LEGISLATIVE COUNCIL

Wednesday, November 7, 1973

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

QUESTIONS

RESEARCH ASSISTANT

The Hon. C. M. HILL: I seek leave to make a short explanation prior to directing questions to the Chief Secretary, as Leader of the Government in this Chamber.

Leave granted.

The Hon. C. M. HILL: I refer to the appointment that was reported yesterday of Miss Adele Koh as a research assistant to the Premier. The report indicated that Miss Koh at 29 years of age was to receive $11 000 a year in her new post. It appears also that Miss Koh came to Canberra six months ago as a public relations consultant and, whilst there, saw this post advertised as a research assistant to Mr. Dunstan and applied for it. My questions are these. Is the appointment made under the Public Service Act; has the position been classified at that salary by the Public Service Board; were applications called within the Public Service for the position; and how many South Australians were considered for the position?

The Hon. A. F. KNEEBONE: I will refer the honourable member's questions to the Premier and bring down a reply as soon as it is available.

AIR POLLUTION

The Hon. R. A. GEDDES: Can the Minister of Health say whether the quantity of airborne lead particles in the atmosphere is measured by the mobile air pollution testing vehicles of the Public Health Department that are situated in various streets of the metropolitan area? If that kind of measuring is done, will the Minister obtain a report as to the measurements of that kind that the instruments in the vehicles have recorded?

The Hon. D. H. L. BANFIELD: I shall be happy to obtain that information for the honourable member.

ELDER HALL

The Hon. C. M. HILL: Last Thursday I asked whether the Minister of Education would look into the question of Elder Hall being saved from demolition and whether he would consider the possibility of either the Government or the Adelaide City Council providing building space in Rundle Street or on the fringes of Hindmarsh Square to permit the expansion of university facilities, thereby saving Elder Hall from demolition. Has the Minister of Agriculture a reply from his colleague?

The Hon. T. M. CASEY: The Minister of Education has arranged for an examination by the Government of the suggestions made by the honourable member with respect to university use of the office building or site of Foys building and the properties on the eastern side of Hindmarsh Square.

KINDERGARTENS

The Hon. R. A. GEDDES: Has the Minister of Agriculture a reply from the Minister of Education to my question of October 30 about kindergartens in rural areas?

The Hon. T. M. CASEY: The Minister of Education informs me as follows:

Until the Fry committee on pre-school kindergartens brings down its report, it is impossible to make any firm determination on the matters raised by the honourable member.

KINGSTON SCHOOL

The Hon. M. B. CAMERON: On August 7, I asked the Minister of Agriculture, representing the Minister of Education, a question about the Kingston Area School and the possible availability of an open-space unit there. As I have not received a reply, will the Minister take up this matter with his colleague and ascertain when a reply will be available ?

The Hon. T. M. CASEY: Yes.

COMMERCIAL MOTOR VEHICLES (HOURS OF DRIVING) BILL

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

SOUTH AUSTRALIAN MUSEUM BILL

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

CRIMINAL LAW (SEXUAL OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from October 31. Page 1506.)

The Hon. G. J. GILFILLAN (Northern): This Bill is a more rational approach to a very difficult problem than the attempt that was made last year to have the Act substantially amended. The honourable member who introduced this Bill is to be commended for a more rational approach in trying to equate the offence as regards consenting males with that of heterosexual acts between male and female. I do not know whether this is men's liberation raising its head by equating males with females in the matter of sexual offences. However, I agree with the Hon. Mr. Burdett that it is not logical precisely to equate these two situations because, as all honourable members know, different principles are involved. I believe that the amending Bill, which was passed last year, has to a large extent covered a position for which it is difficult to legislate precisely.

To the best of my knowledge, there have been no prosecutions relating to homosexual acts between consenting males in private and, as I understand the amending Bill that was passed last year, it is most unlikely that prosecutions of this nature will ever be launched. I agree that the persecution of minority groups should not be tolerated in a democracy. However, in many instances this depends on the administration of the law as much as it does on the law itself.

All honourable members know that laws are passed relating to many aspects of our society and that some of those laws have not been amended for many years. It is because of the common sense of our Administration that such laws have worked to the benefit of our community. I repeat that I do not believe in the persecution of minority groups. However, it is extremely difficult to legislate for a minority when we have to consider the whole of society and its interests.

Our society is still based largely on the family life of the community, and surely the normal behaviour in the community must be that of the large majority. Even with our presently accepted standard of behaviour, the family group is still the majority group in society. Sympathy for this small minority is commendable, but in considering the law the interests of all sections of the community are involved. We live in an age of changing views. Our society, which has been labelled in many different ways, has been called a permissive society.

However, permissiveness is relative, depending not only on the point of view of the individual but also perhaps on the changing views of the community. What is a permissive society today may be taken as normal tomorrow.

It is unfortunate that, when an issue of this nature is brought before the public, demonstrations often occur. A group called "Gay Activist Alliance" has sought permission to give lectures in schools. This is a different matter altogether from that of recognizing the problems of a minority group. The growing tolerance (and I believe there should be a growing tolerance towards people with a certain problem) is carried further, almost to one of promotion, and this is where the inherent risks to our social structure lie. If society considers that our law in this respect is tolerant and is being administered properly, many people will not object. I believe that the Bill passed last year covered many of these problems, but before this Bill has been passed by Parliament we have seen a public action. I do not think the word "promote" is unduly exaggerating the position. We have the normal relationship between the sexes that has occurred since time began, and from the way in which the population has increased over that time it is quite obvious that this attitude has not had to be promoted, but we find this situation now with a minority group, which I believe would be more acceptable to the community as a group with a special problem rather than as a group that is openly promoting a way of life not that of the great majority.

I believe in sex education within the schools if it is properly conducted, and conducted with common sense, but I do not think that any one view should be placed before students, or before any other group of people, as a form of lecture. As I understand it, headmasters who have been approached for permission to hold these lectures have refused in all cases. I know that that has occurred, and I commend the headmasters of schools for the balanced judgment they display in the types of lectures they will allow outside bodies to give within the school. The administration of the Education Department perhaps could give a positive lead in this regard.

Although I have sympathy for people with these problems (and I realize that they are tremendously difficult to solve), and acknowledging the commonsense approach of the mover of this Bill, I still hold that the legislation enacted last year has not proved to be a barrier that has led to persecution, and I should like to see it given a further trial within the social structure. For that reason, I will not support the Bill.

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

COMPANIES ACT AMENDMENT BILL

Read a third time and passed.

ELECTORAL ACT AMENDMENT BILL (COMMISSIONER)

Read a third time and passed.

MOTOR FUEL DISTRIBUTION BILL

Second reading.

The Hon. A. F. KNEEBONE (Chief Secretary): I move:

That this Bill be now read a second time.

It provides for the licensing of certain retail petrol outlets, more commonly known as service stations. It is part of a scheme to rationalize the number of service stations and to reduce their proliferation in the interests of those in the industry as much as in the general public interest. Honourable members will be aware of the consequences of the adoption of the "one brand" service station policy by the major distributors of petrol. The apparent effects of this policy have become increasingly obvious over the last decade or so. Competition in the industry has resulted in the proliferation of service stations with, in many such service stations, a general low level of profitability. In some cases the lessee is receiving a return less than the minimum wage and there is a marked degree of over capitalization by the oil companies in this aspect of their distribution. This situation has given rise to concern not only in South Australia and some other States but in many oversea countries as well.

In the past, attempts have been made by the companies involved to come together voluntarily in a scheme which will alleviate this situation, and the Government would be less than fair if it did not acknowledge that certain arrangements entered into pursuant to such a voluntary scheme have gone a long way towards overcoming some of the more undesirable features of the present situation. However, voluntary schemes have certain disadvantages, and an important one is that there is no sanction that can be applied to companies that do not co-operate fully with others. This results in companies which try to play their part in the scheme fairly being considerably disadvantaged. The Government acknowledges the quite proper desire of the companies involved to retain their existing share of a highly competitive market and recognizes that this situation will not continue to obtain if, say, when one company closes down a service station in a given area, a rival company then is allowed to proceed to open a service station in that area.

During the discussions with representatives of the oil companies concerning the preparation of this Bill, it seemed that it still might be possible for all the companies to agree among themselves as to an effective voluntary arrangement that will achieve substantially the same objects as proposed by this measure. The Government is willing to permit such a voluntary arrangement to operate while all oil companies agree to observe it. However, the Government considers that this Bill should be proceeded with so that it will be on the Statute Book, and should the voluntary scheme prove ineffective can be quickly brought into operation. If this Bill serves no other purpose, it will ensure that those companies that co-operate in the voluntary scheme will not in the future be disadvantaged by their co-operation.

Clauses 1 to 3 are formal. However, I particularly point out in the light of my earlier remarks that clause 2 will enable the Bill not to be immediately proclaimed if the voluntary scheme is observed by all oil companies. Clause 4 sets out the definitions necessary for the provisions of the measure. Clause 5 makes it clear that certain other Acts relating to motor fuel will not be affected by this Act. Clause 6 establishes a Motor Fuel Licensing Board, and I draw honourable members' attention to subclause (2) of this clause, which sets out the functions of this board. Clause 7 provides for the appointment of three members to the board, each to have a term of office not exceeding five years in the first instance. Clause 8 provides for the appointment of deputies of members.

Clause 9 is a clause, in the usual form, providing for vacation of office by members, and clause 10 provides for payment of members. Clause 11 ensures that acts or proceedings of the board will not be invalidated by a vacancy in the membership of the board or by any formal defect in the appointment of a member, and is a usual clause

in measures of this nature. Clause 12 provides for a quorum, of two members, to be present before proceedings of the board can be conducted, and clause 13 empowers the Chairman of the board, or deputy of the Chairman of the board or member presiding, to exercise a casting vote. Clause 14 provides for a Secretary of the board.

Clause 15 empowers the board to carry out hearings, and requires it to conduct hearings when it is considering the matters referred to in subclause (2) of that clause. Clause 16 provides for the procedure to be followed at a hearing before the board. Clause 17 provides that the board may issue summonses to witnesses; clause 18 empowers the board to make orders as to costs; and clause 19 provides that the board shall give written reasons for its decisions.

It will be clear from the explanations I have given in relation to the clauses immediately preceding that the functions of the board are to be exercised in a *quasi*-judicial manner, since it is realized by the Government that a licence to operate a service station is a valuable proprietary right. For this reason clauses 20 to 23 establish an appeal tribunal, which will be constituted of a judge of the Local Court. It is to this tribunal that appeals from decisions of the board will lie.

Clause 24 provides for the appointment of inspectors. Clause 25 sets out, in some detail, the powers of an inspector. Clause 26 provides for the fixing of an appointed day for the purposes of the Bill, and on and from this appointed day the regulatory provisions of the measure will come into operation. Clause 27 is the nub of the measure and provides that on and from the end of the third month next following the appointed day it will be an offence to sell motor fuel from any premises unless those premises are licensed or are the subject of a permit. I draw honourable members' attention to the quite wide definition of premises contained in clause 4 of this measure. For the purpose of clause 27 certain retail sales will be exempted, and it may be of some assistance to honourable members if I mention in brief these exempted sales. First, sales by an employer to his employees will be exempted. Secondly, sales in quantities of 200 litres (44 galls.) or more will be exempted; and, thirdly, prescribed sales will be exempted. The reason for the inclusion of this last class of sale is to ensure that the legislation contains an appropriate degree of flexibility.

Clause 28, when read with clause 29, provides that service stations that were carrying on business in the month of December, 1972, will, in effect, be entitled to the grant of a licence. Thus, the number of service stations that were in operation in the State during that month will be kept the same. Clause 30 deals with applications for licences for new service stations. Before such a licence can be granted, the board will be required to take into account the matters referred to in paragraphs (*a*) to (*h*) of subclause (2) of this clause, and here I draw honourable members' particular attention to the criteria set out, as in the Government's view these are the matters that should be taken into account to ensure the provision of a proper number of retail outlets. Clauses 31 and 32 are formal. Clause 33 provides that those undertaking business from licensed premises must comply with any conditions or restrictions on the licence. Clause 34 provides for the expiry of a licence. Clause 35 provides for an annual fee for the licence.

Clause 36 is again a most important provision, and I draw honourable members' particular attention to it. It provides for the alteration of a licence either by changing the name of the holder of the licence or, more significantly, by changing the premises to which the licence relates. In the terms of the measure, the board must, before granting a fresh licence, turn its mind to the question whether or not the premises proposed to be the subject of a fresh licence can be made the subject of a transferred licence. By a prudent use of these powers, it should be possible for uneconomic service stations to be phased out gradually, the licences attached to them being transferred to economically better locations. Clause 37 ensures that the board will not be obliged to consider a number of applications in relation to particular premises when it has already refused a licence for those premises. Clauses 38 to 46 relate to the granting of permits in relation to premises and, in fact, these provisions mirror the licensing provisions that I have just adverted to, the substantial difference being that premises that will be the subject of a permit are those premises from which the principal business is not the selling of motor fuel by retail. Many premises of this nature will be found in the country areas.

Clause 47 confers additional powers of inspection and inquiry on an inspector, and clause 48 permits the board to conduct certain formal inquiries into the conduct of persons engaged in the business of selling motor fuel by retail. Part IV of this measure, being clauses 49 to 52, is commended to honourable members for their most careful study. It is an endeavour to ensure that the board has some control over the arrangements that some lessees of service stations are obliged to enter into to secure fuel from their lessor oil companies. While it is true that many such arrangements are quite unobjectionable, it is the Government's view that some at least are worthy of scrutiny, not only from the point of view of the economic position of the operator of the service station but also in the interests of the public generally. In effect, this Part will give the board power to declare an arrangement that affects the business being carried on in the premises, the subject of a licence or permit under this Act, to be an undesirable arrangement, where such an arrangement is not in the economic interests of those engaged in the retail selling of motor fuel or not in the public interest. An undesirable arrangement will be void and of no effect.

In clause 52 provision is made for arrangements to be submitted to the board for its approval before they are entered into, and such approved arrangements will not be liable to be declared undesirable arrangements. Clauses 53 to 55, when read together, will limit the installation of new industrial pumps as defined, and I draw honourable members' particular attention to the fact that the definition does not include a pump used in the business of primary production. Such pumps may be installed only where there is a real and proper need for them. The Government considers that the inclusion of these provisions is warranted since a proliferation of industrial pumps can, to some extent, defeat the objects of the measure.

Clause 56 provides for an annual report by the board. Clause 57 is an evidentiary provision. Clause 58 exempts the board and other persons from liability for acts done in good faith. Clause 59 enjoins the board and other persons to keep matters before them secret. Clause 60 is a formal financial provision. Clause 61 is a formal provision. Clause 62 provides for default penalties. Clause 63 relates to offences by bodies corporate. Clause 64 provides for the making of regulations.

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

LAND AND BUSINESS AGENTS BILL

Second reading.

The Hon. A. F. KNEEBONE (Chief Secretary): I move:

That this Bill be now read a second time.

It largely follows the same form as the Bill that was introduced into the Council last year. Much of what I shall say in explanation of the Bill, therefore, recapitulates what was said in the second reading explanation of the previous Bill. The Bill incorporates and amends the provisions of the present Land Agents Act and Business Agents Act. There are four Acts that deal with the licensing of persons who act as agents in the selling of land or businesses or prepare documents relating to the sale of land. They are: the Auctioneers Act, the Business Agents Act, the Land Agents Act, and provisions in the Real Property Act dealing with the licensing of land brokers. As the functions of all persons licensed or registered under these Acts are to a marked extent interrelated, it has been thought desirable to bring land agents, land salesmen, business agents, business salesmen, and auctioneers of land under the jurisdiction of one board and under one common licensing scheme.

It has also been thought desirable to set up a licensing body in respect of land brokers who are at present licensed by the Registrar-General. The sale of many businesses, including small businesses, involves the transfer of absolute ownership or a leasehold interest in land. The transfer of such interests is intermingled with the purchase of the goodwill and stock-in-trade of the business. At present, business agents are licensed by the Local Court. Land agents who were previously licensed by that court were brought under the jurisdiction of a licensing board in 1955. There is no authority in relation to business agents that may effectively inquire into complaints against the conduct of licensed business agents in their capacity as such agents. It would not be appropriate or practicable for the court to make such inquiries except when a formal application for a cancellation of the business agent's licence is made. The present Business Agents Act does not provide for any previous experience or knowledge on the part of an applicant. He is required merely to satisfy the court that his character and financial position are such that he is, having regard to the interests of the public, a fit and proper person to carry on business as a business agent.

Negotiations for the sale of a business frequently involve complex financial transactions on which purchasers and vendors expect to receive advice from the business agents engaged. Many business agents are experienced and are competent by virtue of that experience to tender such advice but, having regard to the present licensing provisions, it is open to anybody of good character and satisfactory financial position to obtain a licence. One of the purposes of the Bill is to ensure that business agents who in the future are licensed for the first time shall be required, as are land agents, to have adequate experience and knowledge to perform competently the functions that the public is entitled to expect of them. The Land Agents Board has, in the past, received complaints about the activities of persons licensed under both Acts where it has been unable to act, because it cannot be determined where the agent's duties as a business agent in a particular transaction cease and where his duties as a land agent commence. Both the Land Agents Act and the Business Agents Act require the agent to keep a trust account. Where a person is licensed under both Acts it is frequently unnecessarily difficult, and sometimes impossible, to determine into which account moneys received by such agents should be paid.

The Bill seeks to bring about a common licensing scheme in relation to land and business agents and auctioneers of land. Such a scheme is in operation in other States, and there is an ordinance covering the same object in the Australian Capital Territory. The Bill also provides for a licensing board for land brokers who, as previously mentioned, are at present licensed by the Registrar-General. Although the Registrar-General requires such persons successfully to undertake a course at the Institute of Technology, the only qualification contained in the Real Property Act is that such persons be fit and proper persons to be land brokers. Again, there is no authority having the jurisdiction to undertake investigations into complaints about the conduct of persons licensed as land brokers. Where a person is licensed as a land agent and is also licensed as a land broker, the Land Agents Board has been unable satisfactorily to deal with a complaint concerning a particular transaction, because the conduct as a licensed land agent of a person holding both licences cannot be separated from his conduct as a licensed land broker. There are some grounds for holding the view that a person should not be licensed both as a land agent and a land broker. However, the Bill seeks to achieve a compromise between this view and the present situation.

In addition to setting up a common licensing system under a land brokers' licensing board, other provisions in the Bill provide for a fund to meet defalcation by land and business agents and land brokers along the lines of the fund recently set up under the Legal Practitioners Act. At present, land agents and salesmen are required to provide a bond of $4 000 against possible defalcations. This amount is grossly inadequate, but a substantially higher amount would involve insurance premiums beyond the financial capacity of many agents. There are other provisions for regulating the making of contracts for the sale of land or businesses and also variations of those provisions of the Land Agents Act and the Business Agents Act which concern the conduct of land and business agents. Auctioneers who simply auction goods and chattels are not affected, but there is no good reason why an auctioneer auctioning land should not be required to be licensed or registered, as in many cases a contract is negotiated by the person conducting an auction immediately after the land being sold has failed to reach the reserve price.

Careful consideration has been given to suggestions of various interested bodies and, whilst it has not been considered practicable or desirable, by legislation, to deal with all the matters which have been raised, with one exception all the provisions relating to the control of agents meet with the approval of the Real Estate Institute. A considerable proportion of the provisions in this Bill were recommended by the Land Agents Board, which has been charged with the licensing of land agents and the registration of land salesmen for the past 17 years.

Part I contains saving and transitional provisions, but attention is drawn to provisions which provide that any licence in force under the present Land Agents Act or Business Agents Act before May 1 shall be deemed to be a licence in force under the Bill and that a person licensed as a business salesman under the Business Agents Act immediately before the commencement of the Act shall be deemed to be registered as a salesman under the Bill. This means that a few persons who do not have all the qualifications required for a land agent will become so licensed by

virtue of their having held a business agent's licence. The number of such persons is, however, relatively few and it was thought better to permit these persons to continue to carry on as business agents rather than lose their livelihood or be outside the licensing provisions and the control of the board. With regard to persons registered as business salesmen, their qualifications are similar to those at present required for land salesmen, and it is not thought unreasonable that they should become licensed as registered salesmen of land and businesses under the new Bill. Again, the number of persons affected is small.

Part II deals with the Land and Business Agents Board. The constitution of this board will be similar to the board under the present Land Agents Act, and provisions as to quorum, validity of the acts of the board, allowances, etc., will remain as they are at present.

Part III deals with the licensing of agents relating to dealings in land or businesses. These provisions are similar to those in the existing Land Agents Act. Clause 13 prohibits the carrying on of business or holding out as a licensed land agent without a licence. Clause 14, which provides for applications for licences, follows, as does clause 13, the present provisions of the Land Agents Act. Clause 15 sets out the qualifications that are required of a person to entitle him to hold a licence. They are based, with some modification in relation to the necessity for practical experience, on the present Land Agents Act, but make allowance for persons who hold a business agent's licence to be licensed under the Bill.

Clause 16 provides for a licence to be granted to a corporation. It requires that, in the case of a corporation that did not hold a licence at the commencement of the Act, the persons managing, directing or controlling the affairs of the corporation are to have the same qualifications as has a licensed agent or registered manager. The board is given power to exempt certain corporations from the requirement that the persons in control of the business are licensed or registered. At present, completely unqualified persons are able to form a proprietary company and engage a registered manager who is then subject to their control, in order to carry out the corporation's business as a land agent.

Land agents are offering personal services to the public, and it is considered reasonable, subject to the exemptions, that those who are able to control the affairs of a corporation holding a licence should have sufficient knowledge and experience in the duties of a land agent to guide the corporation in its business. They should not be permitted by the protection of the corporate body, in effect, to carry on businesses for which they are not qualified. Clauses 17 and 18 deal with the duration and renewal of licences. Clause 19 provides that, where a licensed agent dies, an unlicensed person may, with the consent of the board, carry on the business up to a period of six months in accordance with conditions imposed by the board. Clause 20 provides for the surrender of a licence with the consent of the board.

Part IV provides for the registration of salesmen. Clause 21 provides that a person who is not registered as a manager who is a person required to have the same qualifications as a licensed land agent shall not serve any person as a salesman or hold himself out as a salesman or act as a salesman unless he is registered. The effect of this is that only a registered salesman and a registered manager may be in employment as a salesman engaged in negotiating dealings in land or businesses. This clause follows the present Land Agents Act.

Clause 22 provides, as do the present Land Agents Act and Business Agents Act that a person shall not employ any unregistered salesman. The clause also provides that, unless the board considers that special circumstances exist, no person shall employ a salesman in his business except on the basis that the salesman is employed full time in that business. The clause exempts from this latter provision any salesman employed part-time within a period of 12 months after the commencement of the Act and also permits the indefinite continuation of employment of a salesman employed on a part-time basis where he was so employed by a land agent immediately before the commencement of the Act and he continues in that employment. This provision is designed to phase out gradually the present practice of agents nominally employing large numbers of salesmen who, because of the spasmodic nature of their activities, obtain little or no practical experience or knowledge.

It has been found in a number of instances that there has been conflict between the agent and the so-called salesman about whether or not the salesman is in the employ of the agent. This part-time employment frequently involves lack of any supervision by an agent over salesmen. The Land Agents Board has investigated a number of cases where part-time salesmen, quite inexperienced, were left to their own devices by the agent and they obviously were quite unsupervised in the conduct of difficult negotiations with prospective purchasers.

Clause 24 re-enacts section 39 of the present Land Agents Act. It continues to exempt stock and station agents from the requirement that all employees of a branch office should be registered as salesmen or managers. Clause 25 provides for the manner in which application for registration is to be made by a salesman. Clause 26 provides for the qualifications for registration of a salesman. At present, the only requirement is that a person should be a fit and proper person. The purpose of this clause is gradually to require that persons who apply to be registered as salesmen shall have sufficient knowledge in order properly to carry out their functions.

The duties of a salesman are often crucial in the negotiation for sale and purchase of land. It is the salesman who communicates with the purchaser, shows him the property and usually writes up the contract note which is ultimately signed by the purchaser and the vendor. It is the salesman who communicates any offers from the purchaser to the vendor, and frequently it is only when a contract has become binding on both parties that the land agent, or business agent, the employer of the salesman, becomes aware of it. It is regarded as essential that the qualifications for salesmen should be upgraded and that the requirement to be registered is that such a person shall not only be a fit and proper person but that he has also passed such examinations or obtained such educational qualifications as may be prescribed.

The Bill exempts from educational requirements any person who was registered as a land salesman under the Land Agents Act or licensed as a business salesman under the Business Agents Act immediately before the Bill comes into effect. It is thought that this adequately preserves the rights of persons holding an existing registration and, although as previously pointed out it is perhaps giving a business salesman some advantage which he did not previously have, it is only reasonable that such persons who could, in most instances, by application to the existing Land Agents Board, now be registered as land salesmen should have their position preserved. It also exempts from the educational requirement any person

who, within 10 years before the date of his application, was registered as a salesman or registered as a manager under the Land Agents Act before the commencement of the Act contained in this Bill or held a business agent's licence under the Business Agents Act.

Clauses 27 and 28 provide for renewal of registration as a land salesman. Both these clauses are in similar terms to the existing Land Agents Act and Business Agents Act. Clause 29 provides that a salesman may surrender his certificate of registration. It also provides that, while he is not in the service of an agent, his registration is suspended. Both these provisions are contained in the existing Land Agents Act. This clause requires that a registered salesman shall give notice to the board of the commencement or termination of his employment. This provision is contained in the existing land agents regulations, but it is considered sufficiently important to incorporate it in the Bill as its requirements have in the past frequently not been observed, the usual excuse being ignorance.

Part V deals with nomination and registration of managers whom a licensed corporation is required to have in its service and actual control of the business conducted in pursuance of the corporation's land agent's licence. Clause 30, in addition to providing for the control of its business by a registered manager, also provides that a licensed land agent, not being a corporation, whose usual place of residence is outside the State, must have a registered manager in contol of his business. Clause 30 (3) exempts from the requirement to nominate a registered manager during a period of one month after the happening of certain events. Other provisions in the clause are evidentiary, dealing with the usual place of residence within the State of a person and a prohibition on remuneration to a registered manager who is not in the service of a licensed agent.

This clause substantially follows the existing provisions in the Land Agents Act, but the last-mentioned provision relating to remuneration has been considered necessary because of the practice of licensed land agents paying commission to registered managers not in their employ. This has been found to be most unsatisfactory, as a registered manager may nominally be in the employment of several agents, a practice which may give rise to conflict of interest against both the interests of the public and of the agents themselves.

Clause 30 (6) provides for a manager to be employed full time. This is directed against the case of one registered manager being nominally in the employment of several persons or corporations who are licensed as land agents. This practice has been observed where unqualified persons promote a proprietary company, become directors of it, and obtain a land agent's licence in respect of that company. Although there has in the past been the requirement that they must employ a registered manager it has been found that a licensed land broker, for example, who is also a registered manager is nominally appointed as registered manager, but in fact he plays no part in the business and carries on some other business or is engaged in other employment. In addition, it has been found that such a person is the nominated registered manager of more than one corporation holding a land agent's licence. This situation is most undesirable. Clause 30 (7) is complementary to subclause (5).

Clause 31 lays down the manner in which application for registration as a manager is to be made. Clause 32 provides for the qualifications required for a person entitled to be registered as a manager. These qualifications are similar to those provided for by clause 15 in relation to land agents' licences. As has been previously pointed out, a registered manager stands in relation to a corporation, or a land agent whose usual place of residence is outside of the State, in the place of the person holding a licence. Clauses 33 and 34 provide for duration of registration and for renewal. Clause 35 provides for surrender and suspension of registration of a manager whilst not in the service of an agent. It also provides for notification to the board of commencement or termination of employment.

Part VI deals with the conduct of the business of an agent. Clause 36 requires a licensed agent within 14 days after commencing or ceasing to carry on business to give to the secretary of the board notice in writing of that fact. Clause 37 provides for an agent to have a registered office for service of notices at the registered office and for registration and for giving notice of situation and change of situation of a registered office. Clause 38 provides for registered branch offices and follows the existing provisions in the Land Agents Act.

Clause 39 requires the agent to exhibit a notice as to his name, the fact that he is a licensed land agent, and the name or style under which he carries on business. It also provides for notification to the board of alteration of the name or style under which he carries on business. Clauses 36, 37, 38 and 39 substantially follow the existing provisions in the Land Agents Act.

Clause 40 provides for a licensed land agent to keep prescribed particulars of employees engaged in his business and to produce the record of those particulars. This provision has been found necessary because of the occasions on which land salesmen have failed to notify the board, as required by the existing regulations, of their change in employment or ceasing to be employed, and also by the fact that in some instances, as has previously been pointed out, agents, through failure to keep proper records, have not been able to inform the board whether or not certain salesmen were employed by them. A number of agents nominally employ upwards of 20 to 30 salesmen on a commission only basis.

Clause 41 prohibits the publication by licensed agents of advertisements that do not state the name of the licensed agent, his address and the fact that he is a licensed agent. It also prohibits a registered manager or salesman from advertising except in the name of the licensed agent by whom he is employed. The clause further requires that a person shall not advertise any transaction relating to the sale or disposal of a business without the consent in writing of the owner of the land or business. This clause has its counterpart in the existing Land Agents Act.

Clause 42 requires an agent, on demand, or in any event within two months after the receipt by the agent of moneys in respect of any transaction, to render to the person for whom he has acted as agent an account setting out particulars of such moneys and of their application. Substantially similar provisions are contained in the present Land Agents Act and Business Agents Act. Clause 43 makes it an offence to render false accounts and is similar in terms to provisions contained in the Land Agents Act.

Clause 44 provides that an agent shall supply to any person who has signed an offer, contract or agreemnt relating to a transaction that has been negotiated by the agent a copy of any such document. This provision is considered to be necessary because of the difficulty sometimes experienced by purchasers, and even vendors, for whom the land agent has been acting, in obtaining a copy of the documents they have signed. Clause 45 requires an

agent to obtain an authority in writing before acting on behalf of any person in the sale of any land or business. At present, a land agent is required to obtain an authority in writing before advertising any land for sale, but there have been instances where agents have purported to offer a property for sale (other than by advertising) without the instructions or consent of the owner of that property, causing unwarranted embarrassment to the owner.

Clause 46 differs materially from the corresponding provision of the previous Bill. It provides, first, that a licensed agent must not have any direct or indirect interest in the purchase of any land or business that he is commissioned to sell. Secondly, it provides that a registered manager, salesman or other person in the employment of a licensed agent must not have any interest in the purchase of any land or business that the agent has been commissioned to sell. This provision does not affect any interest which arises merely by virtue of the agency relationship. The section further provides that an agent, salesman or registered manager who acts in contravention of the section, in addition to being liable to a penalty, may be ordered to pay over to the principal, who is usually the vendor, any profit that he has made, or is likely to have made, from the purchase. Furthermore, the licensed agent is not to be entitled to receive any commission where the agent or any employee has been found to have an interest in a transaction in contravention of this clause.

The Government takes the view that it is improper for an agent to have an interest in the purchase of land that he has been commissioned to sell. However, this view is not widely known amongst agents, and it has been thought better to make specific legislative provision so that there will be no doubt of the duties of persons engaged in selling land and businesses, and also to provide for the protection of persons where an agent has acted in contravention of this clause. The practice of land agents, who have been commissioned to sell a property, of inserting a name of a nominal purchaser in the contract and then proceeding to have the land transferred to themselves or to a company in which they have an interest has come to notice for many years but has increased substantially lately. There have been instances where the agent, or his employee, has clearly acted to the detriment of the vendor for whom he is acting. The vendor ought to be able to expect the agent to use his best endeavours to obtain a proper price for the land or business being sold. The agent should not act where there is a possible conflict of interest between his principal and himself.

Clause 47 prohibits a licensed agent from paying any part of the commission, to which he is entitled as agent, to any person other than to a licensed agent or to a registered manager or registered salesman. There have been a number of cases in which a licensed land agent has permitted his licence to be used as a front by persons not, in fact, employed by him, particularly registered salesmen over whom he has no actual control. Substantially similar provisions are contained in the existing Land Agents Act.

Part VII deals with the licensing of land brokers who are at present, as has been adverted to, licensed by the Registrar-General. Clause 48 contains definitions. Clause 49 sets up a Land Brokers Licensing Board and provides for it to be constituted of five members, one of whom is to be a legal practitioner of not less than seven years standing and one of whom is to be a licensed land broker. This clause follows substantially the constitution of boards under the provisions of the present Land Agents Act and the Land Valuers Licensing Act. Clause 50 provides for term of office and removal of members of the board. Clause 51 provides for the procedure of the board. Clause 52 contains the usual provisions as to validity of the acts of the board and the immunity of its members.

Clause 53 provides for allowances to members of the board. Clause 54 permits the board to obtain legal assistance. Clause 55 prohibits a person carrying on business or holding himself out as a land broker unless he is licensed, but following the present situation this does not prohibit a legal practitioner from carrying out work in the practice of his profession. Clause 56 provides for applications for licences.

Clause 57 sets out the qualifications that are required for a person to be entitled to a licence as a land broker. Any person at present licensed as a land broker will automatically be entitled to receive a licence if he is still regarded as being a fit and proper person. The clause also enables the rights of persons who have qualified for licences under the present legislation, but who do not in fact hold licences, to be preserved. Under the Bill, applicants for licences will have to hold prescribed qualifications that will be based upon the present qualifications that, in practice, applicants are required to obtain before the Registrar-General will issue a land broker's licence. Clauses 58 and 59 deal with the term and renewal of brokers' licences.

Clause 60 enables a licensed land broker to surrender his licence with the consent of the Land Brokers Licensing Board. Clause 61 prohibits a person, for fee or reward, preparing instruments relating to any dealing with land unless he is a legal practitioner or licensed land broker. This clause is along the lines of a similar provision in the present Land Agents Act. It will be noted that, in addition to the present provisions of the Land Agents Act, by subclause (2) an agent, or any person who stands in a prescribed relationship to an agent, is prohibited from preparing any instrument (for example, a transfer) relating to the dealings in land. A prescribed relationship exists between an agent and another person if that other person is (*a*) an employee of the agent, (*b*) a partner of the agent, or (*c*) an employee of, or person remunerated by, a corporation where the agent (i) is a director of or shareholder in the corporation (ii) is in a position to control the corporation or (iii) is also an employee of, or person remunerated by, the corporation.

However, by virtue of subclause (4), a solicitor or a licensed land broker who has been in a prescribed relationship to the agent from September 1, 1972, is not prevented from preparing such a document. Subclauses (5) and (6) prevent agents from entering into arrangements with legal practitioners or land brokers under which the agent would receive a commission for passing on Real Property Act work. Subclause (7) prevents an agent, or a person who stands in a prescribed relationship to an agent, from procuring or attempting to procure the execution of a document whereby any person is requested or authorized to prepare a Real Property Act instrument. Subclause (8) makes void any clause in or appended to a contract whereby any person is requested or authorized to prepare any instrument in connection with the transaction to which the contract relates. This is designed to prevent touting for business on behalf of land brokers or solicitors, and to make it more probable that the purchaser will engage a broker or solicitor of his own choice.

The clause makes a substantial change in the present conveyancing arrangements in South Australia. At present, instruments relating to a Real Property Act transaction

may be prepared by either a solicitor or a licensed land broker. The legal costs are paid by the purchaser, who is entitled to expect to have his interests in the matter protected. Very often, however, the land agent who is handling the sale obtains the purchaser's signature to an authority for a named land broker to prepare the documents. All too often this land broker turns out to be an employee of the land agent. A charge is made for the documents of about the amount that would be charged by a solicitor for the same work, but the land agent collects the fee. The land broker has an irreconcilable conflict of duty.

The purchaser is entitled to have some protection for the fee he has paid and, in particular, to have independent advice as to any traps in the transaction and as to whether he should proceed to settle. The land broker, however, must serve the interests of his employer, the land agent, whose interest it is to have the settlement proceed so that he may earn his commission. All too often the transactions find their way to solicitors or to members of Parliament after the damage has been done. It becomes clear that, had the purchaser had independent advice, the settlement would never have taken place. Nobody should be placed in the situation in which the land broker now finds himself. This clause is designed to ensure that a land broker is not placed in that position.

The Bill is designed to establish land broking as a semi-professional calling with independence, status and security. It will have its own licensing and disciplinary authority with the appropriate protections and rights of appeal. There has never been in the past any machinery for the investigation of complaints or the conduct of proper inquiries into the conduct of land brokers. There are proper trust account and audit provisions appropriate to such a calling. The severance of the tie with the land agents will provide the opportunity for the development of a clearer sense of responsibility to the parties to the transaction and, in particular, to the purchaser. Ethical principles and standards of conduct suitable to the calling will be developed and will be underpinned by the surveillance of the Land Brokers Board. In this way there will be established by degrees a semi-professional, independent body of land broking practitioners capable of providing the public with a genuine freedom of choice whether to engage a solicitor or a land broker for the preparation of documents relating to Real Property Act transactions. The provisions of the Real Property Act that at present deal with the licensing of brokers and the regulation of fees for Real Property Act work will be repealed by a provision that has already been passed by Parliament for that purpose.

Part VIII concerns trust accounts and the consolidated interest fund and has as its purpose the setting up of a fund in lieu of the present fidelity bond system to protect persons who suffer from misappropriations or defalcations by agents or brokers. In the following comments relating to this Part, references to an agent include a reference to a land broker. Clause 62 is formal. Clause 63 follows in substance the provisions of the present Land Agents Act and Business Agents Act. It requires an agent to pay into a trust account all moneys received by him in his capacity as an agent and prohibits him from withdrawing money, except for the purpose of completing the transaction in the course of which the moneys were received. The agent is required to keep a full and accurate account of all trust moneys and to keep them separately and at all times properly written up so that they can be conveniently and properly audited at any time.

Clause 64 gives protection to banks and is in similar terms to an existing provision in the Land Agents Act and Business Agents Act. Clause 65 provides for the establishment by an agent of an interest-bearing account. An agent must, on or before each first day of July commencing on July 1, 1974, invest in an interest-bearing trust security the prescribed proportion of the lowest balance of all moneys in his trust account during the previous 12 months, and in each period of 12 months thereafter invest such further sums as may be necessary, so that the total amount so invested is not less than the proportion prescribed of the lowest aggregate of the balance of the amount invested and the balance of his trust account during that period. The proportion of the trust account moneys that are to be invested is one half, or such lesser proportion as may be prescribed by regulation, of the lowest aggregate of the balance of the account during the previous 12 months. Moneys invested in the interest-bearing trust security must be payable on demand so that in the event of the moneys in the trust account being, because of the investment of the prescribed proportion in interest-bearing trust securities, insufficient to satisfy claims upon the trust moneys, the agent may draw upon the trust security for the purpose of satisfying all claims. These provisions are along somewhat similar lines to those applying to legal practitioners, except that the agent is responsible for all investment in the interest-bearing trust security which must be repayable on demand.

Clause 66 requires an agent to pay to the board all interest that has accrued to an interest-bearing trust security during the preceding 12 months. Where, for any reason, an interest-bearing trust security is realized, the agent is to pay to the board forthwith all interest that has accrued. The board must pay all moneys paid to it into the consolidated interest fund which may be invested in the usual authorized trustee investments. Interest derived from such investments also goes into the consolidated interest fund. Because the consolidated interest fund will not for some time build up to an amount sufficient to meet defalcations by agents, agents will be required, pursuant to clause 5 (9) of the Bill, to pay an annual sum of $20 during the period which intervenes before the consolidated interest fund is considered to be sufficient. This amount is less than the usual annual premium which agents at present pay to insurers for a fidelity bond of $4 000.

Clause 67 exempts from liability the board or an agent for any acts which are done in compliance with Part VIII. Clause 68 refers to fiduciary defaults on the part of agents and empowers the consolidated interest fund to be applied for the purpose of compensating persons who suffer pecuniary loss from a default on the part of an agent. In cases where an agent has made payment to a person in compensation for loss and the board is satisfied that the agent acted honestly and reasonably, and that it is just and reasonable to do so, the board may accept a claim from the agent in respect of that payment by him. The consolidated interest fund is only to be applied in respect of defaults occurring after the commencement of the Act.

Clause 69 provides the manner in which the board shall deal with claims. Clause 70 gives a person who has suffered pecuniary loss in consequence of a fiduciary default by an agent to take action in the Supreme Court to establish whether or not he has a valid claim in the event of the board disallowing it. Clause 71 empowers the board to call for documents which are relevant to any claim. Clause 72 provides that the amount of a claim shall not exceed the actual pecuniary loss suffered by a person less any amount that he has or may be reasonably expected to receive otherwise than from the consolidated

interest fund. A person whose claim has not been settled within 12 months from the day on which it has been lodged is entitled to interest at the rate of 5 per cent from the expiration of that 12 months.

After the board has fixed a day by which claims must be brought in respect of fiduciary defaults by a particular agent, the amount of claims upon the consolidated interest fund is not to exceed more than 10 per cent or such other proportion as may be prescribed of the balance of the consolidated interest fund. The clause further provides for the board to apportion the amount available between various claimants, if that amount is not sufficient to satisfy all claims in full, and further, the clause provides that, with the approval of the Minister, the board may make further subsequent payments to any person whose claim is not satified in full.

It is pointed out that, at present, the only moneys available to satisfy claims against a land agent who has defaulted, apart from any moneys or assets which he may himself, have available, is the amount of his fidelity bond, which is $4 000. This has, more often than not, proved to be insufficient to meet claims for misappropriation. Clauses 73 and 74 enable the board, where any payment has been made out of the fund, to recover that amount from any person who is liable for the default.

Clause 75 provides for payment out of the consolidated interest fund of the cost of administering that fund and for moneys recovered by the board to be paid into that fund. Clause 76 requires the board to keep proper accounts of all moneys and to have those accounts audited at least once in every calendar year by the Auditor-General.

Part IX relates to investigations and inquiries. It deals with the powers of the Land and Business Agents Board in relation to matters affecting land and business agents and the Land Brokers Licensing Board in relation to matters affecting land brokers. The powers of each board are similar. Clause 78 provides that the board may, on the application of any person, or of its own motion, inquire into the conduct of any person licensed or registered under the proposed legislation. The clause provides, by subclause (3), the cases in which the board may take disciplinary action and by subclause (2) empowers the board, where proper cause exists for disciplinary action, to reprimand, impose a fine not exceeding $100 or cancel the licence or registration.

Apart from the imposition of a fine, these provisions follow the present scheme of the Land Agents Act. It has been thought appropriate to empower the board to impose a fine because there are a number of cases which, being more serious than simply calling for a reprimand, are not sufficiently serious to justify the cancellation of a licence or registration. Clause 79 provides that the board shall give to the person licensed or registered, who is affected by an inquiry, notice of the time and place when the inquiry is to be conducted and gives such person an opportunity to call or give evidence or to examine or crossexamine witnesses and to make submissions to the board. This follows the present procedure set out in the Land Agents Act.

Clause 80 gives the board power to summons witnesses to give evidence or produce documents, and to answer relevant questions, and provides that failure to comply with the lawful requirements of the board shall be an offence punishable in a court of summary jurisdiction. This provision has its counterpart in the present Land Agents Act. Clause 81 gives the board power to make an order as to costs of an inquiry and provides for the recovery in a court of summary jurisdiction of a fine or costs ordered. Clause 82 gives a right of appeal to the Supreme Court against any order of the board.

Clause 83 empowers the board or the Supreme Court where an appeal has been instituted to suspend the operation of the order of the board. Clause 84 empowers the board to request the Commissioner of Police to make investigations. Clause 85 gives the board power to authorize a person to inspect books, accounts, documents, etc., and to make copies thereof. Clauses 81 to 85 are provisions similar to those already in the Land Agents Act.

Part X deals with contracts for the sale of land or businesses. Clause 86, which deals with obligations in relation to offering vacant subdivided land for sale, has its counterpart in section 66 of the Land Agents Act. Clause 87, which renders voidable a contract into which a person was induced to enter by unreasonable persuasion on the part of a vendor, has its counterpart in the present Lands Agents Act. Clause 88 provides for a cooling-off period. The purchaser may, not later than two clear business days after the contract, or document which may become a contract, has been executed by the vendor or the purchaser, whichever is the later, rescind the contract.

It also provides that no deposit or other moneys shall be received until the period for rescission has expired. To the ordinary man in the street, the purchase of land or a house property is usually the biggest financial transaction which he enters into during the course of his life. Even when no undue persuasion is used, a salesman will sometimes use every reasonable means of encouragement to persuade potential purchasers to buy a property and forthwith to sign an offer or contract to purchase. Many contracts are so signed immediatedy after the purchaser has inspected a property and without any proper opportunity for reflection upon the financial consequences to him of so signing, or to investigate or check the title as to identity of the land or to receive advice about the condition of the property. The clause will not apply in relation to persons who, generally speaking, are qualified to look after their own interests.

Where the purchaser is a body corporate, or an agent, or registered manager, or registered salesman, a licensed land broker or legal practitioner, he will not have the benefit of the provision. Again, where the purchaser, before executing the contract, has received independent legal advice in relation to the purchase of the land or business, he will not have the benefit of the provision. With regard to auction sales, it would be impracticable for the cooling-off period to be applied. The holding of an auction is usually made known some time before it occurs. The salesman is not involved in inducing a particular person to buy, as he is in the case of a sale by private treaty. The purchaser usually has ample opportunity to give consideration to the nature of the transaction and his financial and other responsibilities if, at the subsequent auction, he is the successful bidder.

Clause 89, in effect, provides for the abolition of instalment purchase contracts, except that an amount by way of deposit may be paid in a lump sum or in not more than two instalments towards the purchase price before the day of settlement. There has, unfortunately, been a number of instances where instalment contracts (that is, where the purchaser does not obtain title until he has paid the full price in a considerable number of instalments over a period of years) have been entered into very much to the detriment of the purchaser.

Although it is possible for the purchaser to enter a caveat on the title, in fact many purchasers do not realize that they have this right and many others simply refrain

from doing so. Consequently, although the purchaser may have paid almost the whole of the purchase price, his name does not appear on the title and the original vendor can deal with the land without the knowledge of the purchaser. Instances have occurred where the vendor has mortgaged many allotments of land sold on instalment contracts. He has failed to keep up the mortgage payments and the mortgagee has exercised his rights and sold the land. The original purchaser has thus lost both the money he has paid and the land which he was purchasing.

Clause 90 provides that, before any document which is intended to constitute a contract or part thereof for the sale of any land or business is executed by the purchaser, the vendor shall annex to that document a statement signed by or on behalf of the vendor containing particulars of mortgages, charges and prescribed encumbrances affecting the land or business which is the subject of the sale and also particulars of all mortgages, charges and prescribed encumbrances that are not to be discharged or satisfied on or before the date of settlement. In the event of circumstances arising where it is impracticable for the vendor to annex the statement, he is required to serve it personally or by registered post at least 24 hours before the contract is executed so as to become binding on the purchaser. A new requirement of the present Bill is that, where the vendor of the land himself acquired his title within 12 months of the sale, he must disclose to the purchaser all sales that have taken place during the previous 12 months, together with details of the consideration for which the land was previously sold during that period. In the present circumstances where there is a strong demand for real estate, some unscrupulous speculators have adopted the practice of buying houses and placing them on the market immediately at inflated prices. The new provision will ensure that where this occurs the prospective purchaser will receive proper notice of that fact.

The clause further requires that an agent shall, before presenting to a purchaser for execution any document that is intended to constitute a contract, make all prescribed inquiries and do all such things as may be reasonable to obtain particulars of all mortgages, charges and prescribed encumbrances, and shall deliver a statement of such particulars with a certificate that the particulars disclose that all mortgages, charges, and encumbrances, which are prescribed and which affect the land or business which is the subject of the proposed sale, have been ascertained after reasonable inquiry. If a purchaser suffers loss by non-compliance with the provisions of this section, he may apply to a court for an order awarding such damages as in the opinion of the court may be necessary to compensate him for his loss arising from the default; or alternatively, it may make an order voiding the contract and such other orders as may be necessary to restore the parties to their respective positions.

It is a defence to such proceedings that failure to comply with this section arose, notwithstanding that the person alleged to be in default exercised reasonable diligence to ensure that such requirements were complied with. At present it is usual to refer in contracts to any registered mortgages or encumbrances which affect the land, the subject of the sale. There are, however, several other orders and charges which can affect the land and which are not required to be registered on the title. In some instances these would be known only to the vendor, and the purchaser would have no easy way of ascertaining whether or not they exist. It is intended that the prescribed encumbrances should only relate to matters of which the vendor knows, or ought to know, and it is pointed out that the agent is only responsible to disclose mortgages, charges, and prescribed encumbrances as have been ascertained after he has made the prescribed and other reasonable inquiries.

This clause serves a very important purpose. It is well known that the system of conveyancing in South Australia differs very materially from the traditional English system and from the system obtaining in the other States. In the other States, the parties are referred to solicitors at a relatively early stage in the transaction. The agent finds a purchaser, brings the parties together, and negotiates the terms of the transaction. The parties then go to their solicitors for formal contract documents to be prepared and exchanged. During this process, the vendor and purchaser are represented by different solicitors whose duty it is to protect the interests of their respective clients. Generally speaking, the solicitor for the purchaser will satisfy himself by requisitions to the vendor's solicitor that there is no encumbrance or restriction on the use and enjoyment of the premises, before settlement takes place.

This conveyancing system provides the maximum protection to the parties, and minimizes the danger, in particular, of the purchaser paying out his money and acquiring a defective title or a title which is affected by some restriction as to use or enjoyment. For this protection, however, the parties have to pay fees which are substantially higher than the fees payable on a land transaction in South Australia. The South Australian system is much simpler and cheaper but, unfortunately, does not provide the protections which exist where both parties are represented by solicitors. In South Australia the land agent tends to carry the transaction through to the stage at which the Real Property Act instruments must be prepared. These are then prepared by a land broker or solicitor who not infrequently acts for both parties.

The system is inexpensive, but the protections given by the more formal and elaborate system of having the parties separately represented and by the exchange of requisitions is lost. Certain of the provisions of this Bill are designed to endeavour to give the public of South Australia more of the protections which are enjoyed under the more formal conveyancing system without the loss of the economies inherent in the South Australian system. This clause is an important provision in this regard. It seeks to protect the purchaser against the danger of paying for land which is subject to encumbrances or restrictions which affect its value and utility. As there is no separate representation of the parties and no requisitions in most cases, it is thought to achieve this result by imposing on the land agent an obligation to take reasonable steps to ascertain the existence of such encumbrances and restrictions and to disclose them to the purchaser.

It is intended to prescribe by regulation certain inquiries which must be made by the land agent in order to discharge his duty. It is believed that the provisions of this clause will greatly reduce the number of cases in which purchasers suffer loss, and often crippling loss, as a result of paying the purchase price for a house or other real estate, only to find when it is too late that the title is defective or the land is subject to encumbrances or restrictions which greatly reduce its value.

Clause 91 provides that a person who desires to sell a small business shall, before the contract or agreement for the sale of the business is signed or a deposit is paid, give to the intending purchaser a statement in the prescribed form containing prescribed particulars in relation to the business. A small business means any business

which is to be sold for less than $30 000 or such other amount as may be prescribed. If a statement is not given or it omits any material or particular, or is false or inaccurate, any contract or agreement for the sale of the business shall be voidable at the option of the purchaser for a period and until the expiration of one month after the purchaser obtains possession of the business.

There has been a considerable number of cases where misrepresentations have been made as to the turnover of small businesses. Inspection of the books has failed to reveal a misrepresentation of the true position. It is not until after the purchaser has entered into possession and has had time to assess and see for himself the actual turnover that the misrepresentation comes to his notice. The provisions of this clause should protect purchasers against the unscrupulous or careless vendor, but will not affect the honest person who is disposing of a small business.

Concerning Part XI, clause 92 provides for the keeping of registers, and this is in accordance with the present legislation. Clause 93 provides for the publication of lists of licensed and registered persons under the Act, and provides for evidentiary matters. Clause 94 provides for proceedings by or against the board, and clause 95 is an evidentiary provision. Clause 96 prohibits a person being simultaneously licensed and registered as a salesman or a manager under this Act, or to be simultaneously registered both as a salesman and a manager under the Act. The responsibilities and obligations of managers as such and salesmen are quite distinct, and it would be inconsistent with the responsibilities of a manager for him to be also registered at the same time as a salesman and be nominally responsible to a manager. This clause will not prevent a manager acting as a salesman as he does now.

Clause 97 gives a court power to cancel or reprimand a licensed or registered person or the director or manager of a body corporate who is a licensed land agent. Similar provisions are contained in the present Land Agents Act. Clause 98 makes it an offence to make a false representation in connection with the acquisition or disposal of any land or business. Many of the complaints regarding licensed land agents, registered salesmen, licensed business agents, and registered business salesmen under the existing legislation relate to false representations made. Such representations have been made usually with the intention of inducing a person to buy the land or business. In some cases the representation has been found to have been made by the vendors of the land or business, and it is cossidered reasonable that not only persons licensed and registered should be subject to the prohibition but also other persons who are involved in the acquisition or disposal of any land or business.

Clause 99 extends liability of a corporation for offences against the Act to directors and other persons in control of the affairs of the corporation, unless they prove that they did not consent to or have prior knowledge of the commission of the offence, and also imputes to the corporation intention or knowledge of any officer or servant of the corporation. Clause 100 extends liability for an offence against the Act on the part of one member of the partnership to other members of the partnership, unless they prove that they did not have prior knowledge of the commission of the offence or did not consent to it.

Clause 101 is procedural. Clause 102 provides that, where a person who is licensed or registered under the Act has been reprimanded within a period of five years on three occasions, his licence or registration shall be cancelled. There is a similar provision in the existing Land Agents Act. Clause 103 preserves the usual civil remedies that a person may have against an agent. Clause 104 prohibits contracting out of liability in respect of misrepresentation. There is a clause to a similar effect in the existing Land Agents Act. Clause 105 provides for service of documents under the Act. Clause 106 is the usual financial provision. Clause 107 empowers the Government to make regulations for the purposes of the Act. It is along the lines of the present regulation-making powers in the Land Agents Act. It adds a power to prescribe a code of conduct to be observed by persons licensed or registered under the Act.

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

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL

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

URBAN LAND (PRICE CONTROL) BILL

In Committee.

(Continued from November 6. Page 1580.)

Clause 15—"Certain land transactions forbidden without consent of the Commissioner" to which the Hon. J. C. Burdett had moved the following amendment:

In subclause (3) to strike out subparagraph (iv) of paragraph (*k*) and insert the following new subparagraph:

(iv) an amount—

(A) that has actually been paid by the vendor as interest upon moneys borrowed for the purpose of purchasing the land;

or

(B) that represents simple interest at the rate of 10 per cent per annum on the principal of those moneys from time to time outstanding.

whichever is the lesser;

The Hon. J. C. BURDETT: I seek leave to withdraw the amendment I moved yesterday, which is still before the Committee. If such leave is granted, I will move an alternative amendment. I seek this leave because I recognize the validity of what the Chief Secretary said yesterday when he pointed out the anomaly that would occur under the amendment. I am grateful to him for pointing that out. I try to co-operate with the Government whenever possible. The reason why I moved the amendment was that I recognized that most people, both business men and private land buyers, who bought land and sold it expected to recoup all the costs they had actually incurred. I considered that interest should be included, and they expected to get some profit on the costs incurred. I recognized the anomaly pointed out by the Chief Secretary when there were two identical blocks of land alongside each other, A and B. Block A had been bought for cash and block B had been bought on terms. It was not reasonable that, when it came to fixing a price, one block should have a different price from the other. True, when one looks at it fundamentally, if one buys land or makes any investment, one expects, if one buys it on terms, less profit than if cash is paid for it. For these reasons, I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

The Hon. J. C. BURDETT: I move:

In subclause (3) (*k*) to strike out subparagraph (iv) and insert the following new subparagraph:

(vi) compound interest at the prescribed rate of interest on the aggregate of the amounts referred to in the preceding subparagraphs calculated in respect of the period from (and including) the day on which the vendor obtained possession

of the land to the day on which the contract of sale is entered into and a further period of ninety days.;

and to insert the following new subclause:

(4) In this section—"the prescribed rate of interest" means the current long term bond rate plus one per cent:

"the current long term bond rate" means the rate of interest payable in respect of a Commonwealth Public Loan having a currency exceeding five years presently being raised in Australia, or if no such Loan is presently being raised, in respect of the Commonwealth Public Loan having a currency exceeding five years last raised in Australia.

These amendments have two effects. One is that rates, taxes, etc., are now included in the costs that are aggregated and on which interest is allowed. That seems to be proper. I recognize the anomaly in regard to interest, but rates and taxes are incurred on all land purchased, and it seems proper that the person who purchases land and holds it can expect to recoup what he has paid plus some increment on that. So the first effect of these amendments is to include in the various costs aggregated and on which interest is allowed rates, taxes, and other imposts.

The second effect is in regard to the interest rate itself. It was said in the second reading speeches and by the Hon. Sir Arthur Rymill yesterday that the rate of 7 per cent is completely ridiculous in these days when inflation is said to be running at the rate of 14 per cent. The only way in which we can think that 7 per cent was fixed is that, at the time the Speechley report was brought in, 7 per cent was in fact 1 per cent above the long-term bond rate. My previous amendment, which I have withdrawn, provided for the interest rate to be, in lieu of 7 per cent, 1 per cent above the long-term bond rate, which has already risen to 8½ per cent. The reason why this amendment that I have just moved raises the excess over the long-term bond rate from 1 per cent to 2 per cent was mentioned by the Hon. Mr. DeGaris yesterday. When the Leader heard the Chief Secretary point out the anomaly in my previous amendment, he aked me whether it would not cure the position if the excess over the long-term bond rate was increased somewhat to allow a reasonable profit margin for a person who had incurred interest charges, and yet not distinguish between identical blocks of land, some of which had been purchased for cash and some of which had been purchased on terms.

The Hon. D. H. L. Banfield: I thought you were thinking of the little man!

The Hon. J. C. BURDETT: So I am.

The Hon. D. H. L. Banfield: Does this exclude the big man?

The Hon. J. C. BURDETT: No. However, the main thing is that it serves the little man. I am worried about the little man who buys a block of land and wants to build a house on it, but then finds that he cannot afford it, or perhaps he moves to another State. That person may have borrowed money on which he probably has to pay interest at the rate of 13 per cent or 14 per cent. As I have now withdrawn the amendment I moved yesterday, the little man is not entitled to recoup his interest. I want to see him get something back, and increasing the excess over the bond rate from 1 per cent to 2 per cent is designed to achieve just that. I have very much in mind the rights of the little man.

The Hon. Sir ARTHUR RYMILL: I was not altogether happy with the amendment the honourable member moved yesterday, but I am much happier with this one, because it gets over some of the fallacies that I drew attention to yesterday. I said then that I thought the crux of the problem was inflation. The long-term bond rate is related to the inflation that is going on, and it is also directly related to the interest rates charged on mortgages on real estate. The amount that the honourable member has quoted, 2 per cent above the long-term bond rate, is normally the approximate current interest rate for loans on real estate. A rate 2 per cent above the current long-term bond rate would be 10½ per cent, and that is a very common rate on first mortgage real estate at present. I emphasize "first mortgage" because the so-called little man (I am getting a little tired of hearing the expression, but I suppose one must identify people in some way) would probably need to have a second mortgage as well, on which he would have to pay considerably more than 10 per cent. Yesterday I was hoping that someone would come up with a suggestion whereby the rate allowed as an appreciation on the value of land on account of inflation would be on a sliding scale that had some relation to what is going on from time to time. This amendment is probably as good as any that may be made. I was toying with the idea of drafting an amendment that took the rate of inflation into account, but it is hard to draft a provision of this kind that would be suitable for an Act of Parliament. We must remember, of course, that the long-term bond rate can move downwards as well as upwards.

The Hon. A. F. Kneebone: It has not gone down for a long time.

The Hon. Sir ARTHUR RYMILL: Not very long ago it was 5¼ per cent, though admittedly on tax rebatable bonds. Indeed, it has been as low as 3 per cent or 3½ per cent, but that is not likely to happen again in the predictable future. However, the long-term bond rate could easily come back to about 6 per cent. If that happens, the rate under consideration, instead of being 10½ per cent, will come back to 8 per cent, which approximates what the Goverment's suggestion has been. In the current situation, allowing someone merely 7 per cent on his investment would, at the present rate of inflation, certainly mean guaranteeing that he would lose money on his investment in land, and I do not believe that the Government intends to achieve that. I believe that the Government is genuinely trying to solve the problem, and the Hon. Mr. Burdett's amendment is well worth consideration by the powers that be.

The Hon. R. C. DeGARIS (Leader of the Opposition): I support the amendment, and I also support what the Hon. Sir Arthur Rymill has said. The provision in the Bill at present is unsatisfactory; that has been accepted by most honourable members. The Hon. Mr. Burdett's original amendment created another problem, which has rightly been pointed out by the Chief Secretary. The present amendment solves that problem. We are dealing here with a figure that allows a block of land to be sold without the tribunal's consent. Of course, there is nothing to prevent the tribunal from agreeing to a price higher than a price related to the proposed 10½ per cent above the purchase price, which is the amount allowed under this amendment. I agree that most young people who buy a block of land will lose money if they are forced to sell. It is not unusual for a young person to have a first mortgage and a second mortgage on a block of land and, if that person is transferred to another State, even under this amendment he will lose money if the tribunal does not allow a figure higher than 10½ per cent. The amendment is reasonable, and it overcomes the difficulty raised by the Chief Secretary.

The Hon. C. M. HILL: When we debated the amendment yesterday I spoke strongly for a proposal in which a person ought to be able to recoup his mortgage interest at least, or mortgage interest up to a certain rate, set yesterday at 10 per cent. However, I was aware then that the problem still remained that if the mortgage interest was permitted as part of cost, and a profit (whether it be 7 per cent, 1 per cent or 2 per cent above the long-term bond rate) was permitted, the situation would arise where the amounts that would be available for exemption under the clause could vary between two adjoining allotments obviously of the same value.

I thought that that was an anomaly which was difficult to accept. Having given the matter much thought, I am now inclined to accept the Hon. Mr. Burdett's amendment, which would permit, in this margin (which at the moment is set down as 10½ per cent as profit, or an excess over cost), any person who paid mortgage interest to recover it at least to that extent.

That certainly would be of great benefit to some people who have genuinely had to borrow and pay mortgage interest and whom we would all like to see be able to recoup such mortgage interest. I have also been influenced by the point made by the Hon. Mr. DeGaris which, I believe, could easily have been overlooked: that we are dealing not with what the permitted price of land shall be but only with the sum at which a person will be exempt from control.

I hope that those people who are forced to pay mortgage interest and to sell their allotments and who, if they tried to sell them on the basis of exemption, will still incur a loss, will not exercise their right to seek exemption but will apply to the Commissioner for permission to sell at a cost equivalent to all their outgoings, including their total interest. I hope that, in the exercise of his duty, the Commissioner, in either giving or refusing consent, will take this aspect of cost into account.

If he does this, there will be every possibility for people, who have borrowed genuinely on mortgage, to recoup all their outlay and obtain from the Commissioner a consent to sell in terms of this legislation. That would be a reasonably happy situation for such people to be in. They will not make any profit, but they should not argue very greatly about this, because we have to accept the principal reason for the Bill.

At least, if the Commissioner permits them to receive back in a sale price all their outlay, I think they should be reasonably well satisfied. I hope that, if the legislation eventually passes, and if this occurs in practice, such genuine people will be able to get back all the money they have outlayed.

The Hon. A. F. KNEEBONE (Chief Secretary): The honourable member has moved to correct the anomalies that were pointed out yesterday. I have been unable to calculate what the bond rate of interest plus 2 per cent will mean, so I think that the simplest way out for me is to continue to oppose the amendment, because it is a complete jump from what is contained in the Bill.

The Hon. R. C. DeGaris: Do you agree with the base argument that 7 per cent is unrealistic?

The Hon. A. F. KNEEBONE: No, I do not agree with that.

The Hon. A. J. Shard: My colleague is reserving the right to change his opinion after being advised.

The Hon. A. F. KNEEBONE: I am reserving the right to change my mind for the first time.

The Hon. R. C. DeGaris: What about your second reading explanation?

The Hon. A. F. KNEEBONE: That was not a change of mind but a slip of the pen rather than a slip of the tongue. I still register my opposition to the amendment.

The Hon. Sir ARTHUR RYMILL: When I said yesterday that I thought that 7 per cent was out of date, the Chief Secretary said that I should do something about it. I will co-operate with him by doing that.

The Committee divided on the amendments:

Ayes (11)—The Hons. J. C. Burdett (teller), M. B. Cameron, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, C. M. Hill, F. J. Potter, Sir Arthur Rymill, and A. M. Whyte.

Noes (6)—The Hons. D. H. L. Banfield, T. M. Casey, B. A. Chatterton, C. W. Creedon, A. F. Kneebone (teller), and A. J. Shard.

Majority of 5 for the Ayes.

Amendments thus carried; clause as amended passed.

Clause 16—"Application for consent."

The Hon. JESSIE COOPER: I move:

In subclause (1) (*a*) to strike out "a manner and form determined by the Commissioner" and insert "the prescribed manner and form".

This amendment will ensure that the forms which have to be completed by those attempting to transfer land and submitted to the Commissioner shall be kept reasonably simple and not be unreasonably complex and time-consuming in their preparation. It is considered better that the phrase "the prescribed manner and form" should be used to ensure that these matters come under the blanket regulations and, therefore, will be subject to Parliamentary vetting, rather than that they should be allowed under the Commissioner's department to grow freely like wild and thorny hedges.

The Hon. Sir ARTHUR RYMILL: I support the amendment, for the reasons given by the Hon. Mrs. Cooper. I am surprised that the Bill was not drawn in this way, as clause 33 (2) (*a*) provides that the regulations may prescribe any form for the purposes of the Act. It is therefore logical that this form, as well as other forms, should be prescribed in accordance with the Bill.

The Hon. A. F. KNEEBONE: The amendment introduces additional administrative procedures, which will mean that it will take longer for certain matters to be implemented. I should have thought that the form determined by the Commissioner would be satisfactory. If the amendment is carried, and after a trial and error period further particulars are required, further regulations will have to be promulgated and gazetted, which will cause delays.

The Hon. C. M. Hill: You could have a *Gazette Extraordinary*. It has been done before.

The Hon. A. F. KNEEBONE: Some people seem to be regulation-happy. I oppose the amendment.

The Hon. Sir ARTHUR RYMILL: These things are prescribed in most Acts of Parliament in the way the Hon. Mrs. Cooper has worded her amendment. In other words, it is much more unusual for a Commissioner to be charged with the responsibility of drawing up forms than it is for an Act of Parliament to provide that the forms shall be prescribed by proclamation or regulation. As regulations can be drawn up just as quickly as the Commissioner can draw up these forms, undue delay should not occur. This is a good amendment.

The Hon. M. B. CAMERON: I understand that there will not need to be a proclamation in order to have a document drawn up or amended by the Commissioner. As I agree with the Chief Secretary that the Commissioner should have a right to vary forms without having to go through this procedure, I will vote against the amendment.

The Hon. J. C. BURDETT: I support the amendment. One of the objectionable features about the clause as it now stands is that the Commissioner will be at liberty to determine the manner and form of an application in any way that he sees fit, and he may see fit to ask for all sorts of financial and other details pertaining to the applicant, which may be irrelevant. One of the most regrettable features of present life has been the bureaucracy under which data banks have been built up when there has been no warrant or reason for it. It is important that the Commissioner should not have power to say what details applicants must furnish. This should be prescribed by regulation so that Parliament has a right to disallow the regulations.

The Hon. A. F. KNEEBONE: I have great faith in the person who will be appointed to this position. I can think of many application forms for which regulations are not required. As Minister of Lands, I am interested in a certain operation at the moment in which many people have been assisted but in which, if it had been necessary to bring down regulations for application forms, we would not have got under way yet. Let us not say that it is normal for the form of application to be dealt with by regulation. If justice is to be done, the Commissioner should be able to ask the questions he wishes. It is not for the purpose of setting up a data bank. Some people speak of bureaucracy one day and of Socialism the next, and I find myself quite confused. They seem to think one is the same as the other. I am convinced that the amendment would delay the procedure; I do not know whether that is the intention of the honourable member. Although I do not think it is sufficiently important to make a fight about it, I object to some of the things said at times about the Government's setting up data banks, and so on.

The Hon. Sir ARTHUR RYMILL: This clause provides that the application for consent must be made in the manner and form determined by the Commissioner, while clause 33 provides that the regulations under the Act may prescribe any form for the purpose of this Act. Does that mean, in the Bill as drawn, that if the Government does not like the form the Commissioner draws up it can prescribe a regulation overriding him?

The Hon. A. F. KNEEBONE: I think it is purely mechanical.

The Hon. Sir Arthur Rymill: They seem to be in conflict.

The Hon. A. F. KNEEBONE: I cannot answer the question. The way is made clear for the form to be prescribed by the Commissioner; he draws it up and the Government approves of it. It is a natural corollary to the action of the Commissioner being approved by the Government.

The Hon. R. C. DeGARIS: On reading this clause one can see the matters that have prompted the Hon. Mrs. Cooper to move to change to regulations. When a form seeks information, I think Parliament should at least see the form before it is used by the Commissioner. I do not think there would be any delay. From the time the Commissioner draws his form, it could be gazetted and used, and it is subject to examination by the Joint Committee on Subordinate Legislation and by Parliament. I think that is reasonable.

The Hon. JESSIE COOPER: My reason for moving the amendment was exactly the opposite from what the Chief Secretary considered to be the motive. My intention was to make this simpler and less time consuming. Personally, I think the increasing number of forms being issued requiring more information is a perfect curse to people. Let us keep it simple. I remind the Chief Secretary that form filling-in has become a sort of occupational hazard; there has even been an opera written about it: *The Consul*, by Menotti. I suggest that he read it.

The Hon. C. M. HILL: The effect of the amendment might be curtailed somewhat if subclause (2) were to remain in clause 16. We are restricting the Commissioner to accepting the form that Parliament approves, but he could immediately accept that form and ask questions which otherwise he would have placed on his own form under the clause as drafted.

The Hon. Sir Arthur Rymill: I do not think that is right.

Amendment carried; clause as amended passed.

Clause 17—"Consent."

The Hon. JESSIE COOPER: I move:

In subclause (2) to strike out "preventing or".

I consider that "limiting" is all that is required and is perfectly adequate to cover the requirements of this clause; in fact, "limiting" implies the approval of rational or reasonable increases, and that is the reason for producing this amendment.

The Hon. A. F. KNEEBONE: I like the clause as it is, so I oppose the amendment.

The Hon. Sir ARTHUR RYMILL: I do not think the words to which the Hon. Mrs. Cooper has drawn attention are appropriate for the Bill. There is nothing that I can see in this measure that prevents increases in prices of land; it merely limits them. I think the Bill would be better with the amendment.

Amendment carried.

The Hon. JESSIE COOPER: I move to strike out subclause (3) and insert the following new subclause:

(3) Where due application has been made for the consent of the Commissioner under this Act and, at the expiration of 14 days from the date on which the application is lodged with the Commissioner, the application has not been determined by the Commissioner, the Commissioner shall be deemed to have granted the consent for which the application is made.

I have spoken along these same lines in the course of debating other legislation. I do not believe that interminable delay, even a delay of three months, is reasonable when the delay is acting as grit in the wheels of progress or change. If the Commissioner works with clearcut principles, which he and the public can understand, then 14 days should be more than ample in which to make a decision on any normal land transaction. This amendment is merely intended to speed up and, indeed, to insist on some celerity in the interests of the general public.

The Hon. A. F. KNEEBONE: I regret to have to oppose this amendment, too. It would be physically impossible to achieve what is suggested by this amendment in some cases, as someone could lodge an application on December 24, after which there would be several days delay before it was processed. The same would apply if Anzac Day and Easter fell together, as this would cause a four or five-day delay. The Hon. Jessie Cooper is not talking about working days; she is talking only about days. I, too, do not believe in inordinate delays, but what the honourable member is asking would be almost impossible to achieve in some circumstances. This amendment could ultimately increase the number of staff employed in the department to process these applications, and the Government is criticized at present for employing too many people. I oppose the amendment because I believe it would be almost impossible to achieve what it seeks.

The Hon. Sir ARTHUR RYMILL: This is a good amendment, but I do not believe it should be included in

lieu of subclause (3), which I think should remain in the Bill. Therefore, I suggest to the mover that she should insert this amendment after subclause (2).

The Hon. C. M. Hill: We have already deleted part of that subclause: these amendments are not related. It is somewhat confusing.

The Hon. Jessie Cooper: They are separate matters.

The Hon. C. M. Hill: It is confusing, because it appears that one amendment is improving the other; but they are not related.

The Hon. JESSIE COOPER: I had the same difficulty in interpreting them when I received the amendments from the draftsman.

The Hon. Sir ARTHUR RYMILL: Then, these two amendments are not connected with each other?

The Hon. Jessie Cooper: No, they are not connected.

The Hon. Sir ARTHUR RYMILL: The deletion of subclause (3) is consequential on what has been done previously, and new subclause (3) is to cover a new matter altogether. This, then, seems a convenient place in the Bill in which to put the amendment.

The Hon. JESSIE COOPER: Would it help if I moved in the first place that subclause (3) be deleted? If so, I ask leave to withdraw my amendment.

Leave granted; amendment withdrawn.

The Hon. JESSIE COOPER moved:

To strike out subclause (3).

Amendment carried.

The Hon. JESSIE COOPER moved to insert the following new subclause:

(3) Where due application has been made for the consent of the Commissioner under this Act and, at the expiration of fourteen days from the date on which the application is lodged with the Commissioner, the application has not been determined by the Commissioner, the Commissioner shall be deemed to have granted the consent for which the application is made.

The Committee divided on the amendment:

Ayes (11)—The Hons. J. C. Burdett, M. B. Cameron, Jessie Cooper (teller), M. B. Dawkins, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, C. M. Hill, F. J. Potter, Sir Arthur Rymill, and A. M. Whyte.

Noes (6)—The Hons. D. H. L. Banfield, T. M. Casey, B. A. Chatterton, C. W. Creedon, A. F. Kneebone (teller), and A. J. Shard.

Majority of 5 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 18—"Validation of transactions."

The Hon. J. C. BURDETT: I oppose this clause, which is objectionable because, if there was a contravening transaction, the purchaser would retain his land but the excess could be recovered. The clause should be deleted because it strikes only at the vendor when it should strike equally at vendor and purchaser. Clause 30 already provides a penalty and, if clause 18 is deleted, a transaction contravening the Bill will be void *ab initio*.

The Committee divided on the clause:

Ayes (7)—The Hons. D. H. L. Banfield, M. B. Cameron, T. M. Casey, B. A. Chatterton, C. W. Creedon, A. F. Kneebone (teller), and A. J. Shard.

Noes (10)—The Hons. J. C. Burdett (teller), Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, C. M. Hill, F. J. Potter, Sir Arthur Rymill, and A. M. Whyte.

Majority of 3 for the Noes.

Clause thus negatived.

Clause 19—"Sale, etc., of new houses."

The Hon. J. C. BURDETT: I oppose this clause, as I intend to oppose the whole of Part IV relative to the control of the prices of new houses. I have already given my reasons.

The Hon. R. C. DeGARIS: As the Committee has already agreed to strike out Part IV, could the whole of Part IV be taken at once or must we go through it clause by clause?

The CHAIRMAN: We can take the whole Part at once.

Part IV (clauses 19 to 22) negatived.

Clause 23—"Appeal against decisions of the Commissioner."

The Hon. J. C. BURDETT: I move:

In subclause (1) to strike out "or approval" twice occurring.

The reason for this amendment is that this applied in the Bill, as printed, to new houses. That portion of the Bill has now been deleted, so these words are inappropriate.

The Hon. A. F. KNEEBONE: I have already indicated my views on this. I do not propose to divide the Committee again on matters on which we have already divided.

Amendment carried.

The Hon. J. C. BURDETT: I move to insert the following new subclauses:

(3) An appeal shall lie against a decision of the Tribunal to the Land and Valuation Court.

(4) An appeal under subsection (3) of this section must be instituted within thirty days after the date of the decision of the Tribunal against which the appeal is made or within such longer time as may be allowed by the Court.

This could be an important issue with a considerable amount of money involved, and there is no reason why there should not be an appeal to the Land and Valuation Court. In similar recent legislation the Government has objected to an appeal on the ground that an appeal may hold things up. In this case, no-one is held up save the parties concerned, and the Government should have no objection to the amendment.

The Hon. M. B. CAMERON: I support this amendment because, in the past, I have moved for an appeal to the Land and Valuation Court and the Hon. Mr. Burdett has supported me then.

The Hon. A. F. KNEEBONE: The drafting of the Bill provides for a tribunal to which an appeal may be made. The tribunal would be able to deal with the matter expeditiously. I oppose this amendment.

The Committee divided on the amendments:

Ayes (11)—The Hons. J. C. Burdett (teller), M. B. Cameron, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, C. M. Hill, F. J. Potter, Sir Arthur Rymill, and A. M. Whyte.

Noes (6)—The Hons. D. H. L. Banfield, T. M. Casey, B. A. Chatterton, C. W. Creedon, A. F. Kneebone (teller), and A. J. Shard.

Majority of 5 for the Ayes.

Amendments thus carried; clause as amended passed.

Clauses 24 to 28 passed.

Clause 29—"Certificate to be given on instrument of transfer."

The Hon. J. C. BURDETT: I move:

In subclause (2) to strike out "Part III or Part IV of"; to strike out paragraph (*a*); and in paragraph (*b*) to strike out "or approval" twice occurring.

These amendments are consequential on the removal of Part IV.

The Hon. A. F. KNEEBONE: I agree that the amendments are consequential, and I oppose them.

Amendments carried; clause as amended passed.

Clause 30—"Offences relating to land transactions."

The Hon. J. C. BURDETT: I move:

In subclause (2) after "practitioner" to insert "or licensed land broker"; and to strike out "legal practice" and insert "the practice of his profession".

It is obvious that the same protection as that offered to the legal practitioner should be extended to the land broker. I acknowledge that it is not normally a land broker's function to advise his client, but he may perform acts as stated in the Bill, and he should therefore be entitled to the same protection as that offered to a legal practitioner.

The Hon. A. F. KNEEBONE: I agree with the honourable member that it is not normal for a land broker to advise in regard to a legal position. I oppose the amendments.

Amendments carried; clause as amended passed.

Clauses 31 to 33 passed.

New clause 34—"Expiry of this Act."

The Hon. R. C. DeGARIS: I move to insert the following new clause:

34. This Act shall expire on the thirty-first day of December, 1974.

During the second reading debate the Chief Secretary said that the Government did not intend that this legislation should be permanent. We are dealing with price control, and price control legislation in South Australia has always, since its introduction in 1948, been subject to annual renewal. That being so, it is reasonable that a terminating date should be included in the Bill. The Government may consider that the terminating date in the amendment (December 31, 1974) does not give it sufficient time to correct the position that it wants to correct. That may be so, and I am certain that Parliament would recognize that fact when the legislation came back for renewal. Also, if the Government does not consider that the length of time provided is long enough, I will consider amending the terminating date if the Government so requests.

The Hon. A. F. KNEEBONE: For the reasons I gave yesterday, I oppose the amendment. It is completely unrealistic to expect that the problems can be solved by December 31, 1974; if that is unrealistic, the amendment is unrealistic, too. I cannot see how the problems could be overcome in the short period set out in the new clause. It would be unrealistic to expect this to be done in so short a time. The new clause is unreasonable, and I strongly oppose it.

The Hon. Sir ARTHUR RYMILL: I regard this as the most important amendment to be moved. This is experimental legislation, and whether it will work no-one can say. I predict, as I have done in regard to other legislation, that it will require amending. It is important that Parliament have some control over what amendments are made to the legislation. The argument the Chief Secretary just advanced would have been equally valid in regard to the Prices Act when it was first introduced by the Playford Government and to the Landlord and Tenant (Control of Rents) Act, both of which were to be merely for about a year when the legislation was initially introduced. So, exactly the same argument could have been put then that the Government could not do anything about the control of prices or rents within, say, a year. However, it was not the original intention any more than it is the intention with regard to this legislation that it should expire at the stated date. The amendment provides that Parliament will have some control over this experimental legislation. If it is necessary that the legislation be extended, I will vote for its extension in due course and, if it needs extending again, I will vote for its extension again, just as we have all done, with reservations, in regard to the Prices Act and the Landlord and Tenant (Control of Rents) Act.

The Hon. A. J. Shard: I don't think you always voted for it, though.

The Hon. Sir ARTHUR RYMILL: I think I have always voted for it since we have had a Labor Government, because I felt more at liberty to do that than when the legislation was introduced by my own Party. The Government has said that this is only temporary legislation. Let us hope that that is all it needs to be, because I do not think that anyone wants this control forever. If this is a temporary measure, it should have only a temporary duration. If the legislation is necessary next year, we will pass it again. If the new clause is carried, we will retain some kind of control over the form of the legislation that we should have, anyhow, particularly over experimental legislation such as this. This is novel legislation, and I do not think it is based on any other legislation that has been tried elsewhere. Some people will always try to get around novel legislation, and it would require a superhuman Parliamentary Counsel to foresee everything through which people might try to shoot holes. Therefore, this is a most appropriate amendment, and I give it my full support.

The Committee divided on the new clause:

Ayes (11)—The Hons. J. C. Burdett, M. B. Cameron, Jessie Cooper, M. B. Dawkins, R. C. DeGaris (teller), R. A. Geddes, G. J. Gilfillan, C. M. Hill, F. J. Potter, Sir Arthur Rymill, and A. M. Whyte.

Noes (6)—The Hons. D. H. L. Banfield, T. M. Casey, B. A. Chatterton, C. W. Creedon, A. F. Kneebone (teller), and A. J. Shard.

Majority of 5 for the Ayes.

New clause thus inserted.

Schedule and title passed.

Bill reported with amendments. Committee's report adopted.

MURRAY NEW TOWN (LAND ACQUISITION) ACT AMENDMENT BILL

Consideration in Committee of the House of Assembly's message.

(For wording of message, see page 1572.)

The Hon. A. F. KNEEBONE (Chief Secretary): I move:

That the Legislative Council do not further insist on the amendments to which the House of Assembly has disagreed, and that the Legislative Council agree to the amendment made by the House of Assembly to the Legislative Council's amendment to clause 10.

The House of Assembly has given as the reason for its disagreement that the amendments would cause undue delay in settling compensation for acquisition under the principal Act. This was one of the reasons I advanced in opposition to the amendments previously.

The Hon. M. B. CAMERON: As I moved the amendments to which the House of Assembly has disagreed, I shall repeat briefly some of the arguments I used previously. I do not agree with the reason advanced by the House of Assembly for disagreeing to the amendment. If a person has some argument about the price set on his land, any delay would only bring justice to him, and he should be able to obtain justice through appeal to the Land and Valuation Court. I ask the Committee to insist on the amendments.

Motion carried.

ADJOURNMENT

At 5.22 p.m. the Council adjourned until Thursday, November 8, at 2.15 p.m.