LEGISLATIVE COUNCIL

Wednesday, August 14, 1974

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

QUESTIONS

WHEAT

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

Leave granted.

The Hon. C. R. STORY: In the new wheat stabilization agreement, which took a considerable time to negotiate with the Commonwealth Government and the Commonwealth Minister for Agriculture, one of the points at issue was the owner-operator allowance, which forms a very important part of the agreement. In the past that allowance had a rise-and-fall clause associated with it, but I understand that during the recent negotiations the industry reluctantly agreed that the negotiations should be concluded so that there could be some scheme. In view of the rate of inflation, what is the Government's policy in regard to the movement of the figure set for the owner-operator allowance? Does the Government believe that this allowance should be treated in exactly the same way as are allowances in any other section of industry in Australia?

The Hon. T. M. CASEY: As the honourable member well knows, this is a matter for the Commonwealth Government. After all, wheat stabilization is covered by Commonwealth legislation, and the States come into line when the Commonwealth Government reaches agreement with the Australian Wheatgrowers Federation. The matter has been bandied about for some time; I think I answered a question in this Council some time ago about it. I said that the wheat index committee took many matters into consideration, but I did not believe that the owner-operator allowance had been considered in the past to the extent that it would be in the future. The Commonwealth Minister, Senator Wriedt, has given an assurance to the industry that this will be considered next year. It was too late to do anything about it this year because the Commonwealth Parliament was to be in session for only a short time, and the legislation had already been drafted and agreed to by the Australian Wheatgrowers Federation. It was imperative to introduce the legislation in the current session of the Commonwealth Parliament so that the new wheat stabilization agreement could take effect. The Commonwealth Minister for Agriculture has given an assurance that this matter will be taken into account in the next session. In the circumstances I do not think he could be any fairer than that. I agree with the honourable member that the owner-operator's cost has to be taken into account, probably more so today than ever before. I hope that the matter can be resolved and I shall certainly be watching the situation to see that it is taken into account.

The Hon. C. R. STORY: Although I do not think it was intentional, I think the Minister may have given me the wrong answer, as it is very much within the South Australian Government's province to deal with this matter. Indeed, the legislation cannot operate unless the South Australian Government agrees to it, because that Government has a majority in the Lower House of this Parliament. As legislation ratifying the agreement must pass through this Parliament, the matter is very much within the hands of the South Australian Government and this Parliament. I am really asking the Minister what is the Government's attitude regarding the matter. I am sure the the Minister agrees with me that the Commonwealth Government has not given wheatgrowers a very good go in relation to the wheat agreement, which was virtually forced through because some agreement had to be reached.

The Hon. T. M. CASEY: This is complementary legislation. At the last meeting of the Australian Agricultural Council, South Australia agreed in principle to the wheat stabilization plan, which has also been agreed to by the A.W.F. If the legislation passes through the Commonwealth Parliament, the South Australian Government will naturally agree to the scheme. The matter raised by the honourable member is completely outside the original scheme agreed to by the A.W.F. and by the various Ministers at the Agricultural Council meeting. I have assured the honourable member that the Commonwealth Government will take this matter into account in relation to the next season, and I hope that it will be done.

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

Leave granted.

The Hon. A. M. WHYTE: Farmers have payments due to them on wheat sold as far back as five years ago. They were under the impression that a payment of 20c for ·036 cubic metres would be made in August of this year on the 1973-74 pool, but I understand that it is now possible that those payments will not be made. Does the Minister know what payments will be made to farmers this year, on which pools they will be made, and what amounts will be paid?

The Hon. T. M. CASEY: I will contact the Australian Wheat Board and attempt to get a reply to the question. I will bring down the reply as soon as possible.

HEPATITIS

The Hon. V. G. SPRINGETT: I seek leave to make a statement before asking a question of the Minister of Health.

Leave granted.

The Hon. V. G. SPRINGETT: I understand that about 150 cases of hepatitis are treated each year in the Northfield wards of Royal Adelaide Hospital. A few days ago one of the papers called this a disease that the law could not control, because, although it is notifiable, it is not listed as an infectious disease. Apparently, a young woman suffering from hepatitis was recently admitted to the Northfield wards and, as soon as she felt better, she discharged herself, although her condition was still highly infectious. Unfortunately, nothing could be done to prevent her leaving the wards or meeting with other people, and possibly spreading the disease further. Will the Minister say what can be done about this matter in the interests of the community generally?

The Hon. D. H. L. BANFIELD: True, hepatitis is a notifiable disease. However, as it is not controlled by regulations, a patient cannot be held in hospital against his will. Once the disease has been notified, we can try to instruct the family on hygiene matters; indeed, this is done as soon as the department has been notified of a complaint. Whereas, say, meningitis can be passed on by droplet when persons are speaking to one another, hepatitis can be caused only by a lack of correct hygiene. For this reason, it is not essential that the department be empowered to keep

persons in hospital against their will. However, we do go to people's homes and try to educate those concerned regarding hygiene.

The Hon. R. A. Geddes: Who goes to the homes—representatives of the local board of health or of the department?

The Hon. D. H. L. BANFIELD: From the department.

Later:

The Hon. D. H. L. BANFIELD (Minister of Health): I seek leave to make a personal explanation.

Leave granted.

The Hon. D. H. L. BANFIELD: When I was answering the Hon. Mr. Springett's question I said that officers went out to advise people on the hygiene to be observed when someone in the family was suffering from hepatitis. The Hon. Mr. Geddes asked me whether the officers came from the department or from the local board of health, and I said that I believed that they came from the department. The position is that the department normally notifies the local board of health, and the board sends out officers to advise the people on this matter. If the board is unable to do that, the duty is carried out by an officer of the department.

SOVIET UNION

The Hon. C. M. HILL: On August 6, I asked the Minister of Agriculture, as Leader of the Government in this Chamber, whether the Government would declare where it stood on the question of the Baltic people and their concern in this State at the Commonwealth Government's acceptance of their homelands as part of the Soviet Union. I do not want to be unfair or to appear impatient, but I have noticed that the subject is being discussed in the Commonwealth Parliament, and people have been pressing me to ascertain where the State Government stands on this issue. Has the Minister a reply to that question; if not, will he please do all in his power to expedite a reply from the Premier?

The Hon. T. M. CASEY: I will attempt to comply with the honourable member's request.

COMPANIES LEGISLATION

The Hon. F. J. POTTER: I seek leave to make a brief statement prior to asking a question of the Minister of Agriculture, representing the Attorney-General.

Leave granted.

The Hon. F. J. POTTER: In March of this year the Attorneys-General of the States of Victoria and New South Wales announced the intention of the States of Queensland, New South Wales and Victoria to set up a commission (I think it was to be called the Commission for Corporate Affairs, or some title such as that) to deal with the common control and registration of companies in those three States. When the announcement was made, it was intimated that the other States of the Commonwealth were more than welcome to join in such a commission, and I understand that, since that time, Western Australia has expressed some interest in the matter. Will the Minister ask the Attorney-General exactly what progress has been made in other States in setting up this commission; and secondly, whether the present State Government in South Australia is interested in becoming a party to that idea?

The Hon. T. M. CASEY: I will refer the honourable member's question to the Attorney-General and bring down a reply.

PETRO-CHEMICAL INDUSTRY

The Hon. R. A. GEDDES: I wish to direct a question to the Minister of Health, and seek leave to make a brief statement before doing so.

Leave granted.

The Hon. R. A. GEDDES: In the press this morning it was stated that the Premier intended to introduce the Indenture Bill into Parliament next month to give the green light for work to start on the construction of the petro-chemical complex at Red Cliff Point. What plans has the Minister's department made for possible needs in hospital accommodation of the large work force that will be moving into the Port Augusta area; secondly, has the Public Health Department made any plans to ensure the general well-being, from the health point of view, of the greatly increased population expected at Port Augusta in the next 12 months?

The Hon. D. H. L. BANFIELD: Both the Hospitals Department and the Public Health Department have been investigating this matter for some time. I am visiting Port Augusta on August 29 and will take the opportunity to make some inquiries then, after which I hope to be able to give the honourable member some firm reply.

The Hon. R. A. GEDDES: Can the Minister of Agriculture, representing the Minister of Development and Mines, say what quantity of effluent, which will require biological oxidation, will be discharged each day from the proposed Redcliff petro-chemical plant and for what period the effluent will be held before being discharged?

The Hon. T. M. CASEY: I will refer the honourable member's question to my colleague and bring down a reply.

DRIVING LIGHTS

The Hon. G. J. GILFILLAN: I seek leave to make a short statement prior to asking a question of the Minister representing the Minister of Transport.

Leave granted.

The Hon. G. J. GILFILLAN: I have found while driving at night an increasing number of cars fitted with extra driving lights, some of which are extremely powerful. On one occasion recently I met a car with lights so powerful that it was almost impossible for me to see anything at all, because those lights were not being dipped or switched off. Can the Minister say whether there is anything in the regulations controlling the use of these lights and providing that they should in some way be connected to the dip switch so that they can be switched off when the normal driving lights are dipped? If there is no provision of this type in the current legislation to control this sort of thing, will the Minister look at the matter with a view to introducing some form of control?

The Hon. D. H. L. BANFIELD: I will refer the honourable member's question to my colleague and bring back a reply.

METROPOLITAN TRANSPORT

The Hon. C. M. HILL: I seek leave to make a short statement prior to directing a question to the Minister of Health, representing the Minister of Transport.

Leave granted.

The Hon. C. M. HILL: Many people have referred to the need for improving cross-suburban transport in metropolitan Adelaide. Now that the Government owns the bus services involved in most of this cross-transport, we may assume that a reappraisal of the time tables and the

routes may be made to satisfy this public inquiry and, indeed, the public demand for improvement in this area of our metropolitan bus service network. Also, people have commented to me that considerable advantage would accrue if the bus termini used on the Municipal Tramways Trust's suburban bus routes could be joined so that a loop network or system could be arranged to replace the present arrangement whereby each bus goes to a certain terminus, turns around and then comes back along the same route towards the city. If some of the terminal points could be joined, many potential bus passengers in the metropolitan area could be served, and in that way people would use more public transport and fewer private motor vehicles, which is the aim of all of us. First, what plans has the Minister to improve the cross-suburban passenger bus services in metropolitan Adelaide; and, secondly, will the Minister investigate the proposal to link existing M.T.T. bus termini, with the object of serving more potential bus passengers?

The Hon. D. H. L. BANFIELD: I will refer the honourable member's questions to my colleague and bring back a reply.

KONGORONG LAND

The Hon. R. C. DeGARIS: I seek leave to make a brief explanation prior to addressing a question to the Minister of Agriculture.

Leave granted.

The Hon. R. C. DeGARIS: I have been informed that the Woods and Forests Department has taken options on certain properties in the Kongorong district. Over which land has the option to purchase been taken, what is the price at which the option has been taken, has the land in question changed hands over the past two years, and, if it has, at what price was the sale made?

The. Hon. T. M. CASEY: I should be happy to get the information for the Leader if he gives me the section numbers of the land to which he is referring. Perhaps I could obtain this information from the Leader later today before bringing down a reply.

TELEPHONE DIRECTORIES

The PRESIDENT: Yesterday, the Hon. Mr. Dawkins asked a question about country telephone directories for members of the Legislative Council. The delay in providing directories is not the result of neglect on the part of staff of the Council. I understand that previously metropolitan directories were circulated before country directories were circulated, and steps were then taken to purchase country directories for honourable members' use. These directories have been made available on the payment of 10c each in cash by this Council. Arrangements are being made at present for their purchase next week. In fact, a request has been made to the postal directory section of the Postmaster-General's Department to forward the new directories when they become available and to charge the cost of such directories to the Council.

LOCAL GOVERNMENT BOUNDARIES

The Hon. R. A. GEDDES: I direct a question to the Minister of Health, representing the Minister of Local Government, and seek leave to make a short statement prior to asking a question.

Leave granted.

The Hon. R. A. GEDDES: It has come to my notice that the Minister of Local Government announced on August 7 that any council wishing to complain or make further representations to the Royal Commission on Local Government Areas could do so provided the submission reached the Chairman of the Royal Commission by August 30. The Minister went on to say that such a procedure would give councils six to seven weeks in which to prepare their case. As the period between August 7 and August 30 is not six or seven weeks, will the Minister of Health ask his colleague further to consider extending the closing date to allow councils sufficient time in which to prepare a case should they have objections to the Commission's report?

The Hon. D. H. L. BANFIELD: I will refer the question to my colleague and bring down a reply.

PARINGA PARK PRIMARY SCHOOL

The PRESIDENT laid on the table the report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence, on Paringa Park Primary School Redevelopment (Stage I).

KINGSCOTE PLANNING REGULATIONS

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

That the regulations made on March 14, 1974, under the Planning and Development Act, 1966-1973, in respect of interim development control, District Council of Kingscote, laid on the table of this Council on March 19, 1974, be disallowed.

(Continued from August 7. Page 301.)

The Hon. C. M. HILL (Central No. 2): I support the motion. The situation on Kangaroo Island at present is that the people and councils there object to these regulations. I commend the Hon. Mr. DeGaris for his speech of last Wednesday in which he gave ample evidence about the objections raised on Kangaroo Island to these regulations. I will not repeat the detailed information that the Hon. Mr. DeGaris brought forward.

Last Monday the Kingscote District Council held a meeting at which it reaffirmed its objection to the regulations. As honourable members know, there is a relatively small community on Kangaroo Island in comparison with the total population of South Australia. The people on the island, being somewhat isolated, have traditionally been independent. Frankly, they fear centralized control. They have a splendid record of self-reliance, citizenship and rural production.

We all know that they live under unfortunate handicaps. Because they are an island community, their handicaps include the problems of transport and transport costs. If ever a minority of our population should have its voice heard in the Legislature of this State it most certainly is the Kangaroo Island community. I support the cause of the people there and their objections to the regulations.

When the planning and development legislation was first introduced into this Council in 1966 I stressed some principles that I believed ought to guide one in considering such legislation. On November 15, 1966, I said:

These fundamental principles to which I refer are: first, the need to have such checks within the framework of the legislation as to enable the people who will be affected by town planning to say whether or not they want a particular plan, and when they want it and if and when such plan should be changed to suit them. This check, I submit, should be at local government level. Local government representing the people at local level should, if ever the need or a clash arose, be the master of a co-ordinating town planning authority.

Secondly, the town planning authority should not override local government and whittle away from local government the authority to administer regulations to control land use, but rather should delegate that authority to local government, which has had the traditional role to zone and to exercise many other controls within the provisions of the Local Government Act, the Building Act and other Acts.

I then referred to other principles, but those two principles were the most important, in my view. My views on town planning policies have changed considerably since then. Indeed, town planning has catapulted into a rapidly changing process, and over the past eight years it has become a rapidly evolving discipline. The present Act has failed in many ways and has been severely criticized by everyone from the ordinary man in the street right up to the Chief Justice.

Despite that criticism, I believe that the principles to which I have referred still stand; they most certainly still stand if a council can measure up to its responsibilities and, in the case of Kangaroo Island, the council can measure up to its responsibilities. From further inquires I have made, it appears to me that the council on Kangaroo Island is not dogmatic on the point that it wants to administer its affairs in this area in totality, but it objects to the total planning control, as it affects individuals, being placed in the hands of a central authority in Adelaide. Indeed, I believe that the people on Kangaroo Island would be satisfied if in the main they had control over their affairs. They would not object to some limited control being held in the State Planning Authority.

There is a need for some control over some major planning issues which could perhaps be better administered by the State Planning Authority; I refer particularly to large development projects that might be contemplated for the island by outside interests where large sums for investment purposes are involved. But in the main they want a say in the administration of the planning regulations. Because the people are willing to agree to some form of compromise, they are certainly not taking an unreasonable attitude.

The Minister must take responsibility in this matter. I have heard criticisms of Mr. Hart, the Director of Planning, in regard to these regulations, but I do not direct any criticism at him: I direct my criticism at the Minister concerned, who must take the responsibility. If the Minister is willing to communicate further with these people, to show a better understanding than has been displayed in the past, and to compromise, the most unsatisfactory situation that exists at present can be overcome.

I therefore support the motion and hope that some further communication in the general democratic process will take place. I hope that dialogue will occur between the locally elected representatives on Kangaroo Island and officers from the State Planning Authority.

Further, I hope that the Minister himself will ensure that further efforts are made to reach some solution to this unfortunate problem. I hope that, by a joint venture, both sides in the debate will find sufficient common ground to evolve by one means or another regulations that are acceptable to the local people as well as to the State Planning Authority.

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

OMBUDSMAN'S RECOMMENDATION TO PARLIAMENT

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

That in the opinion of this Council the Engineering and Water Supply Department should give effect to the recommendation of the Ombudsman that a 41-acre water licence in respect of section 290, hundred of Paringa, be granted to Mr. B. T. Kennedy of the Clovercrest Cattle Company.

(Continued from July 31. Page 170.)

The Hon. T. M. CASEY (Minister of Agriculture): In speaking to this motion, I will first give a brief statement outlining the events that actually occurred. In July, 1969, an annual water diversion licence was issued to J. G. and M. M. J. Lindsay. This licence authorized the diversion of water from Pike River to section 290, hundred of Paringa, for the irrigation of a maximum of 16·6 hectares (41 acres) for the year ended June 30, 1970. It was renewed on application for the year ended June 30, 1971, for the same area.

The property concerned was offered for sale by auction, but the reserve price was not reached, and it was subsequently sold on May 10, 1971, to a Mr. B. T. Kennedy, acting for the Clovercrest Cattle Company. Mr. Kennedy applied for the transfer of the licence and, following an inspection, the licence was issued for the then current irrigated area of 7·7 ha in accordance with Government policy. The property was sold by the vendor, a trustee company, through a local agent. The matter was fully investigated by a Government investigating officer from the Attorney-General's Department, and his report and all departmental documents were made available to the Ombudsman.

With this background in view, I now intend to place the principal observations made by the Ombudsman in their correct perspective. The first one with which I wish to deal is that contained in the letter to the Premier set out on pages 7 and 8 of his report. In this he states that he had recommended to the department, following his investigation, that the licence should be issued for 16·6 ha. He further stated that a similar recommendation had been made by the investigating officer and that both recommendations had been declined. He states that he was "'staggered by such departmental intransigence". The investigating officer's report was made to the Crown Solicitor and did contain such a recommendation. However, the Ombudsman was also provided with further documents, wherein the Crown Solicitor reviewed the report and stated that some conclusions were erroneously made and that the recommendation was not warranted. This fact is not mentioned in the Ombudsman's report, and is the reason why the recommendation was not acted upon. The second point with which I wish to deal is the statement on page 5 of the Ombudsman's report, as follows:

> There is no doubt that substantial hardship has been suffered by Mr. Kennedy, as the purchase was based on the assumption that a water licence to the full amount of acreage held by the previous owners would be issued to him.

It does appear that Mr. Kennedy paid a higher price than would normally be paid for such a property. However, this did not occur as a result of any representation or improper action of the department. It is clear from the investigation that Mr. Kennedy made no inquiries from the department prior to the sale as to the possibility of transferring the licence, and relied upon representations made by an auctioneer and an employee of the vendor trustee company. Copies of documents in the possession of the department show that both (that is, the vendor trustee company and the auctioneer) had been advised of the policy applicable to transfers. The vendor's employee admits that Kennedy was informed by both of them that the transfer would be a mere formality. Mr. Kennedy would have been prudent to agree to the sale conditionally on these representations being correct. It is clear that Mr. Kennedy did not suffer hardship as a result of the department's actions.

The Hon. C. R. Story: What about—

The Hon. T. M. CASEY: The department was quite open. It told the auctioneer and the vendor trustee company what the situation was. If the purchaser did

not make up his own mind or go to the trouble of ascertaining exactly what the conditions were and what the department's attitude was, the onus is on him and not on the department.

The Hon. C. R. Story: You said that he hadn't suffered any hardship.

The Hon. T. M. CASEY: He has not.

The Hon. C. R. Story: Of course he has!

The Hon. T. M. CASEY: He has not suffered any hardship as a result of the department's actions. That is the point I am making. Therefore, there is no onus on the department. The Ombudsman then raises an issue to the effect that, if Mr. Kennedy had paid a lower price for the property, the result would have been to transfer hardship to the vendor. As stated, the vendor was a trustee company. This company held the land in trust for a Mr. X, whom the Ombudsman describes as "mentally disadvantaged". At this stage the correctness of the Ombudsman's statements resolves into just what factors should be taken into account in effecting transfers. The Ombudsman refers to Cabinet policy on pages 2 and 3 of his report and specifically to two decisions which were made on December 9, 1968, and May 29, 1969. The first was to the effect that the Minister of Works should consider the type and extent of plantings when transfers of water diversion licences were proposed. The second stated that this could lead to hardship, and gave the Minister discretion to vary this procedure "where he thinks it proper".

The reference to hardship appears to have been very widely construed by the Ombudsman, as evidenced by statements made in his report in respect of both Mr. Kennedy and the vendor company: indeed, to the point where it occurs whenever a person suffers a financial loss. The department's view, which is in accordance with Government policy, is that hardship in connection with the transferable area of a water diversion licence is not established simply because a financial loss will be suffered, as this is likely to occur in all instances where licensed areas have not been developed and are consequently reduced. If financial loss was accepted as the sole criterion, all applications would have to be granted, licences would become a water right, and the very basis of the effective use of water resources would cease to exist.

Also, it is neither practicable nor desirable to attempt to adjudicate on the wisdom of any investment made in property, the effectiveness of employment of resources, or management policy and practices. Hardship is considered as occurring where some unforeseen unfortuitous event occurs during ownership which suddenly changes the *status quo* and warrants special consideration. In the case of Mr. X, whilst it is unfortunate that he is in his situation, he was in it prior to the trustee company's acquiring the property, and there was no change in his circumstances during ownership which would justify departing from normal procedure. The policy on this matter was explained to the Ombudsman by the Minister of Works during an interview, and this is acknowledged by him in his report. The matter has also been reviewed by Cabinet which has confirmed the policy (again, as stated in his report).

The final point I wish to deal with is the Ombudsman's conclusion, given on page 9 of his report, namely:

> Ministerial and Cabinet decisions are outside the scope of my jurisdiction and, in my view, most properly so, and this report should not be construed to suggest that I question the decision at this level. However, my investigation has been directed at the departmental action taken in this case and I remain of the opinion that the department was at fault in ignoring considerations of hardship to the substantial financial detriment of my complainant. I hasten to assure Parliament that I believe the department acted in good faith albeit in my view wrongly.

In this conclusion the Ombudsman refers solely to the alleged hardship affecting his complainant (Mr. Kennedy) which has already been shown to have occurred other than as a result of any representation or improper act of the department. The Ombudsman has also been informed both verbally and in writing that the department has properly followed confirmed Government policy and, as with the earlier remark regarding departmental intransigence, and although this latter comment was tempered with the concession that the department acted in good faith, it is unfortunate that such remarks should emanate from a source likely to lower public confidence in the actions of a department of this nature.

It is for these reasons that I ask the Council not to proceed any further with the motion of the Hon. Mr. Story. I have been right through the files and I am of the opinion, quite conclusively, that there was no fault on the part of the department. I have bought some property in my time, and I have first made sure that I am fully conversant with all the ramifications attaching to any purchase. I am certain that other members of this Council who have an interest in purchasing property make sure in normal circumstances that they are absolutely certain what transpires if they buy a property. I am sure the Hon. Mr. Hill, who has had a wealth of experience in the purchase and sale of properties, would make himself absolutely conversant with exactly what would happen if he purchased a property. In my opinion, and I am sure in the minds of many members in this Chamber, the onus is on the person buying the property. This case simply shows that one cannot rely today on outsiders for all the information required, because someone is liable to make a mistake.

The Hon. R. C. DeGaris: Let the buyer beware?

The Hon. T. M. CASEY: It is the buyer's money, and it is up to him to make certain—

The Hon. R. C. DeGaris: You are advocating a policy of let the buyer beware?

The Hon. T. M. CASEY: It is only common sense. Money is involved, no matter whose money it is. If a person is going to suffer because someone else makes a mistake, one must be absolutely certain (and I am sure the Hon. Mr. Hill would agree with this)—

The Hon. C. M. Hill: I would not.

The Hon. T. M. CASEY: Then the honourable member would put his money at risk. Surely he is not as foolish as that!

The Hon. Sir Arthur Rymill: What about consumer protection against the Government?

The Hon. T. M. CASEY: I am sure every honourable member wanting to enter into a legal contract where his money was at stake would make sure he got real value for his money.

The Hon. C. M. HILL (Central No. 2): First, I am disappointed indeed with the Minister's reply in this debate.

The Hon. M. B. Cameron: We might as well not have an Ombudsman.

The Hon. C. M. HILL: Taking his last comment first, I point out most strongly that the Minister is a member of a Government that puts first and foremost in the majority of its policies the need to protect consumers.

The Attorney-General has made public statements practically every month since he has been in office to the effect that he is concerned more with the buyer than with the seller. In all areas of consumer protection both parties have to be considered fairly, and in today's world proper treatment and justice must be given to all parties to all contracts.

The main point concerning me about the Government's reply in this debate is that in this whole issue the Government has shown that it is just as rigid, just as inflexible, and just as uncompromising as is the department concerned. All Mr. Kennedy hoped for was that the department would use its discretionary power to give him fair treatment in this matter. The department could have done that: it could have used its discretion, but it did not do so. It seems from the Minister's reply today that neither the department nor the Government went to another arbitrator to have all the features of the case looked at again by someone who had no interest in the matter: they took the matter to the Crown Solicitor. Of course, the Crown Solicitor would look at it from the legal aspect, and one would not blame him for doing that.

The Hon. T. M. Casey: But you are blaming the department. The department is only acting on Government policy.

The Hon. C. M. HILL: Then I will blame the Government.

The Hon. T. M. Casey: Don't be so ridiculous! If the Government brings down a policy the department must act on it.

The Hon. C. M. HILL: I will blame the Government. Who is being ridiculous? The Minister indicated from his remarks that followed the prepared statement he read that he wholeheartedly supported the Government's view on this matter.

The Hon. T. M. Casey: How long has it been Government policy?

The Hon. R. A. Geddes: Surely the Minister must know.

The Hon. T. M. Casey: I am asking the honourable member. He is blaming Government policy. Let him say how long it has been Government policy.

The PRESIDENT: Order!

The Hon. C. M. HILL: I do not know.

The Hon. T. M. Casey: Of course you don't.

The Hon. C. M. HILL: I do not know when the Government made this policy, but it must be the Government's policy in regard to this matter.

The Hon. T. M. Casey: That's right. Don't blame the department.

The PRESIDENT: Order!

The Hon. C. M. HILL: I am blaming the Government. That is about the fourth time I have said so, but I do not know whether it has sunk in yet. I am blaming the Government.

The Hon. T. M. Casey: All right. We have got the message.

The Hon. C. M. HILL: Here we have the case of an individual up against a Government that is rigid, inflexible, and unbending.

The Hon. T. M. Casey: For how long has it been Government policy?

The Hon. C. M. HILL: I do not know when the Government makes specific policies.

The Hon. T. M. Casey: You are begging the question and talking about Government policy. First you blamed the department and then you switched to the Government, but you do not know how long it has been Government policy.

The PRESIDENT: Order!

The Hon. C. M. HILL: I do not know how long it has been Government policy, but the Minister agrees with me that it is Government policy. It does not matter when the policy was laid down. At the time when Mr. Kennedy ran into this monolithic wall, this bureaucracy, as an individual in this State he encountered this problem.

The Hon. T. M. Casey: Other people have encountered it.

The Hon. C. M. HILL: Apparently other people have not gone to the Ombudsman, or have not been successful with the Ombudsman. I am talking about the case we have here, the case of Kennedy *versus* the Government.

The Hon. T. M. Casey: Let's be fair.

The Hon. C. M. HILL: I am quite fair. Let us talk about this area of fairness. This Parliament provided the office of Ombudsman for this very purpose, where an individual believes he has not been fairly treated by the State, and this is what has happened. The legislation was adopted here and the office was created. It was accepted by Parliament that there would be times when individuals of this State believed they were being treated unjustly and unfairly, and Parliament decided there should be someone of high repute and independence to whom in the course of the democratic process that individual could turn.

That was the machinery that this Parliament passed. Secondly, there was appointed to this post a man of unquestionably high repute, as I am sure all members on both sides would agree. So the Ombudsman set himself up in office, and in due course Mr. Kennedy came along and stated his case. All the details were given by the Hon. Mr. Story; I will not repeat them, because there is no need to. Mr. Kennedy did not get what he believed was justice. However, more importantly, the Ombudsman did not think he had obtained justice. Not only Mr. Kennedy but also the Ombudsman was of that opinion; so what did the Ombudsman do?

He resorted to the next stage within his jurisdiction: he reported the case to Parliament. That having been done and his report having been laid on the table of this Chamber, one honourable member of this Council made a close and detailed investigation of the whole matter. He believes the Ombudsman should be supported in this case. The Hon. Mr. Story turned to the Government two weeks ago and said, "In my opinion, this man has been treated unfairly. What does the Government intend to do about it? Will the Government reconsider the matter?"

As I listened to the Hon. Mr. Story, it seemed to me that the main principle involved (and I have to discuss the department at this stage, though I still emphasize—and do so because the Minister of Agriculture wants me, apparently, to take this line—that my criticism is of the Government) was that the departmental officers had a discretion. However, as is the case with most departmental officers, they do not like using discretion, because it creates precedent.

But that attitude is and should be changing in today's world, because we should be moving into a world in which the individual is supreme and, if the individual has a case, he is entitled to take it to the farthest lengths possible to have justice done. The days have gone when public servants could hide behind the refusal to use discretionary power because they were afraid of creating precedent. All cases should be taken on their merits.

The Hon. T. M. Casey: Fair go! You are throwing the onus on the department.

The Hon. C. M. HILL: If we want to give maximum justice to the maximum number of individuals, all cases should be dealt with on their merits. Here is a case that was taken on its merits, but the discretion was not granted.

The Hon. T. M. Casey: But there was no discretion.

The Hon. C. M. HILL: The Minister has had enough to say.

The Hon. T. M. Casey: You are twisting things around.

The PRESIDENT: Order! I refer honourable members to Standing Order 181, which states:

No member shall converse aloud or make repeated interjections or other disturbance whilst any other member is orderly debating, or whilst any Bill, Order or other matter is being read or opened.

Standing Order 182 states:

No member shall interrupt another member whilst speaking, unless (1) to request that his words be taken down . . .

I have called for order several times. I must point out to the Minister that those Standing Orders apply to Ministers as well as to all other honourable members. I want orderly debate in this Chamber, and I ask the Hon. Mr. Hill to continue.

The Hon. C. M. HILL: I was stressing the point that the departmental officers in this case had the opportunity to use their discretion in regard to Mr. Kennedy; but that was not done. They then put the matter before their Minister, and then, no doubt, it went to the Government of the day, but that discretionary power was not exercised by the Government. The arbitrator (the Ombudsman) appointed to investigate such matters as this looked into it and came down on the side of Mr. Kennedy; he felt so strongly about it that he took the matter further and laid it before Parliament. I believe that that discretionary power in this case, because of the investigations that have taken place, should have been exercised; but it was not.

As the Hon. Mr. Story has brought out all the details and information concerning the case, the Government has had another opportunity to look at it in these past three months, but it has refused to come down on the side of the Ombudsman. From the point of view of an individual in this State who is entitled to expect the optimum understanding from officers and from the Government of the day, Mr. Kennedy's case is stronger than that of the Government.

This Council should stand on its own record of giving great weight to the voice and the case of individuals in the South Australian community. This Council should take the matter as far as possible: that is, carry this motion. I hope that, even then, when the matter goes to another place, the Government of the day will have another look at it, even to the extent of having it referred to an arbitrator, independent in every sense.

I repeat the point about sending the case to the Crown Solicitor. That action implies to me that the Government (I may be wrong) is looking at the situation from the point of view of whether the Government is quite safe legally, and that is not the kind of consideration the individual expects from a Government in circumstances such as these. I wholeheartedly support the motion.

The Hon. R. C. DeGARIS (Leader of the Opposition) I rise briefly to support the remarks of the Hon. Mr. Story and of the Hon. Mr. Hill. I begin by taking up the point made so ably by the Hon. Mr. Hill that, if one has listened to the remarks of the present Attorney-General on television or on radio, or has read them in the newspapers over the past three or four years, one will have heard this constant message that the old idea of "Let the buyer beware!" has to go by the board and we must produce a situation where the purchaser is protected from the seller. We have had that philosophy come through in many pieces of legislation, including the Land and Business Agents Bill, which passed through this Council in the last session; but this philosophy that has been espoused by the Attorney-General has been suddenly turned around by the Minister in this Council to mean something entirely different. The Government is taking the view that, in relation to an existing water licence on a property that Mr. Kennedy had purchased, everything must once again rest on the buyer. I am not arguing which of these two principles is right and should be adopted, but I am saying that there is a gross inconsistency in the Government's attitude to this case. Let the Government now apply the philosophy it has been thrusting on the people of this State for the past three or four years. It seems that, when the Government is involved, the philosophy it has been espousing is suddenly not followed by the Government. I therefore pose the question: what has the Government got to lose?

Before the property was purchased there was a 16·6 ha licence, but after purchase the property had a 7·7 ha licence. Certain parts of the Ombudsman's report, which was laid on the table of this Council, need to be stressed again. We know that on May 29, 1969, a Cabinet directive was issued on this matter. We also know that on October 20, 1970, a departmental instruction was issued. It is worth noting again the contents of the departmental instruction, which states:

On October 20, 1970, the Director and Engineer-in-Chief (Mr. H. L. Beaney) issued an internal departmental administrative instruction wherein he directed officers that recommendations to the Minister should suggest that the discretion of the Minister be used to refuse transfer of water licences where there was no evidence of development of existing licences. To me such an instruction appeared incompatible with the Cabinet decision of May 29, 1969, but the Director saw no inconsistency.

In a paragraph headed "Essence of the complaint and the basis for my opinion" the Ombudsman stated:

The grounds on which I reached my conclusion that Mr. Kennedy's complaint was justified are set out in the reports which appear hereunder. In essence, my opinion is that the Engineering and Water Supply Department made a decision to issue a 19-acre water licence in respect of a property where a 41-acre water licence had been current immediately prior to the purchase by Mr. Kennedy and that in making that decision the hardship likely to flow therefrom was not taken into consideration as I believe was required by the relevant Cabinet authority. To grant Mr. Kennedy's application would not have increased the previously existing commitment on the use of Murray River water.

We were also told that Mr. Kennedy's agent, who telephoned the department and spoke to a senior officer, was told that the transfer of the existing water licence would be a matter of form. Taking all matters into consideration (the Ombudsman's report and the information gained from people who have been involved in this matter), there appear to be strong reasons why the Government should carry out a policy as detailed by the Ombudsman in his report. The question raised by the Hon. Mr. Hill is valid. After debate in this House we appointed an Ombudsman to do this very job.

The Ombudsman made a report, which the Government chose to ignore totally. In addition, the Government has not presented to the Council a relevant argument why it should not follow the recommendations made by the Ombudsman's report. I support the motion.

The Hon. C. R. STORY (Midland): In closing this debate, I thank honourable members for the way they have received this matter. When I spoke to this motion two weeks ago I said this was the first report tabled by the Ombudsman and that it was the first opportunity Parliament had had to test its sincerity regarding his recommendations. That is why I was pleased to see the attitudes of honourable members and to see just how this concept, which is new in this State and in most of this country, was accepted. The Ombudsman is paid a fairly high salary in comparison with salaries paid to other members of the community, and he has under his jurisdiction people who are necessary to assist him in his research. I believe he is doing a very good job.

It would be a waste a public money if we were to keep in existence on the Statutes an office that was not going to have any sinews when it came to implementing the strength that is supposed to be in the Ombudsman's arms. That strength has not, in my opinion, been used in the way it ought to have been used. Each Minister of the Crown is virtually an ombudsman, because, under the Westminster system of Government, one of the primary functions of a Minister is to act as the go-between of the people and Parliament. Mr. Kennedy, who is the subject of this debate, has, in my opinion, not received proper consideration from the department in question or from the Government. The only action remaining to be taken is to try to correct the situation by having Parliament put the matter in order. Parliament, after all, is the final court.

The situation as outlined by the Minister is really a dissection of the Ombudsman's Report, a report which I dissected two weeks ago. The subtle difference between the two dissections is that I used the report objectively. I believe the department viewed only those parts of the report it wanted to use to bring its argument before Parliament. It has not commented on many parts of the report, and arguments have been raised that have not been rebutted. Kennedy's case was brought before Parliament because it had connected with it peculiar circumstances, as was highlighted by Cabinet's asking the Attorney-General to get a report (which he did) and the Ombudsman's being asked by Kennedy to investigate the situation (which he did). Both came up with much the same conclusion.

If we looked carefully at the whole operation of the water licensing scheme in South Australia, I would guarantee that no-one would come to the Bar of this Chamber and frankly and honestly say that circumstances identical to the circumstances in Kennedy's case have been favourably considered. I know some cases have been considered and that people were given longer periods in which to plant the areas originally allocated to them. It is incorrect to say that, because a person has not planted the area in 12 months, he has lost his allocation. I know of at least one case where a person became very difficult indeed with the department and the Minister, even ot the extent of threatening to shoot people. If the Minister reflects on this case he will see the justice of what I am asking in Kennedy's case.

The Council divided on the motion:

Ayes (12)—The Hons. J. C. Burdett, 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, C. R. Story (teller), and A. M. Whyte.

Noes (5)—The Hons. D. H. L. Banfield, T. M. Casey (teller), B. A. Chatterton, C. W. Creedon, and A. J. Shard.

Pair—Aye—Hon. V. G. Springett. No—Hon. A. F. Kneebone.

Majority of 7 for the Ayes.

Motion thus carried.

The Hon. C. R. STORY moved:

That a message be sent to the House of Assembly transmitting the resolution and requesting that it concur therein.

Motion carried.

COMMONWEALTH TERRITORY SENATORS

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

That in the opinion of this House the South Australian Government should institute an action in the High Court to challenge the constitutionality of the right of the Commonwealth Parliament to legislate for the provision of Senators for Territories of the Commonwealth; and that a message be sent to the House of Assembly transmitting the foregoing resolution and requesting its concurrence therein.

(Continued from August 7. Page 304.)

The Hon. C. W. CREEDON (Central No. 1): It is not possible for me to support this motion. I believe in all people being as nearly equal as possible. I believe that all Australians should have something in the way of equal rights when this involves their way of life. I know that honourable members opposite do not always see this point of view; they seek to give States' rights (and misdeeds in the name of States' rights) a somewhat saintly image. We have a Constitution that is more than 70 years old. It has imperfections, and we must constantly fight to correct what is obviously wrong. The founding fathers were wrong in their belief that Senators would be independent of thought and would fight only for their States. The founding fathers did not foresee the actions of the Senate over the past two years, when the Senate has thwarted the popularly elected House on almost every issue.

Did the founding fathers foresee that the Senate would divide on Party lines? Did they foresee that the electorate would vote on Party lines? We can find plenty of evidence of the voting pattern if we examine voting trends over many years. Regardless of what they did or did not foresee, I do not believe that it was their intention that large numbers of inhabitants would be forced to be content without representation in the Upper House of the Commonwealth Parliament. These Territories, to which the Australian Government seeks to give recognition, did not exist 70 years ago from a population viewpoint, but that is not sufficient reason to deprive them of representation at this time, especially since they now have such large populations. The Hon. Mr. DeGaris referred to the area of the Northern Territory, 130 000 000 hectares, but he did not say that the Territory's population was 87 000. The Australian Capital Territory has an area of 260 000 ha and a population of 150 000. These populations are fairly large, and they should have the opportunity, as have all other Australians, of being fairly represented in the Australian Parliament.

The two Territories are significant parts of Australia and should be represented in both Houses of the Australian Parliament. The people of the Territories pay taxes in accordance with the law and they are subject to the same laws as are all other Australians. Surely then, the inhabitants of these Territories are entitled to have their views expressed in the Senate by their own Senators. The Leader tried to draw red herrings across the trail by referring to such places as Ashmore and Cartier Islands, but he did not tell the Council that those islands were uninhabited. True, there are some people on Cocos Island (630, to be exact) and—

The Hon. R. C. DeGaris: Norfolk Island?

The Hon. C. W. CREEDON: —in due course they should have some representation, as should the inhabitants of Norfolk Island. However, when we compare the size of

these two little places with the Australian Capital Territory and the Northern Territory, we realize that there is no comparison.

There has been much procrastination on this subject for many years. Justice has been denied these people, and justice must not only be done but must also be seen to be done. The time is never appropriate for those who do not want justice to be done. Honourable members should remember that justice delayed is justice denied. I believe the Australian Government is taking a responsible attitude in seeking to give these areas the representation for which they have been asking for a long time. Instead of opposing that Government's action, we should be supporting it.

The Hon. M. B. DAWKINS (Midland): In contrast to the honourable gentleman who has just resumed his seat, so far from opposing the motion I support it, as it expresses the opinion that the South Australian Government should institute an action in the High Court to challenge the constitutionality of the right of the Commonwealth Parliament to legislate for the provision of representatives to the Senate (and I use that term because I cannot really describe them as Senators) for the Territories of the Commonwealth. I oppose that concept and fully support the motion.

I heard the Hon. Mr. Creedon say that the people of, I presume, the Australian Capital Territory and the Northern Territory had been asking for Senate representation for a considerable time. Although in some cases they may have been asking for it for a short time, it is debatable whether they have been asking for it for a considerable time. Before I proceed to debate the motion, I should state that I believe in the development of the Territories. Anyone who has been to the Northern Territory, for example, more than once in recent years can testify to the large amount of development and mushroom growth that is occurring there. However, the Territory still has a one-sided economy: it is still supported largely by Commonwealth funds, and it is still a Territory. The Northern Territory, and possibly others, will in time become States, that is, if the Australian Labor Party is not still in power. When that happens, that Territory will have proper representation in the Senate. In the meantime, I do not believe it is constitutionally correct for territorial representatives to the Senate to be appointed; they will not be Senators, in the proper sense of the term, and they will certainly not be Senators representing a State. The Hon. Mr. Burdett made this clear in his remarks. I do not believe representatives such as these from Territories should be appointed to the States' House.

I emphasize that the Senate is, and indeed always has been, a States' House. The Hon. Mr. Cameron took some time to say that it was not a States' House but that it was now a political House. I believe that it has always been a political House and that any House of Parliament will, to some extent, always be a political House, because that is part of the Parliamentary system. To believe that the Senate or a Legislative Council should be completely removed from politics is indeed an unreal concept.

Honourable members heard a rather irrational speech from the Hon. Mr. Cameron, who, as I said, set out to prove that the Senate was not a States' House. He did this on the basis of three months experience in that place. I once heard him blow his bags about his vast experience there, after only three months in that place. Unfortunately, the honourable gentleman has, in my opinion, a regrettable ability to "Nixonize" his politics. I think all honourable members realize that Richard Nixon was a first-class denigrator of those he wanted to destroy, and I am afraid the Hon. Mr. Cameron is inclined to copy the methods of Richard Nixon. I invite him to consider where Richard Nixon is at present. As I have said, the Senate is a political place. However, it is also an Upper House, and I believe that there should be in every Upper House of Parliament more objectivity and less closely aligned political division than there is in the lower Houses. That should always be so.

The Hon. T. M. Casey: But it never works out that way, does it?

The Hon. M. B. DAWKINS: I believe it does, although I am aware of the Minister's inability to understand it. The group to which the Hon. Mr. Cameron at present belongs is, I would say, in the process of transition to the Labor Party. It believes in approximately equal numbers of people for each electoral district. Indeed, that group does not seem to lose the opportunity to shout this theory from the housetops, although I notice that it was rather quiet on this matter during the Goyder by-election campaign. If one wants proof of this, one has only to remember that only the other day the so-called independent Senator from South Australia voted with the A.L.P. for approximately equal numbers of people in each district. Last week, in the course of the Hon. Mr. Cameron's somewhat irrational speech, after he had spent some time saying that the Senate was not a States' House and that we could still have a bicameral system with two Houses of Parliament, I asked:

Do you support the idea of having 40 Senators from New South Wales and only five Senators from Tasmania?

In reply, the honourable gentleman stated:

That stupid comment is not worth answering.

The honourable gentleman is quite entitled to use the word "stupid", if he is sure that it will not bounce back on him. However, I am sure it will do so on this occasion, as he has spent some time trying to prove, rather ineffectually, that the Senate is not a States' House. He also believes in approximately equal numbers of people in each electoral district. If the Hon. Mr. Cameron really believes that the Senate is not a States' House and that there should be about the same number of people in each electoral district, he must, if he is consistent, believe that there should be 45 or 50 Senators from New South Wales and only five from Tasmania, because the main justification for equal numbers of Senators for each State is that the Senate is, and should remain, a States' House.

If the Hon. Mr. Cameron wants to apply the adjective "stupid" it might be more appropriate for him to apply it to himself, because, if he was consistent (and this I query), he would have had to answer in the affirmative when I suggested that he supported large numbers of Senators for large States and small numbers for the small States.

I should like to refer to one other aspect of the honourable gentleman's speech: he said that under proportional representation there would be one new Senator on each side from each Territory and that there would not be any imbalance. He has completely overlooked the situation regarding by-elections and the effect of those on Senatorial representatives for the Territories. There is not a State Parliament to replace territorial Senators who leave the Senate through death or for other reasons, and these so-called Senators will be replaced by by-elections.

The Hon. R. C. DeGaris: Some more ambassadors to Ireland, do you think?

The Hon. M. B. DAWKINS: That is another possibility. That would be another way of making sure there was an imbalance. We all know that it may be the case that, under the system of Senatorial elections every three years

for these representatives, it is probable that there will be one Senator from each Party in the Northern Territory and one Senator from each Party in the Australian Capital Territory. If there is a by-election in the Northern Territory, however, it is more than likely that a Country-Liberal Party (that is what I think the Party up there is called now) Senator will be elected, and if the person who dropped out was an Australian Labor Party Senator, there would be two members from the one Party. The opposite result would obtain in the Australian Capital Territory, where the first Senator elected would be likely to be an A.L.P. Senator. The honourable member obviously has overlooked the possibility of an imbalance of three Territorial representatives to one, which easily could and probably would occur as a result of a by-election.

I do not wish to discuss the matter in any greater detail, except to say that I believe that the Senate, as a States' House, should remain a States' House, and that any person who believes that an Upper House can be some sort of political vacuum, where Parties do not exist at all, is completely removed from reality. Such a situation endeavoured to obtain in Tasmania for three years. The number of members of the Upper House varied from two to five members of the A.L.P. and from 14 to 17 members who were so-called Independents. For a period of three years that House had no direct representation of Goverment, and such a situation produces a system of unreality.

While the Senate is the State's House and remains so, I believe nevertheless, that there must always be political activity in that Chamber or in any other Upper House of Parliament if it is to be effective. At the same time, more objectivity and less actual political division must exist there than in the Lower House. In passing the legislation last week, I believe the Commonwealth Parliament exceeded its constitutional powers. I believe that this Council would be wise to pass this motion and to transmit it to the House of Assembly; therefore, I support it.

The Hon. R. C. DeGARIS (Leader of the Opposition): I thank honourable members for the attention they have given this motion. However, I believe the debate has been marred somewhat by the paucity of the arguments advanced by honourable members opposed to the motion. I am not surprised that the members of the A.L.P. oppose the motion, because we know the official attitude of the A.L.P. to the role of the States and to Upper Houses, but I am somewhat surprised at the contribution made to this debate by the Hon. Mr. Cameron. The arguments favouring the course of action sought by the resolution have been quite clearly stated and they have been backed by researched opinions, not one of which has been rebutted by the arguments put against the motion.

The Hon. Mr. Cameron sought refuge in experience—an experience of about three or four months as a serving Senator. I suggest that the honourable member should read a little more of the Constitution and a little more of the authoritative works on the various sections related to the matters under discussion. Quick and Garran make several points on the section referred to in this debate, and the Hon. John Burdett referred to Lumb and Ryan. The Hon. Mr. Cameron said:

The Constitution allows for Senators to be provided for the Territories.

I have read the Constitution fairly thoroughly, and I cannot find anywhere in it anything that allows for Senators to be provided for the Territories. There is in section 122 a clause dealing with the right of Parliament to allow representation for the Territories in the Senate, but I can find nothing in the Constitution that allows for the provision of Senators. I ask the Hon. Mr. Cameron to point out where in the Constitution this provision lies; I can assure him it is not there.

Section 122 deals with the question under the heading "New States", which is another point to be taken into consideration. It deals with the question of allowing representation for the Territories in the Senate. What the word "representation" means must be defined, as also must the number of representatives required, and what their abilities will be in the Senate. The Bill that has passed the Commonwealth Parliament provides for Senators with the same powers as those who represent the States. The Hon. John Burdett has already referred to the textbook *The Constitution of the Commonwealth of Australia* annotated by Lumb and Ryan. He has already quoted from that textbook, but there is need to quote it again. This is what the authors say:

The representation of the Territories in the Senate does raise certain constitutional difficulties. In so far as section 7 restricts membership of the Senate to persons chosen by the people of the States, it would seem that a representative of a Territory would not be a Senator but merely a representative of that Territory, and therefore his rights would be restricted to voting on matters affecting the particular Territory represented.

I quote, from page 973 of Quick and Garran, paragraph 473 of the annotated Constitution of the Commonwealth of Australia. Under the heading "Representation of Territories", Quick and Garran had this to say:

A Territory which has been surrendered to the Commonwealth by a State, or placed under the authority of the Commonwealth by the Queen, or been otherwise acquired by the Commonwealth, may be allowed representation in either House of the Federal Parliament, to the extent and on such terms as the Parliament thinks fit. The representation thus accorded is not representation as a State, but territorial representation. It may be allowed not only—as in the case of new States—"to the extent" which the Parliament thinks fit, but also "on the terms which it thinks fit". Apparently, therefore, the Parliament may not only fix the number of representatives for a Territory but determine—at least in some degree—the mode of representation. In the United States, there being no power to allow the Territories to send members to Congress, the organized Territories are nevertheless allowed to be represented in Congress by delegates who may speak but not vote. It would seem clear that under this Constitution the Parliament may, if it thinks fit, allow the representation of Territories by delegates of the same kind, who, although allowed to sit and speak in the Senate or the House of Representatives, would not be members of either House, or entitled to vote therein. The Parliament may, however, under this section, allow a Territory to be represented by actual members in either House; and in that case no terms would be imposed inconsistent with the provisions of the Constitution as to mode of election, tenure, and right to vote. The number of representatives which a Territory may be allowed is of course absolutely in the discretion of the Parliament.

Those are two authoritative textbooks on the Australian Constitution dealing with the representation under section 122, upon which the Bill that passed through the Commonwealth Parliament is based. I am also certain that the Hon. Mr. Cameron did not listen to the debate, because he said:

I am amazed that honourable members should get up and say the Territories should not have representation.

That has never been the contention; no-one is opposing the representation of Territories. What we are speaking about is the concept of the Constitution and the rights of people elected to either House in relation to the Territories of the Commonwealth. That is an extremely important matter. The Hon. Mr. Cameron said:

I am amazed that honourable members should get up and say that the Territories should not have representation.

Then the Hon. Mr. Burdett interjected, rightly:

We did not say that.

Of course, the Hon. Mr. Burdett's interjection was correct. The Hon. Mr. Cameron has made no effort to understand the position, relying solely upon the same emotional appeal that the Hon. Mr. Creedon relied upon to oppose this motion. The question raised by the Hon. Mr. Dawkins is also important—that, if we want to upset the balance of the Senate in its present concept, constituted as it is at present, the easy way to do it is to dream up some scheme of territorial Senate representation. It is the very thing that can completely destroy the Senate as it is presently constituted, so the point made by the Hon. Mr. Dawkins is important. The Hon. Mr. Cameron said:

Under proportional representation there will be one Senator from each side: there will be no imbalance.

That is a very restrictive view that the honourable member has taken of the position but, apart from that, let us look at imbalance. We find in the Bill that passed through the Commonwealth Parliament that, with two Senators provided for the Northern Territory and two provided for the Australian Capital Territory, where a casual vacancy occurs there is a by-election to replace that representative in the Senate.

The Hon. Sir Arthur Rymill: That is certainly an alteration of the Commonwealth Constitution.

The Hon. R. C. DeGARIS: I am certain of it but, whether or not it is an alteration of the Commonwealth Constitution, nevertheless (in reply to the Hon. Mr. Cameron, who said that no imbalance would occur) by the lottery of death the whole balance of the Senate could be upset. All the arguments that have been put against this motion are the result, I believe, of people looking for some emotional appeal on representation when the Senate is not a House of Representatives: it is the Senate and, without the Senate and the equality of State representation, there would have been no Federation. This was the core of Federation. If in the original negotiations to form the Constitution of the Commonwealth of Australia there had not been agreement on two points—first, that there should be equality of representation for all the original States and, secondly, that the Constitution could not be altered unless the people of Australia agreed to it—there would have been no Federation. These two points were the major part of the agreement on the Constitution.

The provision for territorial Senators, in the Bill that passed through the Commonwealth Parliament, cuts across both those principles—the principle of the Senate being a States' House with equality of representation for each State, and because, in my opinion, by the provision of territorial Senators, we are trying to change the Constitution without appealing to the people of Australia so to do. I refer once again to section 128 and the paragraph of that section that deals specifically with the fact that the proportional representation of the States shall not be altered unless every State (not a simple majority of the States or a simply majority of the total people voting but every State) agrees that this change should take place. Not to vote for this motion to ask this Government to support other Governments in the Commonwealth, which no doubt will be challenging this matter, is to abdicate our position as a State; and those people who do not vote for it are nailing their colours to the mast, showing that their design is to destroy the Commonwealth Constitution and the Senate as the Upper House in the Commonwealth Constitution of Australia.

Motion carried.

30

FRUIT FLY (COMPENSATION) BILL

Adjourned debate on second reading.

(Continued from August 13. Page 392.)

The Hon. C. R. STORY (Midland): I think I have participated in every one of these debates since I have been in Parliament. I never enter the debate with any more heart than I had in the previous year because on several occasions it looked as though we had gone nearly all the way to eradicating fruit fly, when there was a gap in fruit fly incidence in this State and there was no need for a Bill to deal with recurring outbreaks. Various means have been tried to eradicate fruit fly. The Agriculture Department has been most successful in what has been accomplished in this State. The tenacity of a former Premier of the State (Sir Thomas Playford) and his Director of Agriculture at the time (Mr. Strickland) was really responsible, in the first instance, for combating fruit fly when it was discovered in one isolated spot during the Christmas holidays one year. The then Premier, with his normal practical approach to a matter, said, "Clear a mile around the spot and spray it." That was a completely radical approach compared with anything else done in any other State. Some officers who had come from other Agriculture Departments were sceptical whether or not that would work. It did work, and has worked well up until now.

The Hon. A. J. Shard: How many years ago was that?

The Hon. C. R. STORY: The first fruit fly outbreak in South Australia was in 1947. From then on the department has always vigorously pursued a programme of eradication. It is unfortunate that the latest outbreak was the largest ever and, as a result, there is a heavy Government committment for compensation to people who qualify for it. The Minister indicated that $50 000 would be provided to satisfy compensation claims, but that is indeed a small price to pay provided fruit fly is contained within the metropolitan area. If fruit fly were to get into the producing areas of this State, $50 000 would be but a drop in the bucket because, if an outbreak were to get out of hand, it could be worse than an outbreak of phylloxera.

This Bill makes changes in the methods to be adopted by the department, because there is now a greater incidence of fruit fly than could have been coped with under the previous system. I believe it has been necessary to change the form in which compensation will be paid. Although I have read the Minister's second reading explanation with much interest, it does not indicate what I am supposed to be debating, except that the Bill provides that it shall be read in conjunction with the Fruit Fly Act. I do not know whether that is a new concept or whether it is merely the usual practice. However, I notice that one or two provisions seem to be different as regards compensation. Clause 3 sets out the 11 proclamations made in respect of outbreaks that have taken place. The Minister told us where only nine of the 11 outbreaks occurred. I presume, therefore, that two other outbreaks occurred, perhaps in the same area.

The Hon. T. M. Casey: That's right.

The Hon. C. R. STORY: As the Minister has not placed a map on the notice board in this Chamber to indicate the outbreak areas, perhaps he will explain in detail where they are. Clause 3 (1) provides:

Any person who suffers loss by reason of—

(*a*) any of the acts to which this section applies; or

(*b*) being prohibited from removing fruit from any land by the operation of any of the proclamations made under the Vine, Fruit, and Vegetable Protection Act, 1885-1959 . . .

The Bill then lists the various proclamations concerning areas where outbreaks occurred and gives the relevant pages and dates in the *Government Gazette*. Clause 3 (1) (*b*) and subclauses (2) and (3) further provide:

. . . shall be entitled to compensation for that loss as provided by the Fruit Fly Act, 1947-1955.

(2) This section shall apply to—

(*a*) any act done pursuant to the excercise or intended excercise of powers conferred by the Fruit fly regulations, if such act is done on land while the removal of fruit therefrom is prohibited by any of the proclamations referred to in subsection (1) of this section;

or

(*b*) any act done in the course of, or incidentally to, the doing of any act of the kind mentioned in paragraph (*a*) of this section.

(3) This section shall apply to acts done and loss suffered before or after the commencement of this Act.

Subclause (3) is the normal provision. However, it appears to me that two separate types of compensation are foreseen: first for the loss of fruit which people with commercial stands have been told they are not to remove from their land (those people thus incurring a loss because the fruit is unsaleable); and, second where an inspector may damage trees through spraying, neglect, or anything of that nature. I believe that is what is meant, but I am sure the Minister will correct me if I am wrong. Clause 4 provides:

Notwithstanding the provisions of subsection (1*a*) of section 5 of the Fruit Fly Act, 1947-1955, a notice of claim under that section for compensation under section 3 of this Act shall be delivered to the Committee on or before the thirty-first day of August, 1974.

The Act was amended in 1949 to alter slightly the original concept by introducing subsection (1*a*) as mentioned in the Bill. The 1949 amending Act set out a schedule whereby the Fruit Fly Compensation Comittee could receive from the public applications for compensation. In addition, it fixed October and December as the months on which to base calculations of the period in which a claimant must notify the committee. I presume that the Government is now requiring the public to lodge applications before August 31, and that is not far away at all: it is certainly not three months after the last proclamation. The last proclamation was very late, because it was made in respect of fruit fly found virtually in the last peach of the year. The other system under which the department worked involved December and October, but we are now getting back to August, and I see no reason for it. Perhaps the Government has found that it did not adequately provide for this matter in last year's Estimates.

The Hon. C. M. Hill: Will the legislation be proclaimed by August 31?

The Hon. C. R. STORY: I am sure that the Minister would not want to put through hasty legislation.

The Hon. A. J. Shard: You wouldn't delay compensation for the poor people concerned, would you?

The Hon. C. R. STORY: No. I have been interested in the biological control of fruit fly for many years. Officers can get bugs to do the work for them, and the bugs enjoy doing it. This method is cheaper than spending much money on chemicals, which pollute the air. When I was Minister of Agriculture money was spent on setting up an insectory at Loxton to breed various predators for the biological control not only of fruit fly but also of oriental fruit moth. A recent report states that Dr. Loren Steiner, who has done much successful work in Hawaii, worked closely with Mr. Noel Richardson, a brilliant entomologist with the Agriculture Department. Unfortunately, the sterile males that were bred in captivity under sheltered conditions could not survive when turned out into the wild and they could not excite their wild sisters sufficiently to be of any use. So, we will have to continue the techniques that we have been using in South Australia. I support the Bill.

The Hon. T. M. CASEY (Minister of Agriculture): I thank the honourable member for his contribution to the debate. This type of Bill has been in the same form every year for the past few years; of course, there have been more outbreaks this year, and that affects the exact wording of the Bill. The last day for making claims under the legislation is August 31, which is more than three months after the date of the last outbreak. We would like to get the matter cleared up before the next season in which an outbreak of fruit fly may occur. We do not want further outbreaks while we still have to pay compensation for the previous season's outbreaks. The department wants to avoid administrative problems. The committee has to deal with many applications, and it is therefore reasonable that the applications should be submitted as early as possible. I announced several weeks ago that August 31 would be the last day for lodging applications, and I assure the honourable member that those people who qualify have already lodged claims. Claim forms will be available from district council offices, post offices and also the Agriculture Department.

The Hon. C. M. Hill: Anticipating the co-operation of this Council.

The Hon. T. M. CASEY: That is done with a measure of this nature. This type of Bill is always introduced after an outbreak of fruit fly, because it is important that compensation be paid. The Hon. Mr. Story also asked a question regarding clause 2, which provides:

This Act is incorporated with the Fruit Fly Act, 1947-1955, and that Act and this Act shall be read as one Act.

That is the way it must be: the Acts must be read as one Act. This has always been the case.

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

DAIRY INDUSTRY ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from August 13. Page 391.)

The Hon. C. R. STORY (Midland): This Bill has been worked on for many years. It is necessary to amend the Act because the dairying industry is doing something, with the assistance of the Agriculture Department, to promote and sell its product, butter. It has produced a new concept of butter, which is known, at least in the Bill, as "dairy blend" but which will probably be known, when it is marketed and if patent rights are granted to it, as "dairy spread". This is similar to a Swedish product called "Bregott", which has found its way on to the market and which contains practically the same formula as that for which we are now legislating.

Unfortunately, we cannot claim that this is a poly-unsaturated product, although it would have been nice to be able to do so, because this is the "in" thing at present. Doctors and, indeed, the Heart Foundation warn us of the need in many cases to use poly-unsaturated fats in our normal diet. I shall now deal with a few aspects of the Bill that it may be necessary to amend. Clause 3, the interpretation clause, defines "dairy blend" as follows:

"dairy blend" means a product obtained by mixing milk fat in the form of cream, edible vegetable oil or oils, salt and water where the resultant mixture is a solid or semi-solid emulsion and where the product—

(*a*) contains not less than 12 per centum and not more than 20 per centum, by weight, of vegetable oil or oils, in its total weight;

(*b*) contains not more than 16 per centum of water by weight and not more than 4 per centum of salt by weight in its total weight;

(*c*) contains—

(i) vitimin A in an amount equivalent to not less than 240 microgrammes of retinol activity per 28 grammes of the product; and

(ii) vitamin D in an amount equivalent to not less than 1·5 microgrammes of cholecalciferol per 28 grammes of the product; and

(*d*) has a spreadability of not more than 75 Newtons and not less than 45 Newtons at 5°C based on the method of determining spreadability of Kruisher den Herder,

notwithstanding that the product also contains skim milk, antioxidants, mono-glycerides or diglycerides of fat forming fatty acids, flavouring or harmless vegetable colouring.

That is a fairly technical dissertation. The first matter that needs attention (the Minister's second reading explanation refers to it, and the Bill certainly contains it) is the method of determining spreadability under clause 3 (*a*) (*d*). I have here a copy of the *Australian Journal of Dairy Technology*, on page 15 of which is an original report on the spreadability of butter, and a determination, description and comparison of five methods of testing. Among these five methods is that which is referred to in the Bill. According to this booklet, the method is the "Krisheer" (and that is followed by a stroke, which means that two people are involved) and "den Herder" method, and in various places throughout the report it is referred to as the "Krisheer and den Herder" method. The Act should therefore read in accordance with what seems to be the accepted spelling, even if my pronunciation has not been correct. This is a recognized means of testing the firmness of butter and similar products. It is one of the five recognized methods, and it operated for some time in Holland. It would seem, therefore, that that is what the Minister is seeking in the Bill. I refer to this matter, as it is better to have it correct right from the beginning.

The Bill contains some consequential amendments. In his second reading explanation, the Minister referred to metric conversions. The reference to "fifty gallons" in the definition of "milk depot" is to be amended to read "228 litres"; the word "ton" in the definition of "store" is to be replaced by "tonne"; and the passage "one hundred yards" in section 22 is to be amended to read "90 metres". That is not an accurate conversion, because 100yds. would not be equivalent to 90 m. Obviously, however, there must be a reason for this.

The Hon. C. M. Hill: For the honourable member's benefit, 100yds. is equivalent to 91·44 m.

The Hon. C. R. STORY: That is correct. There must therefore be a subtle reason why the Minister has done this. Perhaps I have found the reason. I do not know whether the Minister intends it to be so, but I want to develop the point. Section 22 of the principal Act, which is to be amended by clause 5, provides:

(1) No person shall manufacture butter in premises in which margarine is manufactured, nor in premises any part of which is within one hundred yards from premises in which margarine is manufactured.

That is now to be changed to 90 metres.

The Hon. R. A. Geddes: Do you know why they have to be separated?

The Hon. C. R. STORY: Yes; so that there will be no shenanigans. That is the quick answer. If the Minister consults the principal Act he will find that, by not adding the words "or dairy blend" immediately after the word "butter", we will depart from a position that has obtained since the first impost was made on the manufacture of margarine; that is, that butter was to be made in a butter factory while margarine was to be made in a works especially prescribed and looked after under the Margarine Act, with inspectors appointed by the Agriculture Department and by the Health Department. If we do not amend this, it is possible that dairy blend, which has a predominance of butter and which really belongs to the butter industry, can be manufactured in a margarine works. I do not know whether that is the Government's policy, but I think it would be strongly resisted. I have not taken this up with the co-operative butter factories or with the private butter factories, but I do not think they would like a product with a predominance of butter, and one which they agreed should be marketed as a form of butter, to be manufactured in a margarine works. The Act as amended will provide for the new product to be treated in the same way as butter, under the definition of "dairy products". That will be the position unless the Bill is amended; it will be possible for dairy blend to be manufactured in a margarine works.

The Hon. T. M. Casey: I don't think so.

The Hon. C. R. STORY: I think that is so. Section 22 of the principal Act refers to restrictions on manufacturing butter in or near a margarine factory, and section 21(2), as amended, will provide:

Every owner of a factory shall grade, or cause to be graded, all butter—

and there we insert the words "or dairy blend"—

manufactured at the factory, according to quality, and in accordance with the regulations, and shall cause every package into which such butter is packed at the factory to be marked with some words, or words and figures, correctly signifying to which of the prescribed grades the butter belongs.

Then we say that no person shall manufacture butter in premises in which margarine is manufactured. We have come a long way in virtually legalizing margarine in the eyes of the dairying industry. Under the previous interpretation, this product is really nothing more than a margarine. The definition of "butter" provides that it is produced wholly from milk or a lacteal substance. Here, we are using butter oil in the form of cream and allowing it to be mixed with certain vegetable oils; in fact, we are making a margarine except that, because it has a predominance of butterfat, we are setting up a theoretical barrier, if not a factual barrier, and we are therefore putting out a product which is not butter but which is nearer to margarine.

The Hon. T. M. Casey: It is nearer to butter.

The Hon. C. R. STORY: It is nearer to butter in the butterfat content, but it is nearer to margarine under the original interpretation of poly-unsaturated margarine.

The Hon. T. M. Casey: But we are not talking about poly-unsaturated margarine.

The Hon. C. R. STORY: No, but what I say is quite true. I believe the butter industry is entitled to manufacture this product because it is a good spread, but I also believe it should be manufactured exclusively in factories in which butter is made, not where margarine is made. Unless the Bill is amended, the manufacturers of margarine will have an open go to make this product.

Three Bills on this subject are on the Notice Paper, one of which I am dealing with at the moment and which amends the Dairy Industry Act. Another will amend the Dairy Produce Act and a third will amend the Margarine Act. Most of my comments will apply to all

three, because they are related. I have asked the Minister once or twice about the Government policy regarding margarine, and I think I am right in saying that, if it had its way, the Government would completely abandon quotas on margarine, not just on table margarine but also on the manufacture of margarine throughout the whole of the industry.

The Hon. T. M. Casey: Quotas apply only to table margarine.

The Hon. C. R. STORY: That is the point I want to make. The dairying industry has changed its views considerably in the past few years in one respect: it now believes that, as a result of medical reports, people who wish and who have been recommended to use poly-unsaturated margarine should be allowed to do so. I do not think those in the dairying industry, or the people of South Australia generally, believe there should be an open go for the use of imported palm oil to produce a cake-like spread which is anything but poly-unsaturated; in fact, it is a solid fat and I think that would be resisted very strongly.

The Hon. T. M. Casey: It cannot be used in poly-unsaturated margarine anyway, because it is not a poly-unsaturated oil.

The Hon. C. R. STORY: The point I make to the Minister is that I understand Government policy is that quotas on table margarine should be removed completely, and no action would be taken to amend the Margarine Act to see that the Victorian or the Queensland Act would be adopted in this State; that is, all margarine that is produced (except that which is entitled to be called poly-unsaturated or table margarine) must not be coloured and must bear on the carton or package a notation to the effect that it is cooking margarine.. No provision seems to have been made for that by the Government in amending the Act, but the Minister says he will move strongly for the removal of quotas at the next Agricultural Council meeting.

The Government should amend the Margarine Act so that, in the event of it happening (as it looks like happening) that the quota for table margarine is abandoned, something can be done to protect the public against an article that one can buy for 35c at present in the form of copha. If it has a colour in it, it is sold as margarine spread—something we have been arguing about for years. Copha is a highly fat-saturated product. This legislation should have something else written into it. To make this product we are going to use, we should stipulate the other ingredients, 16 per cent to 20 per cent of added vegetable oils, and it should be that they are Australian-produced oils, because that would ensure that we had control over the type of ingredients used. The ingredients we can use, which are poly-unsaturated and which grow readily in this country—

The Hon. T. M. Casey: Such as?

The Hon. C. R. STORY: Does the Minister want to know the full list of them?

The Hon. T. M. Casey: Yes, if the honourable member has them.

The Hon. C. R. STORY: We have soya beans, which we can use in any quantity we like.

The Hon. T. M. Casey: Do we grow them in Australia?

The Hon. C. R. STORY: We can grow them if we set out to; and we can grow safflower.

The Hon. T. M. Casey: In what quantities?

The Hon. C. R. STORY: In any quantities we like to grow. A few people in the earlier days of this country tried hard to grow safflower. If we did not have such a restrictive policy in regard to cash crops, with water from the Murray River in times of plenty we could grow many of these things along the river. We can use sunflower, we can use soya beans, and we can use cotton.

The Hon. T. M. Casey: Can we?

The Hon. C. R. STORY: Yes; it is poly-unsaturated. It is a rich source of poly-unsaturated oil. I return to this matter of getting the margarine legislation into proper order. The dairying industry has given the all-clear to this State, with no great hostility, to allow the use of poly-unsaturated margarine. It has put forward a composite pack of butter oil and vegetable oil, with which we are dealing under this legislation. But the industry should not be taken to the cleaners by people being allowed to manufacture as much as they want of a product which they can dolly up to look like butter and which is much more heavily impregnated with fat than is anything sold on the market today. Our present cooking margarine is 90 per cent beef or mutton fat. In making poly-unsaturated margarine we have to use non-fat oil from vegetables.

The Hon. T. M. Casey: You mean from animals?

The Hon. C. R. STORY: No, from vegetables, for poly-unsaturated margarine. My plea is that the Minister look at this situation carefully and insist that the definition in the Act be amended to ensure that Australian-produced vegetable oil is used. Otherwise, if we give a free go, we shall be flooded again with cheap palm oils from either New Guinea or some other country. That may happen, as it once did. The only reason why the Margarine Act ever came into operation was as a result of a Labor Government which, under the national security regulations, introduced a law prohibiting the use of imported fats in the form of coconut oil, which was being sold to the public cheaply and was ruining the dairying industry at that time. We do not want a repetition of that; we have come a long way since then.

The Hon. T. M. Casey: Do you think this spread will ruin the dairying industry?

The Hon. C. R. STORY: I did not say that at all. The Minister has a great capacity for trying to get people into a corner but he has picked the wrong buddy this time. I did not say that at all. I am saying that I want to ensure that we do not go back to the bad days of importing all sorts of oil without the public knowing what they were getting. After all, we put on cigarette packets that "smoking is a health hazard." There is no greater health hazard than the use of impregnated fats that are sold freely on the market unless some control is exercised. I look to the Government to see that the legislation is amended so that this does not occur. I hope I have made the position clear.

First, I should like a change in the definition clause to get the formula right; and, secondly, I want to see a prohibition written into the Act on the manufacture of margarine in a place other than a butter factory. The Minister will receive many complaints from people in the dairying industry if he departs from using the proper ingredients not only in this spread but also in the manufacture of margarine.

The whole concept of dairy blend is good, and I am pleased that the industry appears to have accepted it. However, I hope for the sake of those in the dairying industry that the project is successful, because no-one can tell me that the industry is on top of the world at present. It is a difficult industry from which to gain a living, and it is not one into which many venture. However, it is

an industry that keeps many people employed. Leaders in the industry have been brave in accepting this step forward, but I want to see that what is left for them is protected, and that is why I ask the Minister to look carefully at the points I have raised.

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

EMERGENCY POWERS BILL

Further consideration in Committee of the House of Assembly's message intimating that it had disagreed to the Legislative Council's amendments.

(Continued from August 13. Page 392.)

Amendments Nos. 1 to 4:

The Hon. T. M. CASEY (Minister of Agriculture): I move:

That the Legislative Council do not insist on its amendments Nos. 1 to 4.

Amendment No. 1 should not be insisted on because it gives the Government far too narrow powers to make regulations in situations of emergency. There are many situations which, to be properly dealt with, will require wider powers than this. Amendments Nos. 2 and 3 are merely consequential on amendment No. 1. Amendment No. 4 should not be insisted on because a power of the nature proposed to be removed has no place in the controlling of situations of emergency that arise from industrial action; in fact, if exercised, it only exacerbates the situation.

The Hon. R. C. DeGARIS (Leader of the Opposition): I believe that the Council should insist on its amendments. I do not agree that the four amendments narrow the Government's power; in many ways they widen its power to handle emergency situations. In all the matters we have spoken about in relation to this Bill the Government has sought powers to provide the essentials of life to people. Through amendments Nos. 1 to 4, the Government has been given power to provide the essentials of life. The restrictions that the Government had in the Bill have now been removed and the Government's powers have an equal effect on every person in the community: there are no privileged sections. If the amendments were removed, could the Government declare a state of emergency and decide to dispense with the services of a judge of the Supreme Court (who otherwise is protected under the Constitution Act)? In other words, would this Bill give the Government power to take action which at present is prevented under the provisions of the Constitution Act?

The Hon. M. B. Cameron: By regulation!

The Hon. T. M. CASEY: I could not answer the question properly until I looked closely at the situation. As I have said, amendment No. 1 should not be insisted on, because it gives the Government power that is too narrow to make regulations in cases of emergency. However, it is difficult to ascertain what the emergency might be.

The Hon. Sir Arthur Rymill: It might be a flood!

The Hon. M. B. Cameron: It might be a fire.

The Hon. R. C. DeGARIS: Does the Minister appreciate that the sittings of the Supreme Court, as provided by the Supreme Court Act and the regulations thereto, may be affected? I do not believe that the regulations could repeal the Act, but the sittings of the court could be suspended. If the Government decided that court orders were disturbing the peace, order and good government of the State it could legislate by regulation, thereby interfering with the sittings or determinations of the court, although I doubt whether the sittings of the court could be suspended.

The Hon. T. M. CASEY: I am sure that the Leader realizes that if the Government brought down a regulation it would be for a limited time, say, seven days.

The Hon. M. B. Cameron: It would be for 14 days.

The Hon. T. M. CASEY: It would be for seven days and then the Government would have to go before Parliament.

The Hon. R. C. DeGaris: It can't be for seven days.

The Hon. T. M. CASEY: As I said, it could happen—

The Hon. R. C. DeGaris: It is 14 days.

The Hon. T. M. CASEY: I do not think it is.

The Hon. R. C. DeGaris: Yet it is. Do your homework!

The Hon. T. M. CASEY: That is the information I have been given and I understand that is the case. It must come back to Parliament, which will decide.

The Hon. M. B. Cameron: Would Parliament's decision be forever?

The Hon. T. M. CASEY: Yes, I suppose, until it decided to alter it in the future.

The Hon. M. B. CAMERON: I do not think that that is necessarily correct. If the Government decided, after Parliament had stopped sitting, to act in the same emergency, another 14 days would be involved. The same regulations would be introduced with monotonous regularity.

The Hon. R. C. DeGARIS: Does the Minister believe that the Government should have this wide power? He is asking honourable members not to insist on the amendments. It appears that the powers that the Government is seeking are limited somewhat by the amendments, and justly so. However, they are also enlarged so that the powers that the Government has are equally spread. Does the Minister realize just how wide the powers in this Bill, if left alone, could go? I have referred to the question of interference with the Constitution Act; there is some doubt in this connection. I do not think there is any doubt that the Government could interfere with the Supreme Court Act and with the sittings of the Supreme Court. Let us suppose that the Industrial Court did not grant a union claim, and the Supreme Court applied the tort and contract clause against the union. In that case the Government could, in a state of emergency, interfere with the determination of the Supreme Court.

I am pointing out these things for the information of the Minister, who has claimed that honourable members do not do their homework. Before he makes such claims he should do his own homework. The Minister has said that we are restricting the power of the Government. Of course we are, but I am saying that it is a just restriction. In other ways the amendments widen the powers so that they rest equally on every citizen in the community. In this regard I support the Hon. Mr. Creedon, who has bleated about equality for a long time, but I have not heard him on this one. He talks a lot about equality but, when he can show his interest in equality, he sits dumb in his seat and says nothing. I believe that the four amendments are essential.

The Hon. G. J. GILFILLAN: I support the attitude taken by the Hon. Mr. DeGaris. I cannot understand why the Government has disagreed to these amendments, because they are reasonable and fair. Either the Government is putting forward a Bill so totally unacceptable that it will be lost or the Bill has a far more sinister import than has been mentioned. With these amendments, the Bill still leaves wide powers to the Government to handle a state of emergency. We have heard statements about closing roads and about floods, etc., but

we already have powers to deal with those matters in other Acts. This Bill seeks virtually unlimited power. I wish to correct the Minister: the period before Parliament can do anything if Parliament has not been sitting is 14 days, because Parliament has to be called together, if it has been prorogued, within seven days, and then the regulations must be laid on the table. It is at the end of another seven days that Parliament has to consider the regulations again and approve them or allow them to lapse.

The Hon. R. C. DeGaris: It could be six weeks.

The Hon. G. J. GILFILLAN: Yes; if Parliament has been dissolved for the purpose of an election, it could be six weeks. Because there must be some safeguards against the absolute powers provided here to override every other provision in the Statute Book, I support the amendments.

The Committee divided on the motion:

Ayes (5)—The Hons. D. H. L. Banfield, T. M. Casey (teller), B. A. Chatterton, C. W. Creedon, and A. J. Shard.

Noes (12)—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, C. R. Story, and A. M. Whyte.

Pair—Aye—Hon. A. F. Kneebone. No—Hon. V. G. Springett.

Majority of 7 for the Noes.

Motion thus negatived.

Amendment No. 5:

The Hon. T. M. CASEY: I move:

That the Legislative Council do not insist on its amendment No. 5.

The insertion of a clause of this nature could result in the payment of unknown, but almost certainly huge amounts. The proper course, in the Government's view, would be to legislate to provide compensation when the acts complained of were known.

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

That the motion be amended by adding at the end thereof the following passage:

but make in lieu thereof the following alternative amendment:

5a. Compensation:

(1) A person who, as the result of compliance with any regulation under this Act or while complying with or being engaged in the carrying into effect of any such regulation, suffers loss, damage or injury, other than any such loss, damage or injury resulting or arising from and by reason of any prohibition, limitation or restriction on the sale or supply of any goods or services, shall be entitled to compensation under this Act from the Minister.

(2) Every claim for compensation under this Act shall be made in a form and within a time approved of by the Governor.

(3) In default of agreement as to the amount of compensation between the Minister and the claimant the Minister shall direct that the claim shall be referred to arbitration before a single arbitrator who shall be a Judge of the Supreme Court.

(4) The procedure to be followed at the arbitration shall be as determined by the arbitrator, but, subject to any such determination, the procedure shall be as nearly as possible the same as the procedure in the trial of a civil action in the Supreme Court.

I repeat what I said last week: in my opinion it was a disgrace for the Government to introduce a Bill that sought such wide powers that could cause extensive loss and damage to people without giving them some right to compensation. When I moved the amendment last week, the Minister said:

While the Government is entirely sympathetic to the motives that induced the Hon. Mr. Burdett to move this amendment, I believe he went a little too far.

The Hon. Sir Arthur Rymill said:

I have to agree with the Minister, as I think the provision goes too far.

The Hon. Mr. DeGaris said:

The Minister may have one small point in his favour regarding the new clause. I agree with Sir Arthur Rymill that the question of suffering loss goes too far if a person whose stocks are frozen can claim for a loss in sales that he has sustained. However, the Hon. Mr. Story's point is valid: the Government can freeze a retailer's stocks and tell him that he can sell only a limited amount of fuel to certain persons, and that he must remain open for a stipulated period, in which event he can suffer severe losses. If the Government requires that sort of action to be taken, it should be willing to compensate. However, I do not think compensation should be given if a person's stocks are frozen or rationed. If, on the other hand, the Government directs that a retailer shall remain open for certain hours beyond which it is reasonable for him to make a profit then compensation should be paid.

Having been rebuked by three such worthy gentlemen, I have no choice but to accept the rebuke. The purpose of this amendment is to remove what the Hon. Mr. DeGaris said was objectionable and what he said went too far. The purpose of this amendment is to provide, in effect, that a person cannot claim compensation if the loss he suffers is by reason of the freezing of his stocks or by some sort of rationing system.

Broadly speaking, there are three sorts of loss that one can conceive. The first is where the subject's goods or services are requisitioned; I suggest all honourable members would agree that there should be a right to compensation in such a case. The second is the one referred to by the Hon. Mr. Story and the Hon. Mr. DeGaris: where a person is forced to carry on business at a loss. As was suggested by the Hon. Mr. DeGaris, it is fairly obvious and just that such a person should also be able to claim compensation. The third case is that in which the only loss suffered is one of profit caused by one's goods or services being frozen or where their is a rationing system. I accept what has been said by honourable members who have spoken on this matter: that that is a loss that people should have to bear for themselves. The purpose of this amendment is therefore to provide a right to compensation but to exclude it when the loss is caused only by the freezing of stocks or by rationing.

The Hon. T. M. CASEY: The Government cannot accept the amendment. However, I realize that it goes a long way towards removing one of the Government's objections to the Hon. Mr. Burdett's original amendment: that is, that it would, in a situation of, say, petrol rationing, remove the obligation to meet vast claims for damages. However, Mr. Burdett's amendment deals with only one facet of claims for damages and cannot deal with others that could not be thought of until an emergency situation arose and until the steps taken to deal with it were known. Although it would not know what sort of emergency could arise, the Government (and that means any Government) would be dobbed in, so to speak. It would therefore be the height of financial folly for the Government to make a firm commitment in advance to compensate people in the general terms of clause 5a as it now stands or even in the terms of the Hon. Mr. Burdett's more limiting amendment. Honourable members would realize that in appropriate

circumstances, this Government, or indeed any other Government, would certainly provide compensation where it seemed just and equitable to do so.

The Hon. Sir ARTHUR RYMILL: Once again, I must agree with the Minister, for the reasons that he has so eloquently expressed without any snide remarks.

The Hon. R. C. DeGARIS: Although I am willing to support the amendment, I point out that there is on file an amendment in my name which, if the Hon. Mr. Burdett's amendment is not carried, I will move. I believe his amendment overcomes most of the arguments that were levelled against his previous amendment. I cannot understand why the Government is saying that no compensation shall be provided under this legislation. It is perfectly reasonable, in legislation of this type, to provide for compensation for people who may be affected adversely by Government regulations other than by the actual existence of a state of emergency. The New South Wales Act has been mentioned. That legislation is a concept totally different from that we are now considering, dealing only with the question of civil defence. In that situation, where a Government, by regulation, does something, a claim for compensation is available. The same applies in the Essential Services Act in Victoria, where a compensation section is included. Yet here, with powers much wider than those given in Victoria or New South Wales, the Government has not included any reference to compensation. A compensation provision is necessary and desirable, and I believe the amendment overcomes most of the problems, because no compensation can be claimed arising from any prohibition, limitation, or restriction on the sale or supply of goods or services. I believe the amendment goes a long way towards correcting the Government's opposition to the matter of compensation.

The Hon. M. B. CAMERON: I supported the original amendment, and I support the one now before the Committee. If the Government is not happy with the amendment it should put forward an alternative. We cannot have legislation giving such wide powers to the Government, even for a limited period. As I understand it, the Government, for that period, would be able to make its own rules. If anyone is affected by such Government action, he should have the right to be awarded compensation for whatever he has been persuaded or forced to do by the Government.

The Hon. Sir ARTHUR RYMILL: I have said that I support the Minister's remarks, for the reasons he has given, because I think the amendment moved by the Hon. Mr. Burdett is still far too wide. On the other hand, the Hon. Mr. DeGaris has foreshadowed another amendment, although I do not know whether he can move it (or whether he will do so) if the Hon. Mr. Burdett's amendment is carried. I think he said that if the Hon. Mr. Burdett's amendment was carried he would not move it.

The Hon. R. C. DeGaris: That's right.

The Hon. Sir ARTHUR RYMILL: That will be a pity, because in my opinion the foreshadowed amendment is good and workable and does not cut across any of the principles the Minister contemplated. As I understand the Hon. Mr. DeGaris does not intend to move his amendment if the present amendment is carried, I hope the Hon. Mr. Burdett's amendment will not be carried so that I shall have the opportunity of supporting the amendment foreshadowed by the Hon. Mr. DeGaris.

The Hon. J. C. BURDETT: This Bill gives very wide powers indeed.

The Hon. C. M. Hill: Absolute powers.

The Hon. J. C. BURDETT: It does give absolute powers. If the Government, through fear of having to pay compensation, restricts in some way the exercise of these emergency powers, that might not be a bad thing.

Alternative amendment carried.

The CHAIRMAN: The question is, "That the motion as amended be agreed to."

The Hon. Sir ARTHUR RYMILL: Would I be in order in taking up the foreshadowed amendment of the Hon. Mr. DeGaris and moving it myself?

The CHAIRMAN: I think we have settled on a solution. I will put the motion now, "That the motion as amended be agreed to." The honourable member could then recommit it.

The Hon. T. M. CASEY: To clear the matter up and to give everyone an opportunity to see where we are going, I suggest that progress be reported.

Progress reported; Committee to sit again.

ADJOURNMENT

At 5.40 p.m. the Council adjourned until Thursday, August 15, at 2.15 p.m.