cover the situation has been included in this Bill. I believe the clause augments the Mines and Works Inspection Act and does not conflict with it.

I turn now to the contributions to the discussion by the Hon. Mr. Whyte, who suggested that "declared equipment" should be defined in the Bill. This has been avoided because the nature of equipment tends to change from time to time, and it has been thought desirable that there should be flexibility in determining what sort of equipment should be placed in this category. However, at this stage, I am able to give the assurance that declared equipment will be prescribed as bulldozers or earth-moving equipment of this nature. There has been some discussion concerning the relationship between this Bill and the Pastoral Act. It is specifically provided in this Bill that it shall not derogate from the Pastoral Act. Accordingly, the protective distances specified in the Pastoral Act in relation to a mining operation will apply in all pastoral areas; elsewhere, the distances specified in clause 9 will apply. It should be understood that the somewhat greater distances applicable in pastoral areas if applied in the more closely settled areas would virtually exempt all land from occupation under the Mining Act. The lesser distances provided in clause 9 are thought to be adequate and reasonable.

Clause 15 provides for the carrying out of surveys by the Mines Department. As the Hon. Mr. Whyte points out, there is no specific provision requiring that notice of entry be given by the department. However, the normal courtesies always apply in these cases, and it seems unnecessary that such a provision be included in the Bill. The honourable member is concerned over the rights of mineral owners who have on their property small prospects on which they may be negotiating with a large mining company. He suggests that the two-year limitation on the right to proclaim a private mine would give the company the opportunity of biding its time, then acquiring the mine without reference to the owner. This somewhat hypothetical problem can in fact be

handled by the owner in several ways. First, he can apply immediately for his prospect to be declared a private mine. This declaration would then remain effective until such time as the Governor had reason to revoke the declaration, which can only be done after a warden's court has determined that proper grounds exist for the revocation. In other words, a legal procedure is available that would prevent any hasty termination of the private mine. Secondly, it would alternatively be possible for the owner to peg the prospect himself and to apply for and be granted suspension of labour covenants during the period in which he is negotiating with the mining company. His third protection arises from the fact that the company with which he is negotiating would have no prior right to the prospect even if it did wait for two years, as any other company could equally obtain access to the prospect. Furthermore, I point out that the situation in which the owner finds himself is no worse than his present situation under the existing Act where access can be obtained by an authority to enter granted by a warden; in fact, his position is somewhat stronger because of the 21 days' notice of entry required under this Bill.

It is an important provision in this Bill that an area subject to a *bona fide* application for an exploration licence is exempt from the registration of a mineral claim while the application is being dealt with. The lack of such a provision in the existing Act has led to many embarrassing situations in which mineral claims have been taken up as soon as an application for a special mining lease has been lodged in order to hold the applicant to ransom. There are many opportunities for the small prospector to peg and deal with his prospects other than in areas which have been subject to applications for exploration licences. I do not believe that any genuine hardship will arise from this cause, especially as exploration licences are of relatively short duration. The size of an exploration licence has not been increased or reduced in this Bill. Under the existing administrative arrangement, a limitation of 1,000 square miles prevails. This limitation is included in the Bill with some provision for special cases should they arise. In the general case, exploration licences do not normally exceed 200 to 300 square miles.

The Hon. Mr. Whyte expresses concern that clause 40, which provides for the payment of rental, does not give the owner the opportunity of negotiating the amount. The clause provides that the rental shall be prescribed in regulations and that the amount will be uniform throughout the State for different classes of land. It is undesirable that the amount be negotiated, as it would be possible for occupiers effectively to prevent mining by demanding exorbitant rentals. The honourable member's comments on the opal field situation are of great interest. As he properly points out, the conflict of interests between opal miners and pastoralists provides a dilemma for legislation. It is clear from his explanation that Mount Clarence Station was taken up long after the opal fields were developed as such and the station presumably was able to accommodate their presence. The problem has arisen from the tremendous expansion of the opal fields, especially in recent years, from the advent of bulldozers. I do not subscribe to the extremists' view which has been expressed by some of the bulldozer operators that the legislation will put them out of business. I support the Hon. Mr. Whyte's view that the opal industry is one of considerable interest and value to this State, but he is also quite correct in saying that it is a net cost to the State taxpayer, whatever its benefits to the national balance of payments problem. I am quite confident that the vast majority of opal miners are happy with this Bill and the Government is anxious to see the provisions given a fair trial. The Hon. Mr. Whyte is correct in saying that the backfilling provisions arise from the community concern with damage to the land surface. They also arise from the belief that appropriate tidying up and backfilling will provide an opportunity over the next several decades for some regeneration at least of the natural vegetation.

The Hon. Mr. Hill has shown particular concern with the provisions of clauses 16 to 19 dealing with the resumption of mineral rights. He questions the provisions in the Bill in respect of the payment of royalties. These have been drafted wth extreme care to meet the legal difficulties which presently apply to questions of separated mineral rights. The Bill ensures that the owner of mineral rights at the time of proclamation of this Bill will be paid royalty in perpetuity and that his heirs and successors will derive their rights therefrom. It must be clearly understood that this provision applies to the ownership of the mineral rights, not necessarily, although normally, the owner of the land itself, by requiring that the former owner must apply for the payment of royalty. It is felt that the onus of establishing this right is being properly placed on the applicant. There are

several current cases in which the mineral rights have been severed from the land in the past by sale or other arrangements and the owner, being a defunct company, is in no position to apply for, or be paid, royalty. In these cases the royalty will quite properly accumulate to the Crown.

The Hon. Mr. Hill has commented on the Extractive Areas Rehabilitation Fund and has questioned the apparent exemption of the Highways Department and local government departments from contributing to the fund. This exemption arises from the fact that both the Highways Department and the local government bodies operate, in respect of their raw materials activities, under the Local Government Act and are not subject to the Mining Act. Notwithstanding this exemption, the Highways Department has undertaken to co-operate in the spirit of this Act by requiring contractors providing them with stone to ensure proper restoration and rehabilitation as part of their contract. The Mines and Works Inspection Act which provides power to ensure proper consideration of the amenity of an area does apply to all operations in this State and accordingly covers work by the Highways Department or district councils. It is felt, therefore, that, both by means of administrative arrangements and the application of the Mines and Works Inspection Act, the spirit of the rehabilitation requirements of the Mining Act will be met.

The Hon. Mr. Hill also questions the effect of the royalty on extractive materials on housing costs. I can assure him that the effect is minimal—estimated to be somewhat less than $10 on a house. He has asked for clarification of the provision in the Bill for extending the autonomy of this State three miles to seaward. The regulations under the existing Act already provide for this autonomy and all that the present Bill does is to transfer the proclamation from the regulations into the Act itself. The Hon. Mr. Hill is correct in mentioning that this is a contentious matter in State-Commonwealth relations. All that can be said at this stage is that there has been no move by the Commonwealth to legislate in this field since the abortive attempt nearly two years ago. So far as the Commonwealth is concerned, there is at present no legislative power in respect of minerals, either onshore or offshore, in South Australia. It is accordingly felt to be proper that the State should stake its claim at least to the three-mile limit.

The Hon. Mr. Kemp has expressed disappointment at what he regards as an unacceptable link between the Mining Act and the Mines and Works Inspection Act. These two Acts are of course complementary, the Mining Act being concerned with the granting of tenements and the conditions pertaining thereto; the Inspection Act is concerned with operational methods and practices. There are certain inevitable areas of possible overlap, but there are no areas of conflict. The Hon. Mr. Kemp's concern appears to arise from the belief that the opal fields should be exempted from the recently gazetted regulations under the Mines and Works Inspection Act dealing with amenities. It has been explained on numerous occasions that the amenity protection required at the opal fields will differ very greatly from those required in the Adelaide Hills. The opal field requirements will amount to an almost total exemption, but the authority to require responsible behaviour by operators of heavy earth-moving equipment must be maintained.

The reason why this power is also included in the Mining Bill as far as the opal fields are concerned should be self evident to members. Under the Inspection Act the most an inspector can do is to order cessation of a practice and virtually to freeze an operation until the operator satisfactorily carries out a direction. In the case of a major mining or quarrying operation, this is a sufficient power to ensure compliance. However, in the relatively small-scale and short-term operations of bulldozers in the opal fields the operator can readily abandon the site, if ordered to cease a certain practice, and start again elsewhere. Hence this Bill provides a restraint on the granting of a new claim until satisfactory performance on the old claim is undertaken. The two Acts to which the Hon. Mr. Kemp refers have been co-ordinated in this instance. I can see no difficulty or administrative objection to the provisions.

The Hon. Mr. Kemp suggests that, to be consistent, this Bill could require the backfilling of the Leigh Creek open cuts. I point out to members that the Leigh Creek operation is a fully engineered project, with long-range development programmes and complete control over all aspects of its work. The project, in spite of the excavation, has resulted in the creation of an oasis in what was formerly a sterile and barren area. The operation is, like all mining operations, subject to the Mines and Works Inspection Act but is not subject to the Mining Act, having been established under its own statutory legislation. There is no conceivable comparison between the Leigh Creek project and the completely unorganized and random operations of the opal fields. The

Hon. Mr. Gilfillan suggests that the provisions of the Bill remove, from the owner of mineral rights, the right to negotiate his own terms and conditions with an exploration company. In fact, under the existing Act this right is limited because, if an owner demands unreasonable terms for entry, the company can apply to a warden for an authority to enter and if such an authority is granted the terms are then those provided by the Mining Act.

Concerning the rehabilitation fund, the Hon. Mr. Gilfillan questions my reference, in the second reading explanation, to the fact that the fund depends legally on the ownership of the minerals by the Crown. My statement arises after a lengthy legal investigation of ways and means of relating payments into the fund to the rate of production from the quarry or sand pit. Any direct levy is regarded legally as an excise and is thus beyond the power of this Parliament. However, a royalty is not so regarded since it is a payment to the Crown in recognition of a transfer of ownership of the minerals produced. I must emphasize in answer to another query from the Hon. Mr. Gilfillan that the Bill specifically provides that only the landowner may peg extractive minerals. This enables him to negotiate with a mining or quarrying company for terms over and above the company's obligation to contribute to the Extractive Areas Rehabilitation Fund. Furthermore, this right in respect of extractive minerals applies to all freehold landowners, not only those who formerly owned mineral rights. In conclusion, I again thank members for their constructive contribution and commend the Bill for their support.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—"Amendment and repeal."

The Hon. A. F. KNEEBONE (Minister of Lands): Because I wish to get further information on some queries that have been raised, I ask that progress be reported.

Progress reported; Committee to sit again.

LOCAL GOVERNMENT ACT AMENDMENT BILL (GENERAL)

Adjourned debate on second reading.

(Continued from November 9. Page 2805.)

The Hon. E. K. RUSSACK (Midland): Local government means a great deal to South Australia because this State was the first in Australia to introduce a system of local government. Since that time local government has served a very real purpose in our community. Many people, to whom we should be very thankful, have served loyally in various positions associated with local government. Possibly local government is the most difficult form of government in which a person can be involved, because he is so accessible to the ratepayers; however, it is a very rewarding responsibility, and I pay a tribute to all who have assisted in this field.

From time to time some people have suggested that the legislation dealing with local government should be overhauled. To that end the Local Government Act Revision Committee was appointed; it sat for many months and produced a very detailed report. I hope that the principal Act will be reviewed as soon as possible and that the committee's recommendations will be considered in detail. In the meantime this Bill makes some necessary amendments to the principal Act. While some of its provisions are commendable, others need to be closely scrutinized and amended. Clause 2 provides:

Section 5 of the principal Act is amended—

(*a*) by striking out the proviso from subparagraph (*b*) of paragraph (1) of the definition of "ratable property" in subsection (1);

and

(*b*) by inserting after subsection (1) the following subsection:

(1*a*) The term "ratable property" shall, notwithstanding any exception of property belonging to, or used by, the Crown in the definition of that term, be deemed to include any land and buildings, held by or on behalf of the Crown, or any part of any such land and buildings, occupied, or if unoccupied, intended for occupation within a period of 12 months, as a dwellinghouse or for any other purpose, not being a public or educational purpose.

The principal Act relieves the Crown of any responsibility in connection with rates on property used for such purposes as schools and police stations, etc. Dwellinghouses occupied by schoolteachers are ratable. Under the principal Act, if a dwellinghouse is not occupied on the day the assessment is adopted, the Crown is not liable to pay rates for that year on the dwellinghouse. I know of a case where the assessment was adopted on a certain day and the occupant moved into the house the next day, but the council received absolutely no rates for that year. Clause 2 makes it possible for the rates to be paid even if the dwelling is unoccupied at such a stage, provided it is occupied in the ensuing 12 months. That provision is most desirable.

I believe that clause 3 has been included in the Bill to deal with one case—that of the Walkerville council. A council may take over an area from another council but, in doing that, it takes over a financial responsibility. The provision will permit the council to borrow a sum of money appropriate to the financial responsibility acquired by it when it acquired the new area.

The Bill provides that members of a council can resign if they want to do so. The principal Act provides that a councillor must apply for a licence to resign, but that provision is to be cancelled. That will make it easier for a person to resign for the purpose of contesting another council office. The Bill provides that councils may make available home units and services for the aged and infirmed. Clause 25 provides:

The following section is enacted and inserted in the principal Act immediately after section 287a thereof:

287b. (1) A council may expend any portion of its revenue in the provision of dwellinghouses, home units, hospitals, infirmaries, nursing homes, chapels, recreational facilities, domiciliary services of any kind whatsoever, and any other facilities or services for the use or enjoyment of aged, handicapped or infirm persons.

Whilst some of these provisions are workable in heavily populated areas, I consider that there could be problems in some country areas, for example, where an infirmary is to be added to a home for the aged for a maximum of five or six patients and where often the number of patients in the infirmary may not be more than two or three or perhaps nil. However, there would be a need for trained staff to be maintained and retained so that they would be present in an emergency to administer nursing needs.

Also, there are added disadvantages in many country areas in which towns are spilling over into district council areas. Who takes the responsibility for these homes? Will a home admit only those living in a corporation area that has supplied the funds to erect and maintain the home, or will it also accept people living in nearby council areas whose rates have not contributed to the cost of the home? I realize there may be some problems with this clause, but I am certain that we all desire to see the aged, particularly the infirm aged, assisted. I should like to say more about this Bill, but I have not yet been able to obtain certain information. I understand that amendments are being considered and, because of this, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

CATTLE COMPENSATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from November 9. Page 2785.)

The Hon. M. B. DAWKINS (Midland): I support this short Bill, in which clause 3, as its operative clause, amends section 4 of the principal Act by striking out from subsection (1) the definition of "cattle", which meant any bull, cow, ox, steer, heifer, or calf, and inserting the definition in which "cattle" means any animal of the genus *bos* or any animal of the genus *bubalus*. My copy of the short second reading explanation points out that this small amendment is designed to include the kind of cattle that are commonly known as buffalo. I am glad that the Minister called them "kind of cattle", because they differ significantly in some ways from the cattle of the various dairy and beef breeds as we know them.

The reason for including buffalo is that commercial consignments of buffalo have recently been received in this State (I believe that at least two places have received them), and that the animals will, from time to time, be grazed in conjunction with cattle that are already covered by the provisions of the Act. I agree with the Minister that it is appropriate that buffalo grazed on commercial properties should also be subject to the provisions of this Act. The sales of buffalo will be subject to the levy for the Cattle Compensation Fund, and, if it is necessary to destroy diseased buffalo, compensation will be payable in the appropriate circumstances. I believe that this action is necessary, because we must control disease in this type of animal. If buffalo are not protected and cannot be destroyed without considerable loss, we may find ourselves in some trouble with certain diseases, particularly tuberculosis.

The kind of cattle that are being included are significantly different. They live longer in some cases, and they have a different gestation period. The cattle with which we are familiar have a gestation period of nine months, but buffalo have a gestation period similar to that of the horse. There seems to be doubt in some people's minds whether cattle can be crossed with buffalo, but I understand from the best authority that this cannot happen.

I believe that, as these animals are being grazed together today, both species should be included in the provisions of the Cattle Compensation Act with regard to the fund. I have ascertained that the fund is buoyant: there have been some calls on it because of the present programme of correction of tuberculosis in the Northern areas but, as at June 30, 1971, the

fund totalled more than $237,000, and I am assured that that is a relatively buoyant position, having regard to the calls made on it. As I believe this Bill is necessary, I have pleasure in supporting it.

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

BARLEY MARKETING ACT AMENDMENT BILL

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

SAVINGS BANK OF SOUTH AUSTRALIA ACT AMENDMENT BILL

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

COMPANIES ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

When the Companies Act, 1962, was enacted, it was expected that within four or five years a comprehensive revision Bill would be introduced in all States to incorporate the improvements and modifications that experience of the operation of the legislation would show to be necessary. Subsequently, it became necessary to bring in a major amendment to the Act in advance of the proposed general revision, because of the collapse of a number of companies that had borrowed extensively from the public and, in addition, it was found necessary to amend the Act in respect of several other smaller matters. The Companies Act has been kept under constant review since 1962, and during the intervening period many suggestions for amendments to the Act have been received and considered by the Standing Committee of State and Commonwealth Attorneys-General. Many of those suggestions had been reduced to draft legislation form by June, 1967, and at that stage the standing committee thought it desirable to have the advice of outside experts on the proposed amendments.

Accordingly, in August of that year, it appointed the Company Law Advisory Committee under the chairmanship of Mr. Justice Eggleston, with Mr. J. M. Rodd (a Melbourne solicitor) and Mr. P. C. E. Cox (a Sydney chartered accountant) as members. The advisory committee was requested to inquire into and report upon the extent of the protection afforded the investing public by the existing provisions of the Uniform Companies Acts and to recommend what additional provisions, if any, were necessary to increase that protection. The advisory committee has made six interim reports to the standing committee and, except in the case of the fifth and sixth reports, which were received only recently, the recommendations contained in the reports are, with only a few exceptions, reflected in the Bill. In addition, the drafting of the Bill has proceeded in consultation with the advisory committee to ensure that the intentions of that committee were accurately implemented.

The first interim report dealt with the accounts and audit requirements of the Act and, arising out of the recommendations made by the advisory committee in that report, the existing provisions relating to accounts and audit are proposed to be repealed and re-enacted in a modified form in clause 25 of the Bill. The second interim report was concerned with the disclosure of substantial shareholdings and the regulation of take-over offers. The proposed provisions relating to the disclosure of substantial shareholders are new and are set out in clause 12 of the Bill. The existing take-over provisions are to be repealed and re-enacted in a vastly different form. The new provisions are set out in the new Part VIB in clause 27 of the Bill.

The third interim report reviewed the provisions of the Act relating to investigations. Those provisions of the Act have been redrafted and are contained in the new Part VIA in clause 27 of the Bill. The fourth interim report dealt with the subject of the misuse of confidential information by officers of companies, and the advisory committee's recommendations are reflected in amendments contained in clause 19 of the Bill. The fifth interim report dealt with the control of fund raising, and the sixth interim report is concerned with share hawking; but the reports were received too late to enable the committee's recommendations to be implemented at this point of time.

In addition to the amendments arising out of the recommendations made by the advisory committee, the Bill contains a further lengthy amendment in clause 30 by which Part IX of the Act, which relates to official management of companies, is to be repealed and re-enacted in a modified form. That amendment was enacted in other States several years ago and has been included in

the Bill to regain uniformity with the Companies Acts of the other States. Clause 44 of the Bill introduces new provisions relating to defaulting officers and is in line with amendments which are already enacted in three States and are included in Bills already introduced, or about to be introduced, in the remaining States. The Bill also contains several miscellaneous amendments which are relevant to other amendments set out in the Bill and which have been agreed to by the standing committee.

The foregoing sets out, in general terms, the contents of the Bill and the source of the proposed amendments. The Bill will now be explained in greater detail. Clause 1 sets out the short titles. Clause 2 relates to the commencement of the amending Act. Clause 3 alters the arrangements of the Parts and Divisions of the principal Act. Clause 4 repeals subsections (5) and (6) of section 4 of the principal Act. These were transitional provisions that have now ceased to have effect. Clause 5 amends certain existing definitions contained in section 5, and inserts others which are necessary for the purposes of new provisions contained throughout the Bill.

Clause 6 enacts a new section 6a, which defines the expression "interest in a share" for the purposes of the provisions relating to the disclosure of substantial shareholdings, take-overs and the register of directors' shareholdings. Generally speaking, the section defines the expression "interest in a share" in the widest possible terms to insure against evasion of those provisions by persons having the beneficial interest in shares in a company. The section extends the general meaning of an "interest in a share" to the extent that an interest in trust property that includes a share is an interest in a share; that a person who controls 15 per cent of the voting power of a company that has an interest in a share has an interest in that share. (In determining whether a person controls 15 per cent of the voting power of such a company, the voting power of an associate of that person, as defined in subsection (5) of section 6a, must be taken into account); that an interest in a share includes a right under a contract to purchase a share, any other right to have a share transferred, and an option or any right to control a right attached to a share; that the fact that an interest is held jointly or cannot be related to a particular share is irrelevant, as is also any question of remoteness of the interest or the fact that the exercise of a right conferred by the interest is subject to restraint or restriction; and that some interests are excluded: for example, the interest of a bare trustee, the interest of the holder of a unit in a unit trust in shares comprised in the trust portfolio, the interest of a moneylender who holds a share as security, and other interests as may be prescribed by regulation, including those arising from the holding of certain statutory offices.

Clause 7 repeals certain subsections of section 9, which relates to the qualifications of company auditors. These provisions have been re-enacted in the audit provisions in section 165 for the purpose of effecting a better arrangement of the Act. Clause 8 contains one of the miscellaneous amendments, and is unrelated to other amendments in the Bill. Its purpose is to enable certain types of partnership to consist of up to 100 persons. The amendment has been approved by the Standing Committee of Attorneys-General and is designed to facilitate the formation of large partnerships of practising accountants on an Australia-wide and international basis.

Clause 9 repeals and re-enacts section 25 of the Act, which provides for the conversion of a company from one class to another. The existing section is defective and makes no provision for the conversion of a limited company to unlimited status. The existing provision whereby an exempt proprietary company need not appoint an auditor is proposed to be amended to the extent that only an exempt proprietary company that is an unlimited company will be entitled to enjoy that concession. It, therefore, became necessary to enable existing proprietary limited companies to convert to unlimited status. A notable feature of the amendment is that a limited company may convert to an unlimited company only if all members of the company have consented in writing to the conversion, thus ensuring that no member of a company can be forced to accept unlimited liability for the debts of the company.

Clause 10 repeals section 26a of the Act, which was enacted by the Companies Act Amendment Act, 1970, for the purpose of enabling a no-liability company to convert to a limited company. The proposed new section 25 now provides the necessary machinery for such a conversion, with the result that section 26a is no longer required. Clause 11 contains two other miscellaneous amendments, which have already been enacted in all other States. The purpose of the first amendment is to require a debenture prospectus issued by a subsidiary company to state whether the holding

company has guaranteed the repayment of the debenture moneys, while the second amendment empowers the Registrar of Companies to refuse to register a prospectus if in his opinion any portion of its contents contains misleading information.

Clause 12 inserts a new Division IIIA in Part IV of the Act and requires persons who hold an interest in at least 10 per cent of the voting shares of a company whose shares are quoted on a stock exchange to give notice to the company of the extent of his interest in voting shares in the company, and of any change in the extent of his interest. The Company Law Advisory Committee stated in its report that, in the case of companies whose shares are traded on a stock exchange, shareholders are entitled to know whether there are in existence substantial holdings of shares that might enable a single individual or corporation, or a small group, to control the destinies of the company and, if such a situation does exist, to know who are the persons on whose exercise of voting power the future of the company may depend. The advisory committee recognized that it is common practice for investors to have their shares registered in the name of nominees, somtimes for the purpose of concealments but in many cases merely for the sake of convenience. In either case, where the holdings of a person are substantial, shareholders should be entitled to ascertain the extent of those holdings. Any provisions requiring disclosure could not be fully effective unless they reached behind the person nominally holding shares, to uncover the true beneficial owner. As previously stated, the new section 6a, which is inserted by clause 6 of this Bill, is designed to achieve that purpose, in that it defines in some detail the expression "interest in a share".

Section 69a sets out the kinds of bodies corporate and unincorporate to which the Division applies, and it should be noted that the Division applies only to companies whose shares are capable of being dealt in on a stock exchange. Section 69b requires all persons, whether resident in Australia or not, to comply with the provisions of the Division. Section 69c defines a substantial shareholder as one who holds an interest in 10 per cent of the voting shares in the company. Under section 69d a substantial shareholder is required to disclose full particulars of his interest in shares. Section 69e provides that notice of any change in the extent or nature of his interest must be given to the company within 14 days and, where a person ceases to be a substantial shareholder, section 69f requires him to give the company notice of that fact. As the Division applies to persons domiciled overseas, provision is made in section 69h to ensure that, if any person holds shares in which a non-resident has an interest, he is required to notify the non-resident of the requirements of the Division and, if he knows that the non-resident holds his interest for a third party, he is required to direct the non-resident to give a copy of the notice to that third party.

Section 69j empowers the Registrar to extend the time within which a substantial shareholder must give notice to the company in respect of his interest in shares. Section 69k requires a company to keep a register of substantial shareholdings and to make the register available for inspection by any member of the public. Copies of the register must be supplied upon the request of any person.

Section 69l provides a penalty of $1,000 for failure by a substantial shareholder to give notice to the company in respect of his interest in shares. Section 69m deals with defences to a prosecution and exonerates a defendant who proves that he was not aware of the fact or occurrence the existence of which was necessary to constitute the offence, but that defence will not be available to him if, in the terms set out in subsection (2) of the section, he is presumed to have been aware of the fact or occurrence. As a further aid to ensuring that the requirements of the Division are complied with, particularly by persons outside the jurisdiction who might not be deterred by a threat of prosecution, section 69n enables the Supreme Court, on the application of the Minister, in cases where there has been a failure to comply with the Division, to make a number of orders, including an order restraining the disposal of the shares or the exercise of voting rights attached to the shares, or an order directing the sale of the shares.

Clause 13 contains an amendment to section 74f (5), which is consequential upon the amendment to the accounts provisions as contained in the Bill. The effect of section 74f (5) remains unaltered. Clause 14 amends section 76 of the Act, which controls unit trusts and other types of investments which are not shares or debentures. The purpose of the amendment is to enable control to be exercised over persons who sponsor real estate syndication schemes, which are increasing in number in this State. Such schemes have failed badly in Western Australia, resulting in members of the public suffering heavy losses. Clause 15

contains a consequential amendment to section 80, the need for which was overlooked in the drafting of the Companies Act Amendment Bill 1964. The effect of section 80 remains unaltered.

Clause 16 amends section 81 and is related to the amendment contained in clause 14. Its purpose is to enable members of the public who have invested in existing real estate syndicates to dispose of their investment. Clause 17 amends section 83, and is also designed to enable members of real estate syndicates to dispose of their investment. Clause 18 amends section 122 of the Act, which restrains certain convicted persons from taking part in the management of any company. The effect of the amendment is that the provisions of the section will be extended so that they also apply to a person who has been convicted of an offence involving the issue of a prospectus or a take-over statement that contained an untrue statement or a wilful non-disclosure of material matter.

Clause 19 repeals and re-enacts section 124 of the Act, and inserts a new section 124a. The amendment is designed to implement a recommendation made by the Company Law Advisory Committee in its fourth interim report. Section 124 provides that, if an officer of a company makes use of information acquired by him by virtue of his position as an officer so as to gain an improper advantage for himself, he is guilty of an offence and is liable to the company for the profit made by him. The amendment to section 124 effects an improvement to the drafting of the section, and provides that the officer is also liable if he used the information to gain an improper advantage for some other person. New section 124a extends the principle expounded in section 124, in that an officer who makes use of confidential information in dealing in securities of the company is liable to any person who suffered loss by reason of the purchase by him of such securities at a price in excess of that which would have been reasonable if the information had been generally known.

Clause 20 repeals and re-enacts sections 126 and 127 of the Act. The existing section 126 requires every company to keep a register and to enter therein in respect of each director particulars of all shares and debentures held by, or in trust for, him or of which he is entitled to become the registered holder. The effect of the amendment is that the register must contain particulars of all shares, debentures, interests (as defined in section 76 of the Act) and options in which each director has an interest within the meaning of the new section 6a, set out in clause 6 of the Bill.

Section 127 requires every director of a company to give to the company particulars of his holdings of shares and debentures to enable the company to maintain an up-to-date register, required to be kept under section 126. Consequential upon the amendment to section 126, which requires additional information to be entered in the register, it is necessary to amend section 127 to require directors to disclose to the company additional information to enable the company to comply with section 126. A provision has been inserted in section 127 providing a defence to a prosecution of a director for failure to disclose particulars of his holdings. The defence is identical with that contained in section 69m in relation to the failure of a substantial shareholder to comply with the new Division IIIA of Part IV.

Clause 21 amends section 129, which contains a reference to section 184. Section 184 is repealed by clause 28. Clause 22 amends section 131 of the Act, and is consequential upon the amendment to the definition of "emoluments" set out in clause 5. The effect of the section is not materially altered. Clause 23 amends section 136 of the Act in relation to the power of the Registrar to extend the time for the holding of an annual general meeting of a company. The purpose of the amendment is merely to correct anomalies in the existing section, the general effect of which remains unchanged.

Clause 24 inserts a new section 159a in the Act, and provides that a company, which is not required to include its financial statements in the annual return lodged with the Registrar, shall ensure that the annual return contains a statement signed by the auditor of the company stating whether or not the company has kept proper books of account, and whether those accounts have been audited. Experience has shown that, when proprietary companies go into liquidation, many of them have not kept adequate records, and it is difficult for the liquidator to ascertain the true financial position of the company. The new provision will enable the Registrar to ensure that all companies keep proper books of account and that regular audits are carried out.

Clause 25 repeals the accounts and audit provisions contained in Part VI of the Act and enacts substantially modified provisions relating to those two matters. The new

Division I of Part VI provides interpretive provisions for the purposes of that Part. The new Division II contains substantive provisions relating to accounts. Section 161a specifies the basic requirement to keep proper accounting records, but makes no substantial alteration to the existing law. Section 161b requires the financial years of all companies in a group to end on the same date, and here again there has been no change in the existing law.

Section 162 relates to the presentation of annual accounts to the shareholders at the annual general meeting, and contains a new provision requiring a holding company of a group of companies to lay group accounts before shareholders at that meeting. The group accounts must be in the form of consolidated accounts unless the directors certify that the preparation of consolidated accounts is impracticable, or that it is in the interest of shareholders that the group accounts be prepared in a different form. The section requires the directors of a company to ascertain what steps have been taken in respect of bad and doubtful debts, current assets and non-current assets, to ensure that all known bad debts have been written off, that adequate provision has been made for doubtful debts, and that current assets are written down to an amount which they are expected to realize.

Where non-current assets appear in the accounts at more than their true value, the accounts must contain explanations as will prevent the accounts from being misleading. These are steps which diligent directors would take to satisfy the existing requirements of the Act, but their inclusion in express form will serve to stress the importance of these matters in relation to the preparation of true and fair accounts. The accounts must be accompanied by a statement signed by the principal accounting officer stating whether or not the accounts give a true and fair view of the matters required to be contained therein. The existing Act requires the secretary of the company to make a statutory declaration that the accounts are true and correct but, since the secretary of a company is not always concerned with the preparation of the accounts, the Company Law Advisory Committee recommended that the duty to certify the accounts should be imposed upon the principal accounting officer.

Section 162a sets out the matters required to be included in the directors' report, which must be attached to the accounts. The report has been expanded to require a number of additional matters to be included therein and, in the case of a holding company, requires the report to cover the activities of the group. The expanded requirements are in accordance with the recommendations of the Company Law Advisory Committee which, in its first interim report, expressed the view that the directors' report should give the shareholders a description of the year's activities and results, should draw shareholders' attention to specific important matters, and should be the means of bringing shareholders' knowledge up-to-date.

Section 162b contains new provisions relating to the preparation of group accounts, and requires the directors of a subsidiary company to supply all necessary information to the holding company to enable group accounts to be prepared. Section 162c is an important new provision, in that it empowers the Registrar to relieve a company from the need to comply with any requirement of the Act relating to the form or content of the accounts or the directors' report if he is satisfied that compliance with the Act would make the accounts misleading or would impose unreasonable burdens on the company. The Registrar must take into account the views held by Registrars in other States, to ensure that a uniform approach is adopted throughout the Commonwealth when dealing with applications for exemption.

Section 163 prescribes penalties for failure to comply with the provisions relating to accounts, and provdes an increased penalty if it is established that the failure involved an intent to defraud. The section provides a defence to a prosecution, namely, that any omission from the accounts was not intentional, and that the information omitted was not material. Section 164 requires a company to send a copy of its audited accounts to shareholders at least 14 days before the annual meeting, and provides for a copy of accounts to be supplied, on demand, to a debenture-holder or to a shareholder who is not entitled to receive notice of meetings of the company. These provisions do not change the existing law.

The new Division III contains provisions relating to auditors and the audit of accounts. Section 165 re-enacts the repealed subsections (1) to (6) of section 9 relating to the qualification of auditors. New provisions have been inserted to provide for the appointment of a firm as auditors of a company, and to empower the Companies Auditors Board to grant approval for the appointment of a person,

who is not a registered auditor, to act as auditor of an exempt proprietary company in a case where it is impracticable to obtain the services of a registered auditor, by virtue of the remote locality in which the company carries on business.

Section 165a alters the existing law in relation to the right of an exempt proprietary company to dispense with the appointment of an auditor. In future, that right will be available only to exempt proprietary companies that are registered as unlimited companies and whose members are natural persons or other unlimited exempt proprietary companies. The view is widely held that a company whose members enjoy the benefit of limited liability should be required to submit its accounting records for regular audit, and that any defect in the accounts should be made public as provided by the new section 159a. Provision is made in clause 9 to enable a limited company to convert to an unlimited company, so that an exempt proprietary company that wishes to avoid the appointment of an auditor is provided with the means to achieve that result. Existing exempt proprietary companies that do not convert to unlimited companies will be required to appoint auditors within three months after the commencement of the amending Act.

Section 166 makes an important change in the law relating to an auditor's tenure of office. Under the existing law, an auditor ceases to hold office at the annual general meeting in each year, but may offer himself for reappointment at that meeting. The necessity for the annual appointment of auditors has been the subject of much criticism, and it cannot be denied there have been occasions where auditors have succumbed to pressure applied by directors for fear that they will not be reappointed at the next annual meeting. It is considered that the new provision will strengthen the position of the auditor, by making his tenure of office more secure. He would be less likely to compromise a view to please a client and, if his point of view was well founded, it is unlikely that shareholders would remove him from office, nor would another auditor be likely to stand for election against him.

Section 166 (15) makes special provision for the case where a company becomes a subsidiary of another company. It is common practice for all companies in a group of companies to appoint the same person as auditor so that, where a new subsidiary is acquired, it is necessary to afford the holding company an opportunity to appoint its own auditor as auditor of the subsidiary. Subsection (15) therefore provides that, where a company becomes a subsidiary, the auditor shall retire at the next annual meeting, but is eligible for re-election. Section 166a relates to nomination of auditors prior to appointment, but does not substantially alter the existing law.

Section 166b provides for the resignation and removal of auditors. The procedure for the removal of an auditor remains unchanged, but the provisions relating to the resignation of auditors are new. The principal Act does not authorize an auditor to resign, and doubt exists as to whether he has power to do so. Section 166b (5) provides that an auditor may resign his position, but only with the consent of the Companies Auditors Board. The purpose in requiring the consent of the board is twofold. It ensures that an auditor cannot resign merely to avoid reporting adversely upon the company's accounts, and on the other hand it assists the auditor to withstand improper pressure to resign that may be brought to bear by the directors of the company.

Section 166c alters the procedure for the fixing of the remuneration of the auditor. Under the existing law the remuneration must be determined by the shareholders in general meeting or, in certain circumstances, by the directors, with the result that it is necessary to fix the remuneration before it is possible to determine the amount of work involved. The advisory committee considers that an auditor should be in the same position as any other professional person employed on a *quantum meruit* basis, and it is therefore provided in section 166c that the reasonable fees and expenses of the auditor are payable by the company.

Section 167 requires the auditor to report upon the accounts of the company and, generally, is very similar to the existing section. One important change is that, where the company has subsidiaries, the auditor must also report upon the group accounts, and for that purpose is given access to the books of account of the subsidiaries. A further new provision requires the auditor to report to the Registrar if he becomes aware that there has been a breach or non-observance of the Act, which in his opinion cannot be adequately dealt with in his report to the members. The purpose of those provisions is to fortify the auditor in his duty on behalf of the members

to ensure that all breaches of the Act are rectified. Section 167a re-enacts the existing provisions relating to the supplying of a copy of the auditor's report to the trustee for debentureholders, in the case where the company is a borrowing or guarantor corporation.

Section 167b implements another recommendation of the advisory committee in relation to the protection of the position of the auditor by providing that he shall not, in the absence of malice, be liable for defamation in respect of any statement made by him as auditor, and similar protection is given to a person who publishes an auditor's report. In the new Division IV, section 167c exempts life assurance companies and banking companies, which are required to prepare accounts in accordance with certain Commonwealth laws, from the obligation to comply with the requirements of the Act, as regards the form and content of their accounts. Similar exemptions are already conferred upon life companies by the existing law and, as a result of representations made by banking companies, it is proposed to extend the exemption to such companies. Clause 26 repeals Divisions III and IV of the principal Act, which relate to inspections and special investigations of companies, and clause 27 re-enacts those provisions in a modified form as Part VIA. The right of a company to conduct a "private" investigation of its affairs by the appointment of an inspector by special resolution is abolished but, in lieu thereof, the company may apply to the Minister for the appointment of an inspector, if the company resolves by special resolution so to do. An important improvement in the new Part is made in the power given in section 171 to appoint an inspector to investigate only specified aspects of the affairs of a company. This obviates the need to report upon the entire history of the company, and will result in an appreciable saving of time and money. Section 174 contains new provisions which are designed to protect persons who are examined by inspectors. Subsection (2) permits legal representation, subsection (4) provides protection against civil action as a result of compliance with a requirement of the inspector, and subsection (5) entitles a person examined to witness expenses. Section 176 stipulates the uses which may be made of notes of an examination, and in particular authorizes the Minister to provide a copy to a legal practitioner who is contemplating legal action in respect of the company's affairs.

Section 178 adopts a new approach in relation to the contents of inspectors' reports, in that it provides that an inspector shall not include in his report any recommendation as to the institution of legal proceedings, nor any statement that in his opinion a person has committed a criminal offence. Instead, the inspector is required to state any such opinion in writing to the Minister. The existing Act provides that, where the Minister causes a prosecuton to be instituted, he may require any officer of the company to give all assistance in connection with the prosecution that he is reasonably able to give. It is considered that such a requirement could lead to self-incrimination, and it is therefore proposed that the officer be given the right to object to the supplying of self-incriminating information; and, if the court considers that the objection is *bona fide*, the officer is not bound to comply with the requirement. The existing Act provides that the expenses of an investigation shall, in the first instance, be paid out of moneys provided by Parliament, but that the Governor may order the whole or part of the expenses to be paid by the company whose affairs have been investigated, or by any person who requested the appointment of an inspector. The new section 179 adopts a different approach, in that no person shall be required to contribute to the expenses of an investigation, unless the court so orders. Before making such an order the court is required to apply the criteria prescribed by the section.

Clause 27 also enacts a new Division VIB, which contains new provisions controlling take-overs. Section 180a sets out a number of definitions, and it will be noted that the definition of the expression "shares in a company to which a person is entitled" is very lengthy and complex. Such shares not only include those in which a person has an interest (as defined in the new section 6a in clause 6 of the Bill) but also extends to those shares in which an "associate" of that person has an interest. The definition of "associate" in section 180a (6) adds to the complexity of the new provisions, but it is felt that the provisions are necessary to ensure against avoidance of the new take-over code by the device of spreading the shares which the offeror controls among several holders.

Section 180b makes a major change in the law, in that natural persons who propose to make take-over offers will be required to comply with the Act. The existing law applies only to offerors who are bodies corporate, but it is considered that there should be no difference in the principles that should be

applied where control of a company is sought to be acquired, whether the offeror be a body corporate or a natural person. Subsection (1) of section 180c sets out the information that must be included in take-over offers, and it will be noted that offers made by two or more persons jointly are now brought within the meaning of a take-over offer. Such is not the case under the existing law, with the result that offerors have avoided complying with the take-over provisions by using an associated company as a nominal joint offeror. The subsection also requires offerors to supply the offeree company with a statement that complies with Part A of the tenth schedule. The statement must set out information which will enable the directors of the offeree company to assess the merits of the scheme before making a recommendation to the offerees.

Subsection (2) specifies offers that are not take-over offers within the meaning of the Act, namely (1) offers which will not result in the offeror becoming entitled to exercise more than 15 per cent of the voting rights in the company; (2) offers made not more than three members of the offeree company within a period of four months; (3) offers to acquire non-voting shares, unless the offeror is seeking to acquire the whole of the non-voting shares; (4) offers to acquire shares in a company that has less than 15 members; and (5) offers to acquire shares in a proprietary company, if all the members of that company consent in writing to the take-over provisions not applying to those offers.

Subsection (3) of section 180c introduces an important change in the law, in that it controls "first-come-first-served" invitations which have become common in recent years. The principal objections to those invitations are that (1) they are made by brokers on behalf of clients whose identities are not disclosed; (2) the invitations are expressed to be in respect of a small proportion of the issued capital of the company, with the result that persons to whom the invitations are made are forced to make hasty decisions for fear that they might miss the opportunity to sell their shares; (3) notwithstanding that the invitation is expressed to be for a certain proportion of the shares, it is invariably the intention of the invitor to acquire as many shares as possible; and (4) "first-come-first-served" invitations do not involve the invitor in compliance with the take-over provisions. The new provisions are designed to ensure that persons who invite shareholders to offer to sell their shares are required to comply with the take-over provisions to the same extent as if the invitor had made offers to acquire those shares.

Section 180d effects a further change in the law. Under the existing Act, offers to acquire shares do not constitute a take-over scheme unless acceptance of the offers would result in the offeror becoming entitled to exercise not less than one-third of the total voting rights in the company. The Company Law Advisory Committee considers that a person holding much less than one-third of the voting rights could virtually control the company, and the committee recommended that an offeror who seeks to control 15 per cent of the total voting power should be required to comply with the take-over provisions. Section 180d sets out a formula to be applied in determining whether take-over offers would result in an offeror being in a position to exercise 15 per cent of the voting rights, and the following factors are required to be taken into consideration: (1) Shares already held by the offeror (and by associates of the offeror within the meaning of section 180a) must be taken into account: (2) There shall be added to the number of shares referred to (1) above, the number of shares in respect of which the offeror, or his associates, has dispatched offers or invitations during the past four months (excluding shares which are included in those referred to in (1) above) or proposes to dispatch offers or invitations during the next four months; and (3) The aggregate of the votes that can be cast in respect of the shares referred to in (1) and (2) above is then divided by the total number of votes that can be exercised in respect of all the voting shares in the company, in order to arrive at the percentage of votes which will be controlled by the offeror.

Section 180e sets out terms and conditions which apply to offers. Offers must remain open for the period specified in the offers, being a period of not less than one month, unless they are withdrawn. If offers are withdrawn, contracts arising out of earlier acceptances are voidable at the option of the offerees. Section 180f prescribes the terms and conditions relating to invitations. As in the case of offers, invitations must remain open for a period of at least one month; the invitor shall not indicate that invitations will be accepted on a "first-come-first-served" basis; and no offer from an invitee shall be accepted before the expiration of the period during which the invitations are

expressed to be open, or in a manner that is unfair to other invitees.

Section 180g re-enacts a provision contained in the existing Act whereby the directors of the offeree company, on receipt of the Part A statement referred to in section 180c (1), are required to prepare a statement in accordance with Part B of the tenth schedule, setting out their reaction to the proposed take-over offers. The statement must be forwarded to the offeror for transmission to the offerees, or may be sent direct to each offeree. Section 180h requires an offeror who has dispatched take-over offers to give notice in writing to the offeree and to the Registrar, that the offers have been dispatched.

Section 180j sets out the liability of an offeror for false or misleading matter in, or material omissions from, a Part A statement, and prescribes the defences available to the offeror in proceedings taken against him. Under section 180k, if a person other than the offerees has acquired shares to which the offers relate, a corresponding offer is deemed to have been made to that person. Section 180l sets out the extent to which an offeror may vary the terms of the offers by increasing the consideration payable to the offerees. Under the present take-over provisions, if an offeror finds it necessary to increase that consideration in order to counter offers made by a rival bidder, he is required to go through the preliminary procedures afresh, and is therefore at a great disadvantage. The short procedure prescribed by section 180l will eliminate that anomaly. An important feature of the section is that persons who accepted offers prior to the variation are entitled to receive the increased consideration.

As a corollary to the provisions contained in section 180l, section 180m provides that, while a take-over offer remains open, no person may be given any benefit not provided for in the original scheme, other than an increase in consideration made under section 180l. However, that prohibition does not prevent the offeror from buying shares on the Stock Exchange at a price in excess of the offer price. Section 180n relates to conditional offers, that is, offers which (for example) are subject to acceptances being received in respect of a stated minimum percentage of the total number of shares for which offers are made. The offeror is not permitted to declare the offers to be free from the condition, unless it is specified in the terms of the offer that he may do so not less than seven days before the offer closes.

If one offer is declared to be unconditional, all other offers must be so declared, and the declaration must be published in a newspaper, together with a statement as to the proportion of shares to which the offeror has become entitled. Whether or not he has published such a notice, the offeror is required to publish a notice on the day specified in the offers as the last day upon which the declaration may be made, stating whether the declaration has been made and whether or not the condition had been fulfilled. Thus, offerees who may wish to accept the offer only if it appears that they will be left as a small minority if they do not accept will be informed as to the success of the take-over scheme, and will have the opportunity to accept the offer before the closing date.

Section 180p entitles the directors of an offeree company to have refunded to them the amount of any expenses reasonably incurred by them in connection with the take-over scheme. Section 180q prohibits a person who does not intend to make a take-over offer from announcing that he intends to make such an offer, and similar forms of bluffing are also forbidden by the section. In the past, it has been possible for a person to distort the market for shares, and to jeopardise the success of a legitimate take-over scheme, by announcing his intention to make take-over offers at a certain price, when in fact he has no intention of doing so, and has not the means of carrying the take-over scheme into effect.

Sections 180r, 180s and 180t vest certain powers in the Supreme Court. Section 180r enables the court to make orders against an offeror who has not complied with the take-over provisions, to ensure that the offeror cannot take advantage of shares acquired by him in breach of the Act, and to protect the rights of persons affected by the take-over scheme. Section 180s, on the other hand, empowers the court to declare an act not to be invalid, notwithstanding that the act constituted a failure to comply with the take-over code, if the court considers that, in all circumstances, the failure should be excused. Section 180t requires the court to satisfy itself, before making an order under section 180r or section 180s, that the order will not unfairly prejudice any person.

Section 180u repeats the provision in the existing Act whereby the requirements set out in the tenth schedule may be varied by regulation, thus providing a ready means of varying those requirements if a weakness therein

becomes apparent in practice. Section 180v empowers the Minister to exempt a person, by notice published in the *Government Gazette*, from the requirement to comply with any of the take-over provisions. A similar provision is contained in the existing Act, and is designed to alleviate hardship in particular cases. Section 180w prescribes the penalties for breach of the take-over provisions.

Section 180x is very similar to section 185 of the existing Act, in that it enables an offeror, who has become entitled to 90 per cent of the shares in the offeree company, to acquire compulsorily the remainder of the shares. Action to acquire the shares must be commenced within two months after the closing date specified in the original offers. A dissenting offeree may apply to the court to restrain the acquisition of his shares, and is entitled to be supplied with the names of all other dissentients to enable him to seek support to any court action he may wish to take. The existing section 185 will not be repealed, but will be retained in a slightly modified form for use in respect of schemes for the acquisition of shares, being schemes which are not take-over schemes within the meaning of the Act.

Section 180y provides for cases where an offeror has become entitled to 90 per cent of the shares in an offeree company, but does not proceed to acquire compulsorily the remaining shares. The section empowers a dissenting offeree, on discovering that the offeror has assumed control of the company, to require the offeror to acquire his shares on the same terms on which the other shares were acquired under the take-over scheme. A similar provision is contained in the existing section 185. Section 180z is transitional and provides that a take-over scheme that was initiated before the commencement of the amending Act shall be governed by the law in force prior to that commencement. Section 180za is similar to section 180p, except that it applies to expenses incurred by directors of an offeree company in respect of a take-over scheme under the law in force prior to the commencement of the amending Act. Its purpose is to fill a gap in that law.

Clause 28 repeals section 184 which has been replaced by the new take-over provisions in sections 180a to 180za. Clause 29 amends section 185, which as already stated, will apply only to the compulsory acquisition of shares, arising out of schemes which are not take-over schemes within the meaning of the new Part VIA. Although the whole of section 185 has been repealed and re-enacted, there has been no substantial alteration to the existing law. Clause 29a amends section 196 of the principal Act, and should be read in conjunction with the amendments to section 292 of the Act, as contained in clause 34 of the Bill. The purpose of the amendment is to ensure that wage and salary earners retain their priority for payment of amounts owing to them, as against the holder of a floating charge which crystallized and became a fixed charge prior to the appointment of the receiver.

Clause 30 repeals the whole of Part IX of the Act, and re-enacts it in a modified form. Part IX relates to the official management of insolvent companies, and was included in the existing Act to provide a means whereby the creditors of an insolvent company could appoint a person to take over the management of the company in the expectation that the company might be saved from total collapse, and to enable creditors to ultimately receive payment of the full amount owing to them—a result that could not be achieved if the company were forced into liquidation. When first enacted, it was recognized that the official management provisions were experimental, and it is not surprising, therefore, that the practical application of those provisions demonstrated that a number of amendments were necessary, if Part IX was to serve the purpose for which it was enacted. Several years ago, a redraft of Part IX was circulated to all interested organizations and, after their comments had been received and acted on, Bills were introduced and enacted in the other States and Territories, in terms identical with those contained in clause 30. The more important changes proposed to be effected in the law are as follows:

(1) Section 198 (2) provides that where a related company is a creditor of the insolvent company, that related company shall not be entitled to vote at the meeting of creditors at which a resolution is proposed to be passed to place the company under official management.

(2) Section 200 requires a director of the company to attend the meeting of creditors for the purpose of disclosing the state of the company's affairs and the circumstances leading up to the proposed official management.

(3) Section 202 (1) requires the creditors to form an opinion whether there is a reasonable probability that official

management will result in the company being able to pay its debts. That provision is designed to overcome the existing objectionable practice whereby companies are placed under official management when in fact there is little likelihood that the company can recover from its hopelessly insolvent position.

(4) A further feature of section 202 (1) is that it fixes the period of two years as the maximum initial period during which a company shall remain under official management. However, section 203c provides that the creditors may from time to time resolve to extend that period for a further period not exceeding 12 months in each case. The creditors are thereby in a position to review the company's position annually. Under the existing Act, any period of time may be fixed as the period for which a company shall be under official management, and no provision is made for an extension of the period originally decided upon.

(5) Section 204 (3) provides for the filling of the vacancy caused by the retirement of the official manager. Under the existing law, if the official manager ceases to hold office for any reason, the company ceases to be under official management.

(6) Section 206 (3) provides that, if the official manager forms the opinion that the continuance of official management will not enable the company to pay its debts, he shall call a meeting of the members of the company for the purpose of passing a resolution that the company be wound up. In the past, a number of companies have continued under official management even though it was apparent that losses were still being incurred and that the company had no hope of reaching a solvent state. The only person who benefited from the continuance of the official management in those circumstances was the official manager himself, who continued to receive his remuneration while funds were available.

Clause 31 amends section 218 of the principal Act, which prescribes the circumstances in which every present and past member of a company shall be liable to contribute to the assets of the company in the event of its being wound up. Clause 9 makes provision (*inter alia*) for the conversion of an unlimited company to a limited company, and it therefore becomes necessary to determine the extent of the liability of members and past members of the company in the event of its being wound up after conversion to a limited company. It is apparent that the members should not be able to take full advantage of the principle of limited liability, because it would encourage unlimited companies to convert to limited status at the first sign of insolvency, in order to enable members to escape liability for the full amount of the company's debts. It is also necessary to consider whether a past member should escape liability if he ceased to be a member more than a year before the commencement of the winding-up, as would be the case if the company had at all times been a limited company. The amendments to section 218 of the principal Act seek to resolve these problems, and are identical with the corresponding provisions of the Companies Act of the United Kingdom. The liability of the members and past members of a limited company which was formerly an unlimited company, is therefore expressed as follows:

(1) A past member who was a member at the time of the conversion to a limited company shall, if the winding-up commenced within three years after the conversion, be liable to contribute in respect of debts incurred before the conversion, without limit to his liability.

(2) Notwithstanding that the existing members of the company have contributed to the full extent as required by the Act, a past member who was a member within a period of three years prior to the commencement of the winding-up is required to make contributions without limit as to amount, if no persons who were members at the time of the conversion are members at the commencement of the winding-up.

Clauses 32 and 33 relate to minor consequential amendments arising out of alterations made to section numbers in the new provisions relating to investigations. Clause 34 amends section 292 of the principal Act in respect of the priority extended to wage and salary earners in a winding-up. Under the existing Act such a person is entitled to priority for $1,000 in respect of a period of six months

prior to the winding-up. Under the proposed amendment, the amount is increased to $1,500 and the qualifying period of six months is deleted. The substitution of the reference to "the relevant date" for the existing expression "commencement of the winding-up" is designed to ensure that wages and salaries owing to employees in respect of the period between the date of the presentation of the petition for winding-up and the date of the making of the winding-up order, are entitled to the same priority as other wages and salaries. These amendments have been recommended by the Standing Committee of Attorneys-General.

Clause 35 amends section 293, which relates to undue preferences in a winding-up. Section 293, in its present form, provides, in effect, that in order to determine whether a payment to a creditor is an undue preference the period between the date of the payment and the date of the commencement of the winding-up is a relevant factor. The effect of the amendment to section 293 is that where the company was under official management at the time of, or at any time within six months prior to, the commencement of the winding-up the date on which the company went under official management is substituted for the date of the commencement of the winding-up for the purpose of determining whether a payment amounted to an undue preference.

Clause 36 repeals sections 300 to 305 (inclusive), the provisions of which are re-enacted in sections 367b, 374a, 374b, 374c and 374d in clause 45. Clauses 37 and 38 amend sections 331 and 332 respectively, and the amendments are related to the amendment to section 25 in clause 9, which makes provision for the conversation of a no-liability company to a limited company. Section 331 provides that, if a no-liability company ceases to carry on business within twelve months after incorporation, shares issued for cash shall rank in a winding-up in priority to shares issued for a consideration other than cash. Section 332 provides that shares in a no-liability company issued to vendors or promoters shall not be entitled to any preference in a winding-up.

The purpose of the amendments to sections 331 and 332 is to ensure that those sections apply to a no-liability company that converts to a limited company, to prevent persons who hold shares in a no-liability company from avoiding the effect of those sections by converting the company to a limited company.

Clause 39 contains an amendment to section 341, and is consequential upon the alteration of clause and paragraph numbers in the ninth schedule. The amendment does not effect any alteration to the existing law.

Clause 40 enacts a new subsection in section 350, to the effect that, if a foreign company is placed under official management or goes into liquidation, every invoice, order for goods, etc., that is issued by the foreign company must include the words "under official management" or "in liquidation" (as the case may be) after the name of the company. The principal Act already imposes that obligation upon local companies.

Clause 41 enacts new section 352a, requiring a foreign company that is placed under official management in its State of incorporation, to lodge with the Registrar a notice to that effect. If the official management is terminated, notice of the termination is also required to be lodged. The purpose of the new section is to inform persons having dealings with such a foreign company that the company is in financial difficulties.

Clause 42 amends section 366, which empowers the court to validate irregularities in proceedings under the Act. Subsection (3) provides (*inter alia*) that the court may make an order to validate the proceedings of a meeting of a company or of its directors at which a quorum was not present or which was otherwise irregularly held. The purpose of the amendment is to empower the court to make such an order in respect of a meeting of creditors or of a joint meeting of creditors and members of the company.

Clause 43 amends section 367, which denies an inspector the right to demand disclosure of privileged communications made by a client to his solicitor. The new section 177 contained in clause 27 authorizes an inspector to delegate his inspectorial powers to another person, and it is therefore necessary to amend section 367 to ensure that privileged communications need not be disclosed to the inspector's delegate.

Clauses 44 and 45 effect important changes to the Act in its application to defaulting officers of companies. Sections 300 to 305 (inclusive) which are repealed by clause 36, contain provisions that enable proceedings to be taken against officers who have committed fraud, misfeasance, and other offences, but those provisions apply only in respect of companies which are in the course of being wound up. There have been many instances where

officers of companies have committed offences of a kind referred to in sections 300 to 305, but proceedings could not be taken against them because the companies were not in liquidation. The position is further aggravated by the fact that in some cases the company reaches the position where it has no assets, and in those circumstances creditors are not prepared to petition the court for a winding-up order, because there is little likelihood that they could recover the costs involved. As a result, officers of the company who by their fraudulent or negligent conduct have been responsible for the company's failure are not called upon to answer for their sins.

The underlying purpose of clauses 44 and 45 is to extend the provisions of sections 300 to 305 to officers of companies that are in financial difficulties, whether or not the companies are in the course of being wound up. Thus, officers of companies which (*a*) are under official management, (*b*) are under receivership, (*c*) are being investigated by an inspector, or (*d*) are unable to pay their debts or have ceased to carry on business and have no assets, are brought within the provisions of the Act relating to defaulting officers.

Section 367a is new. It enables the Minister or any person authorized by the Minister to apply to the court for an order for the examination of an officer, where it appears to the Minister that the officer has, by his conduct, rendered himself liable to action by the company. If the court makes the order, the applicant and, with the leave of the court, any creditor or member of the company, may take part in the examination which shall not be held in open court, unless the court otherwise orders. The person examined may be represented by counsel, but is not entitled to refuse to answer any question which the court allows to be put to him, but if the person claims that the answer might incriminate him, the answer shall not be used in criminal proceedings against him. Notes of the examination may be used in evidence in legal proceedings against the person examined, except to the extent already stated. If the court considers that an order for examination was obtained without reasonable cause, the court may order that the costs incurred by the person examined be paid by the applicant.

Section 367b re-enacts the provisions contained in the existing section 305 (which is being repealed) except that the application to the court for the examination of the officer may be made only by the Minister or by a person authorized by him. Section 305 authorizes the liquidator or any member or creditor to make the application. Section 374a is identical with the existing section 300 (which is being repealed), except that it applies to offences committed within the past five years. Section 300 is expressed to apply only to offences committed during the past 12 months. It is considered that the period of 12 months is too restrictive and enables delinquent officers to escape punishment.

Section 374b, although drafted in different verbiage, re-enacts subsections (1) and (2) of the existing section 303, which is being repealed. Section 374c (1) is identical with existing section 303 (3). Section 374c (2) has the same effect as the existing section 304 (4). Section 304 is being repealed. Section 374d re-enacts the existing section 304 except subsection (4) which, as already stated, has been re-enacted as section 374c (2).

Section 374e is interpretative for the purpose of sections 374a to 374d. Throughout the existing sections 300 to 305 powers are vested in the liquidator of the company to bring proceedings against defaulting officers. As already pointed out, the new sections 374a to 374d apply to certain categories of company that may not be in liquidation, with the result that section 374e vests those powers in other appropriate persons—for example, the official manager, the receiver, the Registrar, and a person nominated by the Minister, according to the category appropriate to the company.

Sections 374f and 374g re-enact the provisions contained in the existing sections 301 and 302 respectively. Sections 301 and 302 are being repealed. Section 374 is new. It empowers the Registrar to apply to the court for an order prohibiting a person who during the past seven years has been concerned in the management of two or more companies that have fallen into financial difficulties, from acting as a director or taking part in the management of a company, if the court is satisfied that the failure of the companies was due, in whole or in part, to the manner in which they were managed. The provision is designed to answer constant criticisms of the existing law which enables a person who has been a director of companies which have failed to form another company and continue to incur further debts.

Clause 44a amends section 374 of the principal Act and is related to the amendment to section 383 contained in clause 48. Its purpose is to prevent co-operative societies from

going from place to place hawking their shares. Clause 46 amends section 375 (2) of the principal Act which prescribes penalties against persons who make false statements in documents prepared for the purposes of the Act. The new subsection provides that it is also an offence to make or authorize the making of misleading statements in such documents or to omit any information if the omission would render the document misleading in a material respect.

Clause 47 enacts new section 375a, which creates a new offence in relation to the making of false or misleading statements. It has particular significance in relation to the accounts requirements of the Act, but also extends to false or misleading reports made to the Stock Exchange. Clause 47a seeks to enact new section 378a, which is a reciprocal provision to be enacted in all States. Its purpose is to enable action to be taken against persons outside the jurisdiction who commit offences against the Act, particularly in respect of the provisions relating to disclosure of substantial shareholdings and take-overs.

Clause 48 amends section 383 of the principal Act, and the purpose of the amendment is to extend the operation of section 374 to co-operative societies. Section 374 prohibits the hawking of shares, but in its present form the section does not apply to co-operative societies. Promoters have taken advantage of that weakness in the law by registering co-operative companies and employing share salesmen who go from door to door offering shares to the public.

An identical amendment to section 383 was included in the Companies Act Amendment Bill, 1970, but was withdrawn pending consideration of submissions made by promoters of co-operatives that had already raised large sums of money from the public by the hawking of shares. The submissions contained a number of inaccurate and misleading statements and, in fact, did nothing to justify the suggestion that co-operatives should not be prohibited from hawking shares.

Clause 49 amends the second schedule to the Act which prescribes the fees payable under the Act. The first amendment is merely consequential upon the amendment to the accounts provisions, and does not effect any change in the law. The second amendment prescribes the fee payable on lodging an application by a company under the new section 167c for exemption from compliance with any of the new accounts provisions set out in sections 162 and 162a in the Bill. The fee of $25 is $5 in excess of that payable on the lodgement of other applications under the Act, but the excess is justified by the fact that the Registrar is required to consult Registrars in other States before making a decision, since it is most desirable that such applications are dealt with uniformly throughout Australia.

Clause 50 amends the eighth schedule, which prescribes the form and content of annual returns lodged by local companies. The amendments are consequential in nature and are not of great significance. Clause 51 repeals and re-enacts the ninth schedule which prescribes the information that must be set out in the profit and loss account and balance sheet of a company. The new schedule requires the disclosure of detailed information far in excess of that prescribed by the existing schedule, and represents an attempt by the Company Law Advisory Committee to ensure that members of companies and the investing public are able to assess more accurately the trading results and the current financial position of companies in which they hold shares or in which they contemplate investing money. It is impracticable to discuss every new item appearing in the new schedule, but the following new requirements are considered to be worthy of separate mention:

(1) Income derived from, and amounts paid to, other related companies in a group of companies must be shown separately from other income and payments.

(2) Profits or losses arising otherwise than in the ordinary course of business must be separated from trading profits or losses.

(3) Bad debts written off and provisions made for doubtful debts must be disclosed in respect of each class of debtors.

(4) Amounts paid to auditors for their services as auditors must be shown separately from amounts paid to them for other services rendered to the company.

(5) Where the amount shown as set aside for payment of income tax differs by more than 15 per cent from the amount of tax that would appear to be payable on the disclosed net profit, the reasons for that difference must be explained in the accounts.

(6) Accumulated losses must be shown as deductions from the amount of paid-up capital and reserves.
(7) Provisions for depreciation and doubtful debts must be shown as deductions from the assets to which they relate.
(8) All secured liabilities must be shown separately from unsecured liabilities, and the extent to which they are secured must be stated.
(9) Current assets and current liabilities must be shown separately from other assets and liabilities.
(10) Where the amount of any asset is shown "at valuation", a statement must be added showing whether the valuation was made by the directors or by an independent person. If the valuation was made by an independent person, the qualifications of that person must be stated.
(11) Where land has been purchased for resale, and development costs and rates and taxes in respect of that land have been capitalized, the accounts must show separately the amounts so capitalized.
(12) Group accounts prepared by a holding company must disclose (*a*) the name and place of incorporation of each subsidiary; (*b*) the amount invested by the holding company in shares in each subsidiary; (*c*) the percentage of each class of shares held by the holding company in each subsidiary; (*d*) where the financial years of the holding company and any subsidiary does not end on the same date, the date on which the financial year of the subsidiary ends.
(13) Where separate accounts of a subsidiary form part of the group accounts, the subsidiary's accounts must be in the same form as the holding company's accounts, except that if the subsidiary is incorporated outside the State, it is sufficient if its accounts are prepared in accordance with the law in force in the place of incorporation of the subsidiary.
(14) If group accounts are not in the form of consolidated accounts, they must be accompanied by a certificate signed by the directors that the preparation of consolidated accounts is impracticable for the reasons stated in the certificate.

Clause 52 repeals the existing tenth schedule and enacts a new schedule in its place. Part A of the existing schedule sets out the requirements with which take-over offers must comply. Those requirements now form part of new section 180c (1). Part B of the existing schedule prescribes the information to be given by the offeror to the offeree company. That information is now prescribed by Part A of the new schedule, and is similar to that contained in the existing Part B. It has been necessary to make certain changes in the verbiage to cater for the circumstance where the offeror is a natural person or where the offers are being made jointly by two or more corporate bodies or natural persons. The existing law does not apply to such offers.

Part C of the existing schedule is replaced by a new Part B setting out the information to be contained in the statement prepared by the directors of the offeree company for the benefit of the offerees. Here again, there is no change in the nature of the information to be supplied, except to the extent to which it is necessary to cater for joint offers and offers made by natural persons. I submit the Bill for the attention of honourable members. It will be a difficult Bill to discuss, and I suggest that any member who wants any information concerning it or wants to propose any amendments should contact me and I will obtain details for him, only with the idea of saving time in Committee.

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

PRICES ACT AMENDMENT BILL

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

ADJOURNMENT

At 5.39 p.m. the Council adjourned until Thursday, November 11, at 2.15 p.m.