LEGISLATIVE COUNCIL

Wednesday, September 11, 1974

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

QUESTIONS

SHIPPING

The Hon. C. M. HILL: I seek leave to make a short statement prior to directing questions to the Minister of Agriculture.

Leave granted.

The Hon. C. M. HILL: I refer to reports of June 1 from the Minister of Agriculture as the result of his oversea tour concerning the need for more adequate shipping between South Australia and South-East Asia. The Minister at the time was reported to have suggested expansion of an independent national shipping line. He was quoted in the press as saying:

One of the biggest obstacles to trade between South-East Asia and South Australia is the lack of shipping. At the moment there is little direct shipping between South Australia and these countries, and many other countries can undercut the South Australian product because they have their own independent shipping line. It is not much good developing markets with South-East Asian countries if we cannot guarantee delivery.

He then went on to say that he would draw the matter to the attention of the Commonwealth Minister for Agriculture, Senator Wriedt. First, what was Senator Wriedt's reaction to the request or submission that the Minister of Agriculture made? Secondly, has the Minister of Agriculture been able to achieve any success in the shipping situation between South Australia and South-East Asia?

The Hon. T. M. CASEY: As the honourable member has indicated, I took up this matter with Senator Wriedt. I continued my investigations into the whole matter and finished up by receiving a reply from the Minister for Transport. I have in my office that reply to the questions I raised with the Minister and shall be happy to bring down a reply for the honourable member.

HOME FOR INCURABLES

The Hon. V. G. SPRINGETT: Has the Minister of Health a reply to my recent question about accommodation available at the Home for Incurables?

The Hon. D. H. L. BANFIELD: A rebuilding programme is currently being undertaken at the Home for Incurables. The number of beds available and occupied at present is 411. The east wing project, which is the final phase of the rebuilding programme, will go to tender within the next couple of months, and when completed in three years time the building will provide an additional 415 beds, giving a total accommodation for 826 inmates.

BUSINESS AGENTS

The Hon. F. J. POTTER: Has the Minister of Agriculture, representing the Attorney-General, a reply to the question I asked on August 27 regarding the licensing of land agents?

The Hon. T. M. CASEY: The Attorney-General reports as follows:

Section 5(1) of the Act provides that a person licensed as a business agent immediately before the commencement of the Act, and who had been so licensed before May 1, 1973, would be deemed to be licensed as a land and business agent under the new legislation. This transitional provision was in the Bill when it was first introduced, and mention of it was made by the Attorney-General when introducing the Bill. Mention of this transitional provision was also made by the Chief Secretary when giving his second reading explanation in the Council on November 7, 1973. I draw the honourable member's attention to pages 1617 and 1618 of *Hansard*. The Government has no intention of changing this transitional provision.

MURRAY RIVER FLOODING

The Hon. R. A. GEDDES: I seek leave to make a statement before asking a question of the Minister of Lands.

Leave granted.

The Hon. R. A. GEDDES: My question, which relates to the problem of the high level of the Murray River at Renmark, could be directed to either the Minister of Lands or the Minister of Works. Concern has been expressed that seepage is occurring along the levee bank that has been constructed alongside Ral Ral Avenue near the Renmark Hospital. The seepage is occurring at the base of the bank and, with the river at its present level, it is feared that, if the river rises further, as has been predicted, the seepage could cause the bank to give way altogether. Should this happen, serious damage and inconvenience could be caused, the seepage occurring so near to the Renmark Hospital. Will the Minister therefore request the relevant department to examine this matter and to act in the wisest possible way to ensure the stability of this bank?

The Hon. A. F. KNEEBONE: Of course I will. The Hon. Mr. Story having asked a question yesterday on the Murray River, I said I would try to obtain a full report for him today. Unfortunately, I have been unable to do so. I assure honourable members that my officers are at present in the Riverland area examining what can be done. As the Hon. Mr. Story suggested, district officers will play a major part in anything that is done, and discussions with them will take place. I hope next week to receive a full report indicating what fears are held, some estimates of the extent to which the river will rise, and what can be done about the matter. All these matters are being discussed with the local people at present. The problem raised by the Hon. Mr. Geddes will be considered and the Government will ensure that everything possible is done.

MOTOR VEHICLES DEPARTMENT

The Hon. J. C. BURDETT: Has the Minister of Health received from the Minister of Transport a reply to my recent question regarding delays occurring in the Motor Vehicles Department?

The Hon. D. H. L. BANFIELD: When the honourable member asked his question previously, I suggested that he should give specific instances that could be investigated, which he then did. The Minister of Transport reports as follows:

I have had these cases investigated by the Registrar of Motor Vehicles, and a copy of his report is attached. From this report it will be seen that there were delays within the Motor Vehicles Department office, but, on the other hand, a number of these delays were the result of errors and omissions on the part of some of the clients involved. It will be appreciated that the motor vehicles office is extremely busy, that there is an increasing volume of transactions and additional functions being performed therein, and that the staff is fully occupied. It is inevitable that some errors must occur and I can assure the honourable member that the Registrar of Motor Vehicles is doing everything possible to remedy the situation.

BLEWETT SPRINGS LAND

The Hon. R. C. DeGARIS: Has the Minister of Agriculture a reply from the Minister of Environment and Conservation to my recent question about the Blewett Springs property?

The Hon. T. M. CASEY: Following strong representations from conservationist bodies for the purchase of this property as a conservation park, the area was thoroughly inspected by the Director and the Senior Projects Officer of the National Parks and Wildlife Division of the Environment and Conservation Department. My colleague states that, although the area comprises 31 hectares, less than 20 ha is still clothed in natural vegetation. Whilst this small area does have some conservation value, it does not have the combination of qualities which would justify its acquisition as a conservation park. The Government does not propose to purchase the property. I believe, however, that the Director of National Parks and Wildlife is actively investigating the possibility of acquiring a more extensive tract of the land in the same general area, which is of far greater conservation significance.

LAND AND BUSINESS AGENTS ACT

The Hon. C. M. HILL: Has the Minister of Agriculture a reply from the Attorney-General to my recent question about proposed changes to the Land and Business Agents Act and regulations?

The Hon. T. M. CASEY: My colleague states that a number of matters are under consideration and an announcement will be made when decisions are taken.

The Hon. C. M. HILL: I seek leave to make a short statement before asking a further question on this matter of the Minister representing the Attorney-General.

Leave granted.

The Hon. C. M. HILL: I am disappointed that I have received such a brief reply to my original question, which I asked because of the confusion existing among those involved in real estate work in South Australia as to interpretations of the new Act and the regulations that are on the table of this Council. There is also much confusion among people at large who transact or are in the course of transacting real estate business. The basic problem confronting all these persons is that they do not want to breach the law, which in its present form is very difficult to understand. The Real Estate Institute approached the Premier while the Attorney-General was overseas, and it sought some changes. The institute was given to understand that changes were to be introduced. The Attorney-General, on returning from overseas, indicated that he wanted to be co-operative in regard to this matter. However, up to the present none of the people to whom I have referred knows what the Attorney-General has in mind in regard to proposed amendments or new regulations. It was because of this confusion that I asked the general question to which I received a very brief reply today. Therefore, I now specifically refer to one problem area. The situation is one in which a licensed land agent has been conducting real property work, such as preparing transfers, mortgages, or discharges of mortgages, for a client over many years. Naturally, the work has been carried out by that agent's employee, who has been a licensed land broker. In such activity, the agent has not been involved in selling transactions which relate directly to such real property work; in other words, it has been looked upon as being private brokerage work. Can the agent still accept such work under the new Act and regulations, or must the agent refer his client to a solicitor or to an independent licensed land broker?

The Hon. A. F. KNEEBONE: I shall refer the honourable member's question to my colleague and bring down a reply as soon as it is available.

TAXI-CAB BOARD

The Hon. C. M. HILL: My question is directed to the Minister of Health, representing the Minister of Transport. Has the Government any plans whatsoever to place the Metropolitan Taxi-Cab Board under the direct control of the State Transport Authority?

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

ROYAL INSTITUTION FOR THE BLIND ACT AMENDMENT BILL

The Hon. D. H. L. BANFIELD (Minister of Health) obtained leave and introduced a Bill for an Act to amend the Royal Institution for the Blind Act, 1934. Read a first time.

The Hon. D. H. L. BANFIELD: I move:

That this Bill be now read a second time.

This short Bill is, amongst other things, intended to change the name of the body corporate incorporated under the principal Act, the Royal Institution for the Blind Act, 1934, from the Royal Institution for the Blind (Incorporated) to the Royal Society for the Blind of South Australia Incorporated. This change has been proposed by the board of management of the body corporate who feel that the inclusion of the word "Institution" in the name of the organisation is "a most austere and frightening one and possibly excludes application being made to us by a number of handicapped people for information, counsel training and the help and benefits that we are able and willing to make available to them".

With this contention the Government is inclined to agree, and this measure is introduced accordingly. The Bill also changes the constitution of the board of management of the organisation to provide for the appointment of the Executive Director and to ensure that one member of the board will be an employee of the organisation elected by employees.

Clause 1 is formal and provides for a new short title to the principal Act to reflect the change in name of the organisation. Clause 2 is formal. Clause 3 amends the interpretation section of the principal Act to recognise the new name of the institution and also provides in that section definitions of "employee" and "Executive Director". The definition of "subscribers" is also updated. Clause 4 effects the change in name of the institution and also makes certain consequential amendments which, I suggest, are self-explanatory. Proposed subsection (5) relates to an incorporation, many years ago, of the organisation, under an old Associations Incorporation Act, since that incorporation has for many years had no force or effect, and this provision formally recognises the situation.

Clause 5 amends section 9 of the principal Act to provide for an Executive Director on the board of management and for one member of the board to be an employee of the institution elected by the employees. Clause 6 inserts a new section 10a of the principal Act to recognise formally the existing appointment of an Executive Director, and also inserts a new section 10b to enable annual "subscriptions" to be effectively increased. Clause 7 amends section 13 of the principal Act to give the board power to make rules in connection with the election of an employee of the institution to the board. In the terms of the relevant Joint Standing Orders this Bill is a hybrid Bill and will in the ordinary course of events be referred to a Select Committee of this Council.

The Hon. R. C. DeGARIS (Leader of the Opposition): I rise to support the second reading of the Bill but, as it is a hybrid Bill and will be referred to a Select Committee, there is nothing more I will say about it at this stage.

Bill read a second time and referred to a Select Committee consisting of the Hons. D. H. L. Banfield, J. C. Burdett, M. B. Dawkins, A. J. Shard, and V. G. Springett; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on September 24.

EXPLOSIVES ACT AMENDMENT BILL

The Hon. D. H. L. BANFIELD (Minister of Health) obtained leave and introduced a Bill for an Act to amend the Explosives Act, 1936-1972. Read a first time.

METROPOLITAN TAXI-CAB ACT AMENDMENT BILL

Read a third time and passed.

STATE LOTTERIES ACT AMENDMENT BILL

Read a third time and passed.

LOCAL GOVERNMENT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from September 10. Page 794.)

The Hon. C. R. STORY (Midland): I rise to support this Bill, with one small exception which I shall develop later.

The Hon. A. J. Shard: You will make it a big one?

The Hon. C. R. STORY: I hope not. This Bill is much the same as the one that was before us in the last session of Parliament, when it was considered at great length. The Legislative Council amended it and the Government chose to abandon it. In order that this may not happen again, because I believe it is important that clauses 1 to 38, with the exception of clause 7, be passed immediately, and rather than take that risk, I shall endeavour to divide this Bill so that any emotion that may be generated in regard to clause 7 will not be reflected in this Council to such an extent as to delay the passage of the rest of the Bill, because it contains some good provisions and I believe it should be proceeded with.

The Government has accepted many of the amendments that this Council inserted in the previous Bill and also an amendment made in another place. I have no doubt that that has improved the legislation to some degree. However, to the people who think as I do, it is not a matter whether or not councils' sitting hours should be decided by a two-thirds majority or an absolute majority: my point is that this is a complete intrusion into the running of the local council, municipal council or city council, and therefore there is no need for this provision; there is no justification for it. If we abandoned this principle, essential to local government, the dictatorial attitude of Governments would be even more manifest than it has been so far.

I refer here not only to what the State Government is attempting to do in intruding into local government but also to what the Commonwealth Government is doing, because it is only a few weeks ago that the Commonwealth Government (and I continue to call it the Commonwealth Government; I will not call it the Australian Government while I am here, because I believe it is the Commonwealth Government) was all set to impose restrictions and put tags on the moneys it was about to make available to local government through the Grants Commission, by-passing completely the State Government department and the State Minister and dealing directly with local government. I suggest this was for the sole purpose of conditioning people to the idea that State Governments are not necessary, that all wisdom and money are in the East, and all wisdom and money flow from the East to the States. Wisdom is certainly not there, because the Commonwealth Government is so remote from the local situation that it does not realise just how jealously local government views the autonomous rights it has, rights given to it by the States long before the Commonwealth system was instituted.

Most of these powers were granted to local government over 100 years ago. I believe they are important and should be treasured by local government. We, as State members of Parliament, are, I believe, charged with the responsibility of ensuring that the Local Government Act is maintained in the form and the spirit in which it has been over the years in respect of the management of local councils. So, I oppose completely the provision saying whether a council should meet in the day-time or at night. That is entirely a matter for the councillors who are elected from time to time by their ratepayers. We have seen this Government attempting two measures, the first of which was a common roll of ratepayers (a common roll of voters, I should say) where every person would get a vote for local government. That was the first intrusion into local government by this Government.

A council is elected by the ratepayers who pay their rates and who are entitled, in my opinion, to say how those rates shall be spent. If the Government makes grants to local government, I believe the Government is entitled to put certain restraints upon the council if the moneys are granted for specific purposes—say, for caravan parks, swimming pools, libraries, or similar purposes. In that case, the council should and will accept the direction of the Government. However, when money is paid to councils, they should be allowed to spend that money as they see fit, just as the State Government can. I do not believe that Big Brother must stand over councils in the way that has happened recently. The Highways Department has tended very much to dictate to councils which roads will be sealed or brought to a certain standard. No-one knows better than the council concerned which roads in its district will serve its ratepayers best. This is indeed an unfortunate intrusion into local government, and I do not want to see more of it than is necessary.

I have already stated that the Government intends to obtain control of local government. The second aspect is the Bill with which the Council is now dealing, under which councils will be told that they must hold their meetings after 6 p.m. I refer, thirdly, to the Royal Commission into Local Government Areas, which has set out severely to reduce the number of councils, making unworkable areas and causing much heartburn and many problems for local government and its ratepayers. These are, therefore, three ways in which the State Government has intruded. All of the intrusions have been resisted by local government, yet the Government persists more and more.

All honourable members know that many councils are short of ready cash and have, therefore, been forced reluctantly to accept money from outside sources. If the Commonwealth Government has money to spend, it is only right and proper that that money should be allocated to the States, which, in turn, through their properly elected Parliaments, can distribute the money to councils in fair and equitable proportions. No-one knows better than those directly involved in local government how this money can best be spent, as local government involves local people who know what is happening in a certain area.

Section 144 of the Local Government Act provides that ordinary council meetings shall be held at the council office or at such place or places within the area as the council appoints for the purpose, and that the meetings shall be held at least once each month. A brief examination of the local government situation in South Australia illustrates the following pattern. There are 23 local government bodies in South Australia with city status, 22 of which meet at night. Only one, the Adelaide City Council, meets at 2 p.m. on one day each month. There are 17 towns or municipalities, and the councils of all of them meet at night. There are also 98 district councils, 86 of which meet in the daytime and 11 of which meet at night, the remaining one meeting in the daytime for 10 months of the year and at night for the remaining two months. That gives a total of 138 councils in South Australia, 87 of which seem to meet in the daytime, 50 of which meet at night, and one of which meets at different times during the year.

Why should it be laid down specifically when these councils shall meet? They have worked out for themselves (and quite adequately, as far as I can see) what suits their own areas. We are faced with a local government redistribution and, if the boundaries are altered to anything like those recommended by the Royal Commission, many towns will be included in one council area. In this respect, I think particularly of the Gawler area and of the Barossa Valley, the latter area having at present six or seven councils, but probably there will eventually be only two. Many towns will be worse off than they have been in the past, and the people who live and work in these towns will in many cases have different interests from those engaged in industries affiliated to primary industry. It is not convenient for everyone to attend council meetings at all, be they held during the day or at night. However, just as many arguments can be advanced on why a council should meet during the day as can be advanced on why it should meet during the evening.

The Hon. R. C. DeGaris: How could a shift worker attend a council meeting at night?

The Hon. C. R. STORY: That is true.

The Hon. D. H. L. Banfield: How could a day worker attend day meetings?

The Hon. C. R. STORY: If the Minister had given me his full attention instead of just looking up occasionally from his newspaper, he would have heard me say that many arguments could be advanced either way.

The Hon. D. H. L. Banfield: The Hon. Mr. DeGaris has said that this will cut out shift workers, and I am saying that there are many more day workers than there are shift workers. I just want to get that on the record.

The Hon. C. R. STORY: Just as many arguments can be advanced for day meetings as can be advanced for night meetings, and the argument regarding shift workers is a perfectly legitimate argument to raise. Whether people are on day shift, night shift, or an in-between shift, there will be difficulties if they want to stand at council elections. However, the councils in the area will automatically adjust to the conditions applying, as they have done over the years. Most councils have instituted a system of ratepayers meetings, which are very good. I have never heard of a ratepayers meeting having a strong lobby favouring either night council meetings or day council meetings.

The Hon. D. H. L. Banfield: Then, you don't get about very much any more.

The Hon. C. R. STORY: The Minister can reply when his turn comes, and I am sure that he will be able to cite examples. My experience is that the ratepayers meetings have never expressed a strong opinion on when councils should meet. If necessary, a letter could be published in the local paper stating that several people would like to be councillors but they could not stand at council elections because the council met at the wrong time. If that sort of letter appeared in the paper, many ratepayers would be interested in voting for the people concerned. Many people dodge the responsibility of local government by saying, "I am sorry; I would like to serve on the council but I cannot do so because the meetings are held at the wrong time." I do not take account of such excuses, because they are not legitimate.

Local government is responsible to the people; it will look after its own affairs perfectly well; and it is entitled to fix its own meeting times. Therefore, I can see no reason why the Minister should be so keen to bring this matter before the Council at this time. Last session a similar type of provision was amended very properly in this place so that an absolute majority of the council had to vote on meeting times, whereas the provision originally allowed one person to dictate to the council when it should meet. I thought that the Council's amendment was generous, but it was not acceptable to the Government, which, obviously in pique, decided to deprive local government officers of benefits for a full year.

I am not willing to take that risk again: I want to see this Bill divided so that the clauses that are acceptable to the Council (I shall know which clauses are acceptable only after a vote has been taken) are passed. Then, each honourable member will be perfectly free to exercise his conscience on whether there should be any restriction on the time of council meetings and on whether a two-thirds majority or an absolute majority should apply. In this way honourable members will not feel that they are being pitchforked into a situation; the Government will not be able to claim to the Local Government Officers Association, "We would have loved to put the Bill through, but the obstructive Legislative Council would not give us clause 7." I want local government to carry out its work and to be able to decide for itself when meetings should be held. Therefore, at the appropriate time I will move to have the Bill divided so that it can be dealt with properly.

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

SUPERANNUATION (TRANSITIONAL PROVISIONS) ACT AMENDMENT BILL

(Second reading debate adjourned on September 10. Page 795.)

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

ARBITRATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from September 10. Page 799.)

The Hon. J. C. BURDETT (Southern): I support the second reading of this Bill, and I support the remarks made by the Hon. Mr. Potter yesterday. I shall listen with interest to the speeches of other honourable members, but at present I believe that the abuses that have occurred through the use of arbitration clauses are such that they justify the Council in passing this Bill. If the Bill is passed, the procedure of arbitration will largely but not entirely

disappear from our legal procedures. As we are to some extent singing the swan song of the arbitration system, it may be useful very briefly to outline the system and the procedure of arbitration. In some cases, when parties enter into an agreement in the first place, there is a clause in the agreement providing that, if there shall be in the future any difference between the parties, as a condition precedent to court proceedings the matter must be referred to arbitration. This kind of clause will be rendered void if this Bill is passed. There are other cases where disputes arise between parties and where there has been no previous agreement that any dispute will be referred to arbitration but where, after the dispute has arisen, the parties decide that they wish, instead of going to court, to refer the matter to arbitration. This second practice is not taken away by the Bill.

In whatever way the decision by the parties to go to arbitration instead of to the ordinary courts arises, the arbitration is started by the choice of an arbitrator and the submission to arbitration. The arbitrator is usually a single arbitrator, where the parties can agree on one, and, if the parties cannot agree on one, generally speaking each party appoints an arbitrator, making two where there are only two parties, and in such case pursuant to the principal Act the arbitrators, before undertaking their duties, must appoint an umpire, who is to give the decision in case the arbitrators cannot agree.

The Hon. R. A. Geddes: Are any special qualifications required?

The Hon. J. C. BURDETT: The arbitrators need not have any qualifications at all. Usually, in the ordinary sort of arbitration that is most common, in insurance cases and so on, the arbitrator is a legal practitioner, but he does not have to have any qualifications at all; he can be anyone the parties agree to appoint. The written submission to arbitration takes the place of the pleadings in a civil action.

The arbitrator is appointed, dates for hearing are fixed, and the arbitration commences. Generally speaking, the arbitrator is a legal practitioner, and usually the arbitration is conducted in much the same way as a court hearing. The person seeking the arbitration opens his case and calls his witnesses. The laws of evidence are generally adhered to. The other party opens his case and calls his witnesses in the same way. The arbitrator eventually makes his award, and this award, by virtue of the agreement to submit to arbitration and the Arbitration Act, has the force of law.

The award may be the subject of legal proceedings, and eventually it can be enforced in the same way as a court decision. If the award of the arbitrator, which is the same as a judgment in a civil case, is not carried out, the other party can commence a civil action based on the award, and the only thing he has to prove is the fact of the due making of the award. In such case, he gets his judgment and can obtain enforcement. There is no appeal from the decision of an arbitrator. His decision is binding on the parties and may be enforced, provided that he has correctly gone through the motions. It is only if he has acted improperly and quite apart from the terms of the submission that there can be an appeal. There cannot be an appeal on the ordinary grounds that he has been wrong in law or in fact.

It is erroneous to suppose, as I think many people do, that most arbitrations conducted under the principal Act, which commenced in 1891, are a sort of sitting around a table by the parties under the chairmanship of the arbitrator. It is a procedure conducted in the same way as court proceedings. It is worth stating the obvious: this kind of arbitration has nothing to do with industrial arbitration, and is in fact much older than industrial arbitration.

As the Minister said in his second reading explanation, and as the Hon. Mr. Potter said yesterday, abuses have arisen out of the decision in *Scott v. Avery* that arbitration clauses in agreements were enforceable; that is to say, when an agreement says, as soon as the parties enter into a written agreement, that, if there is any dispute arising out of the agreement or in any way related to the agreement, then the parties cannot proceed directly to court but must proceed first to arbitration as a condition precedent to court proceedings. In such cases it has been held that these provisions in the agreement are binding and that the matter cannot go to court.

If there is a subsequent disagreement, if one party considers he has a cause of action, he cannot take it to the court, he must first submit it to arbitration. Abuses have arisen out of the use of such clauses. One area is that of insurance, but I hasten to add that only a minority of insurance companies has sheltered behind the arbitration clauses. Nevertheless, it does happen. In most insurance policies issued at present there is an arbitration clause saying, in effect, that if the insured (or the company, for the matter, although this rarely arises) considers that he has a claim against an insurance company he cannot in the first instance take it to court; he must first submit it to arbitration.

This could be most unfair to the insured, first of all in the matter of costs. If a party to a contract wishes to take a matter to court he has to pay for his own legal expenses for his own lawyer, but he does not have to pay the costs of the judge or the magistrate or the court officers, or of the provision of the courthouse. For this he pays only a hearing fee, which is relatively nominal and which nowhere near covers the actual expense. In the case of an arbitration, the parties have to pay the expenses of the arbitrator. They have to pay his full costs and full agreed remuneration for his services (and the arbitrator is usually a legal practitioner who would expect to be paid his full legal fees for his time and trouble), and they also have to pay for any assistance he may require in the way of taking notes of evidence, and so on. They will have to find a room in which the arbitration proceedings can be held.

There is a further difficulty, and that is in the case of litigants who seek the assistance of the Law Society's legal assistance scheme. If people seek the assistance of the scheme in ordinary court cases they are provided with a lawyer and also, generally speaking, court fees are waived; the parties do not have to pay the court fees. However, where there is required under an agreement (and I am speaking specifically about policies of insurance) a reference to arbitration as a condition precedent to legal proceedings, and if the complaining party, the insured, seeks the assistance of the Law Society's legal aid scheme, he will certainly get, in the same way as in court proceedings, a lawyer provided. Generally speaking, however, he does not get any assistance towards finding the costs of the arbitrator or of his assistants or of the rent for a room in which the proceedings can be heard. This means that a comparatively well-off body, such as an insurance company, can take advantage of an impecunious insured person. It could be that an insured person has sufficient financial resources, in the case of a grievance, to run the risk of going to court, paying for his own legal expenses, paying the costs of the other side should he lose his case, paying the court fees, and perhaps even

getting legal assistance as I have suggested, but he cannot afford on top of those costs, if the finding were to go against him, to pay the full cost of the arbitrator, the arbitrator's assistants, and the provision of a room in which the proceedings can be held.

This situation can put the insurance company into a position to get a settlement in its own favour. I have known of several cases where I am certain that justice was not done because in the insurance contract the insured person could not go to court and had to submit his case to arbitration, but was not in a financial position to do so. I am sure there have been many such cases where, if the insured person had been able to submit his claim to the courts directly, he would have obtained justice.

If this Bill is passed, clauses in contracts requiring all future disputes to be submitted to arbitration will be void. Therefore, the parties will be free to go to the courts in the case of a dispute. In his second reading explanation the Minister referred to publicity. Court hearings are normally conducted in public, while arbitration matters are usually conducted in private. It has been known in arbitration proceedings that insurance companies are willing to use technical defences, which they would not be willing to use in an open court, as the matter in dispute could be reported to the public so that the tactics the companies were using would become known.

It was properly said in the second reading explanation that some people were in an inferior bargaining position when entering into contracts. I refer to the position of a person seeking to insure his house against fire or his motor vehicle comprehensively. The insurance contract is comprised of the proposal, which is signed, and the standard printed form of policy, which is eventually issued. We know that if any of us want to insure our house or our car in this manner, and we said we did not like the arbitration clause included in the contract, we would be told to take it or leave it. An ordinary person insuring a house or car is obliged to accept the terms of policy provided, which include the arbitration clause.

The Hon. R. C. DeGaris: Does that apply to policies of the State Government Insurance Commission?

The Hon. J. C. BURDETT: I think it does, but I have not looked at its policies. The second main area where injustices apply is in the case of building contracts. The ordinary house builder who seeks to build a house goes to a builder and is presented with a printed form of contract, which almost always includes an arbitration clause, as follows:

In the event of there being any dispute in the future, the parties must refer the case to arbitration, and cannot go to the court in the first instance, but must refer the case to arbitration as a condition precedent to going to court.

If they do refer to arbitration, and if there is an award, the only way the parties can go to court is by enforcing the award, because they are bound by whatever the award is. In the case of building contracts, when the house buyer signs the building contract he is normally anxious to get his house, and as a result does not usually read the arbitration provisions or many other provisions. He normally signs the contract, as he wants the house.

The Hon. R. A. Geddes: What would happen if he struck out those words?

The Hon. J. C. BURDETT: If he struck out the words there would not be a contract unless the striking out was also initialled by the builder. I agree that in the case of a building contract the consumer is not in such a disadvantaged position as in the case of an insurance contract. With an insurance contract the purchaser has really no option. If he wants the insurance he has to take it, and he has no way of getting the arbitration clause struck out from the policy. However, in the case of the building contract, depending on the size of the contract and his bargaining position generally, if the purchaser raises the matter he has at least the chance of having the builder agree to the striking out of the arbitration clause.

I predict that in 90 cases out of 100 that is not worried about. The purchaser believes that everything is satisfactory; he is happy with the builder, and he does not foresee that any proceedings are likely. As in the case of the insurance companies, I hasten to add that only a small minority of builders shelter behind arbitration clauses. Of course, if one is the house owner who does suffer through an arbitration clause, it is not much comfort to know that it is only a minority of builders who hide behind such clauses.

I refer to the position of a house owner who has signed a building contract containing an arbitration clause and who finds that there are delays or that poor workmanship has been carried out on the building. Such a person cannot go to court, because he must refer the matter to arbitration and suffer the same disability concerning costs as I have outlined applies in respect of insurance contracts. The matter of publicity has some effect also. Whereas a builder may not want the allegations against him made known in respect of delays or poor workmanship, he may not mind the case going to arbitration, as such proceedings are conducted in private.

I know of several cases where I am certain that justice has not been done because the consumer, the house owner, was not free to go to court and had to have the case referred to arbitration. I have one constituent who came to me a few days ago in just such a situation. This Bill is a fairly radical step, as it provides that arbitration clauses in agreements shall be void, and it provides that it is no longer possible to agree, in advance, that a dispute shall be taken to arbitration and not taken to the courts. Although it is a radical step, I believe it is justified, because of the abuses I have outlined.

I have said that the arbitration procedure is an old procedure. Our Act commenced in 1891. The arbitration procedure in England is much older than that and, in its early days, before the abuses crept in, it was an honourable procedure, which was fairly successful. I refer now to the clauses of the Bill. Clause 3 provides, in effect, that any agreement which requires future differences or disputes arising out of the agreement to be referred to arbitration shall be void. It is worth noting that new subsection (2) provides:

An agreement to submit a claim, difference or dispute to arbitration made after the circumstances on which the claim is based have occurred, or the difference or dispute has arisen, shall not be rendered void by the provisions of subsection (1) of this section.

This means that, where any agreement, such as an insurance policy or a building agreement, provides that, while there has been no dispute so far, where there is a dispute it must be referred to arbitration, that clause in the agreement shall be void; but there shall be nothing to stop the parties, after a dispute has arisen, who decide that they would prefer to go to arbitration rather than go to court from doing so; if the agreement is then valid and the reference to arbitrate is valid, the award would be binding on the parties.

There are times, of course, when the parties to a dispute prefer to go to arbitration rather than go to court. They may have legitimate reasons for not wanting the dispute between themselves to be aired in public; they may prefer

that it be aired in private and, provided they do not make their agreement to take the matter to arbitration until after a dispute has arisen, the agreement they make is still valid and they may still submit their case to arbitration.

It is worth pointing out that, even in cases where there is no difference in bargaining power between the two parties, there are instances where the parties wish any future dispute to be, by virtue of the agreement, referred to arbitration rather than being able to go, in the first instance, to the court. For instance, in the case of some leases, partnership agreements and other business agreements, the parties prefer even in the first instance when they first sign the agreement to provide that, where any disputes arise, they shall be referred to arbitration and the parties shall not go to court, because they do not wish the disputes to be made public: they prefer them to be kept private. This sort of agreement in advance will no longer be possible if this Bill is passed. After a dispute has arisen, provided both parties agree, they may submit the matter to arbitration.

Another matter to which I wish to refer is that arbitration clauses are often used as a conveyancing device by lawyers to inject certainty into an agreement. Take, for example, the case of leases. Sometimes both parties (the lessor and the lessee) want the lease to have a fairly long specific period of tenure—say, six years. Both parties want the certainty of knowing that the lease will continue for six years. Particularly in these days of inflation and uncertain rental values, they do not want to fix the rental in advance for six years. Most honourable members know that, if a lease for six years is restricted to a rental of $X for three years and after that the rental is subject to review, by agreement, such an agreement is not sufficiently certain and it could not be enforced by the courts. Arbitration clauses are sometimes used legitimately and properly as a way of injecting certainty into such an agreement. They commonly provide that, if the agreement is for six years, the rental for the first three years shall be $X a year and for the remaining three years the figure shall be agreed upon by the parties or, in default of agreement, by arbitration, pursuant to the provisions of the Arbitration Act. Such an arrangement is sufficiently certain, because there is a procedure, provided for by Act of Parliament, that can be entered into. It may well be that provisions such as these, which are quite harmless and designed simply to inject certainty into agreements, will be rendered void by new section 24a. It seems to me that new section 24a (1) (*a*), which provides:

> any provision of an agreement requiring differences or disputes arising out of the agreement, or any other agreement, to be referred to arbitration . . . shall be void,

and the subsequent lettered paragraphs in new section 24a (1) may render void the kind of arrangement to which I have referred. However, if that is the case, I have sufficient confidence in the ingenuity of the legal profession to suppose that it will be able to devise other means of catering for variable situations—variable rents, variable values, and so on. I do not consider that this will create a major problem in the future.

I should like to ask a question of the Minister, and I hope he will answer it when he replies to the debate: will the Bill render void arbitration provisions in existing agreements? It is an interesting question and I should like to hear the Minister's answer. Literally speaking, this would seems to follow if we take, for instance, new section 24a (1) (*a*), which provides:

> any provision of an agreement requiring differences or disputes arising out of the agreement, or any other agreement, to be referred to arbitration . . . shall be void.

Of course, clause 2 provides:

> This Act shall come into operation on a day to be fixed by proclamation.

When the day is fixed and the Act comes into operation, then, by virtue of new section 24a (1) (*a*), any such provision in an agreement shall literally fit into the section and be rendered void. On the other hand, could it be said that this would be a retrospective operation? If so, the effect will not apply, because this is an amending measure, which cannot have a retrospective operation unless that is specifically stated. It seems to me it could be argued that the effect I have mentioned is not a retrospective operation: it is not providing for anything that has happened in the past—it has no retrospective effect. There is certainly an argument for saying that this will have no retrospective effect, that this is simply applying in the future, particularly when we refer to section 24 of the principal Act, which provides:

> This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

That suggests to me that, when we read the new Act (as it will be if we pass this Bill as a whole) the effect will be that arbitration clauses in existing agreements will be void. I have referred to sections 20 and 21 of the Acts Interpretation Act. I do not say it is wrong if, because of the passage of this Bill, arbitration clauses in existing agreements are made void. However, this is the Government's Bill, and I should like to know its interpretation of the Bill. Does it believe that the legislation, if it passes, will result in existing agreements becoming void when it comes into operation?

For the reasons to which I have referred (I consider that there are real abuses under arbitration clauses and that these occur frequently), I support the second reading. If I can be convinced that there are ways in which the Bill can effect an undesirable result (and I am not aware of any at present) it may be possible to amend it. Although there are some disabilities which the Bill may effect and to which I have already referred, I am satisfied that the extent of abuses is sufficient to justify the Bill. I therefore support the second reading.

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

ADJOURNMENT

At 3.43 p.m. the Council adjourned until Thursday, September 12, at 2.15 p.m.