LEGISLATIVE COUNCIL

Thursday, September 12, 1974

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

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Fire Brigades Act Amendment,
Mental Health Act Amendment,
Transplantation of Human Tissue,
Public Purposes Loan,
Housing Loans Redemption Fund Act Amendment.

PETITIONS: SODOMY

The Hon. R. C. DeGARIS presented a petition signed by 25 persons objecting to the introduction of legislation to legalise sodomy between consenting adults until such time as Parliament had a clear mandate from the people by way of a referendum (to be held at the next periodic South Australian election) to pass such legislation.

Petition received and read.

The Hon. A. J. SHARD presented a similar petition signed by 37 persons.

Petition received.

QUESTIONS

KONGORONG PETROL SUPPLY

The Hon. R. C. DeGARIS: Has the Minister of Agriculture a reply to my recent question about the Kongorong petrol supply?

The Hon. T. M. CASEY: I have been advised by my colleague, the Minister of Labour and Industry, that a definite decision has now been taken by the oil company concerned that the retail outlet at Kongorong will not be closed.

LANDS DEPARTMENT

The Hon. C. M. HILL: Is the Minister of Lands aware of criticisms of the Lands Department in the Auditor-General's Report for the year ended June 30, 1974? Further, is the Minister aware that these criticisms refer to unsatisfactory aspects of accounting work, inadequate internal checking procedures, ineffective salary and wage records, and unsatisfactory charge journal entries? Does the Minister intend to take action to remedy these weaknesses in his department and, if he does, what form will such remedial action take?

The Hon. A. F. KNEEBONE: The answer to the honourable member's first question is "Yes". I am aware of the criticisms raised in the Auditor-General's Report, and I am also aware that these criticisms were brought to the notice of the Lands Department during the period of the audit, and corrective action has been taken. Necessary action which could have been taken earlier to overcome the difficulties would have involved the employment of more people in the accountancy field. Over the last year or two the work piled on to the Lands Department has been enormous in respect of the rural reconstruction scheme, the metropolitan and rural unemployment schemes, and various other tasks of this nature. We have endeavoured to carry out all the extra work without employing many more people. We had hoped that some of the work would be of only a temporary nature. The staffing difficulties have brought about some errors, but we have agreed with Cabinet that there will be no great increase in the number of staff members. We have agreed that the increase in the Public Service will be kept to a small percentage. This makes it difficult to rectify the problems. Despite what I have said in relation to our difficulties, I can assure the honourable member that every effort is being made to see that there will be no criticism from the Auditor-General's Department when the next report is issued.

WARDANG ISLAND

The Hon. M. B. DAWKINS: I seek leave to make a short statement before asking a question of the Chief Secretary, representing the Minister of Community Welfare.

Leave granted.

The Hon. M. B. DAWKINS: My question relates to the trouble that has occurred on Wardang Island. I was most disturbed, as I have no doubt were many others, at the apparent problems of mismanagement and what would appear to be the complete lack of responsibility which has characterised the control (or the lack of it) at Wardang Island and which has been made public in recent days. In this morning's newspaper we read that it was thought by some people that white guidance of the Aboriginal Lands Trust was to blame. Whether or not that is so, the ultimate responsibility for correction of the present trouble must surely lie with the Government. Will the Minister ascertain from his colleague what action the Government intends to take to correct the unfortunate situation that has occurred at Wardang Island?

The Hon. A. F. KNEEBONE: I shall direct the honourable member's queries to my colleague and bring down a reply as soon as possible.

FISH DEATHS

The Hon. R. C. DeGARIS: I seek leave to make a brief explanation before directing a question to the Minister of Agriculture, representing the Minister of Fisheries.

Leave granted.

The Hon. R. C. DeGARIS: The Minister of Agriculture may know the answer to my question. In the past two or three days several reports have come to me of the number of fish dying in the Coorong and the lower reaches of the Murray River. I noticed in this morning's *Advertiser* several more reports on this matter. First, has the position been brought to the attention of the Minister of Fisheries; secondly, has the Minister any information on the cause of the death of the fish in the lower reaches of the Murray?

The Hon. T. M. CASEY: This matter has been brought to the attention of the Minister of Fisheries; in fact, we talked about it only yesterday. The exact cause of the death of fish in the Murray River has not been ascertained as yet, although it is known that similar deaths have occurred in other States, especially in Victoria. I shall refer the question to my colleague to see whether I can get a report on the exact cause of the deaths.

HOUSING TRUST RENTAL HOUSES

The Hon. C. M. HILL: I seek leave to make a short explanation before directing a question to the Chief Secretary, representing the Minister of Housing.

Leave granted.

The Hon. C. M. HILL: I have been approached by a group of people known as the Home Buyers Association of South Australia. These people are concerned at the high interest rates for house purchases and other problems facing people in the South Australian community requiring housing. They are especially concerned with the situation that might exist in relation to rental houses controlled by

the South Australian Housing Trust. This situation applies where tenants are granted occupancy when their incomes are moderately low. After some years their incomes may increase considerably, and indeed in some instances it is thought that people on comparatively high incomes continue as tenants and have their leases renewed. At the same time, there exists a long waiting list of applicants on low incomes who suffer great hardship through being without reasonable living accommodation. My question is this: when leases come up for renewal within the Housing Trust, especially when tenants have resided in homes for some years, is any means test applied or any investigation undertaken to ensure that high income families are not continuing in occupation of trust homes, thereby stopping urgent cases in the low income bracket from obtaining housing which it is absolutely impossible for such people to obtain other than through the Housing Trust?

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

IMPOUNDING ACT AMENDMENT BILL

Bill recommitted.

New clause 5—"Liability of owner of straying cattle."

The Hon. D. H. L. BANFIELD (Minister of Health): I move to insert the following new clause:

5. Section 46 of the principal Act is amended by striking out from subsection (3) the passage "five miles" and inserting in lieu thereof the passage "eight kilometres".

This is another metric conversion. I did not want to have to introduce another Bill so, for that reason, I am trying to get the matter settled as the Bill is going through the Council.

The Hon. R. A. GEDDES: I am glad the Government has heeded some of my earlier remarks on this Bill. I have checked this amendment and find it is acceptable. It does what the Minister has said it does: it provides for the position of straying cattle travelling at least five miles or eight kilometres in a direct line in one day.

New clause inserted.

Bill reported with an amendment. Committee's report adopted.

SUPERANNUATION (TRANSITIONAL PROVISIONS) ACT AMENDMENT BILL

Read a third time and passed.

EXPLOSIVES ACT AMENDMENT BILL

Second reading.

The Hon. D. H. L. BANFIELD (Minister of Health): I move:

That this Bill be now read a second time.

It deals with a number of matters of a disparate nature and for that reason it will be more convenient to explain the Bill by considering each clause in turn. Clause 1 is formal. Clause 2 amends section 25 of the principal Act by providing that unpaid storage charges and expenses for explosives deposited in a Government magazine may be recovered by selling the explosives by public tender. The present procedure of sale by public auction has been found to be cumbersome in practice and it is believed that sale by public tender would be more satisfactory. Clause 3, by paragraph (*a*), would enable the Government to recoup travelling expenses and expenses incurred in the examination of explosives required to be destroyed or disposed of by an inspector in addition to the cost of their actual destruction or disposal which at present is all that may be recovered from their owner.

Paragraph (*b*) of clause 3 also amends section 42 of the principal Act but provides for a matter of more importance. Doubt has arisen whether in certain circumstances that section gives the Chief Inspector and his inspectors sufficient powers to remove an immediate or potential danger involving explosives, and this provision is intended to ensure that the inspectors have sufficient power to prevent the serious injuries which may result from an explosion. Clause 4 provides that the Chief Inspector may revoke any licence under the principal Act of a person who fails to co-operate with or obey an inspector in the exercise of his powers. This sanction would appear to be appropriate in the dangerous area of explosives.

Clause 5 is intended to clarify the power to prescribe fees for the purposes of the principal Act and the conditions upon which licences may be granted, suspended and revoked. In addition, this clause empowers the raising of the maximum penalty for a breach of the regulations to $500, an amount more in keeping with today's money values.

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

ARBITRATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from September 11. Page 862.)

The Hon. R. C. DeGARIS (Leader of the Opposition): So far in this debate we have heard the Minister's second reading explanation and speeches from the Hons. Mr. Potter and Mr. Burdett. Both these honourable members have supported the Bill. That alone, considering the knowledge that both these two gentlemen have on this matter, must weigh heavily on the final decision of this Council. Both honourable members have had significant experience in law and doubtless have a thorough knowledge of the use of arbitration clauses in contracts.

Both honourable members have pointed out that abuses have occurred through the use of such clauses in contracts. I do not doubt that for a moment, but I point out that it does not matter what the law is, or what the Statute provides, there will be always some abuse. I refer now to what the Hon. Mr. Burdett said in his speech. He stated:

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.

As I read the Bill, that is exactly the position. The arbitration clause in an agreement is rendered void if the parties decide that they do not wish to go to arbitration. However, they may, if they so decide, still go to arbitration. I accept the information provided to the Council by the Hon. Mr. Burdett and the Hon. Mr. Potter that there have been abuses in the use of arbitration clauses in contracts. This covers a whole range of contracts, from those involving insurance to those relating to the building industry. Although in some instances one party can be in a stronger bargaining position than another, any

system that is introduced by legislation will be subject to some abuse. I do not care what it is; this will still happen.

It is therefore reasonable that I should examine the advantages relating to the use of arbitration clauses in contracts. I have some misgivings about throwing out arbitration clauses as they exist at present. I believe we should examine ways and means of overcoming abuses that may have occurred in the past, without totally abandoning a system that has worked reasonably efficiently in many respects. I intend placing before the Council some information regarding this matter. First, I refer to the housing industry. Last year, for example, the Housing Industry Association completed about $130 000 000 worth of houses in this State. That involved about 5 000 houses or 70 per cent of the total number of houses built in South Australia. There were about 50 arbitrations (or about 1 per cent of those 5 000 houses built by the association) to enable certain matters to be decided, the sums of money involved in the arbitrations ranging from a few hundred dollars to a maximum of about $40 000.

I therefore ask whether it would not have been less costly not only for the person whose house was being built but also for the house builders if these disputes could have been resolved under another system. Would not the result have been quicker for all parties concerned under our present arbitration system rather than its being left to court proceedings? Something is to be said for the technical expertise in the choice of an arbiter that would lead one to this conclusion. Arbitration would be much quicker, and indeed less costly, for both parties involved in a dispute. Recently, an arbitration involving a dispute about a large house was resolved within five days. I have been informed that, had the matter gone to court, it could have taken the court five weeks to decide it.

The Hon. J. C. Burdett: But the parties could still go to arbitration under the Bill.

The Hon. R. C. DeGARIS: That is a valid point, which I hope to cover soon, but I accept the honourable member's interjection as a reasonable one. The speed of the process involved assumes much importance when one is dealing with a person who is building his own house. The Bill does not remove the right of parties to select a course of arbitration, which is the point the Hon. Mr. Burdett made in his interjection. However, I should like to make a contrary point in this respect: if one must rely on a dispute occurring before the arbitration process can be used, the possibility of arbitration declines rather rapidly because, once the two parties are in dispute, much difficulty will be experienced in getting them to agree to arbitration. The parties are more likely, when the dispute is under way, to insist on court action rather than on arbitration.

Once one gets to the stage of court proceedings, I doubt (and I merely raise a query in this respect) whether such a process can produce as speedy and as effective a result (and indeed a less costly one) as by the use of arbitration. I refer again to the Hon. Mr. Burdett's interjection, which I believe was valid. The Bill does not rule out the use of arbitration, which can still be adopted. However, I make the point that, unless arbitration is included in the first contract, it will be difficult to get people to a situation of arbitration after a dispute arises.

On a more general basis, I believe the question of arbitration clauses in contracts has been discussed between the respective State Attorneys-General. There is some need to consider the matter of uniformity throughout Australia is this respect. I hope that in future this goal is borne in mind. There should be uniformity throughout Australia in relation to arbitration clauses in contracts. As builders, particularly commercial and industrial builders, operate on a national, if not an international, basis, there is a need to examine the matter of uniformity between the States. Can the Government give the Council any information regarding the decisions made by the State Attorney-General when discussing this mater? Also, can it say what the other States intend to do regarding arbitration clauses? Regarding the discussions of the Attorneys-General, is the question of arbitration clauses related only to insurance? The next section one should examine in connection with the building industry is the one I have just mentioned—the large commercial and industrial builders who operate on a State-wide and national basis. In South Australia there have been six arbitrations during the past 12 months in relation to these builders; that is a remarkable picture.

Let us consider the construction of a multi-storey building where strong financial forces are pushing both parties. I believe that in those circumstances arbitration is the most satisfactory method of solving disputes. I admit that, in a commercial and industrial situation such as this, both parties are more likely to use the arbitration system than is the home owner, where a strong personal bias may be involved; that bias is not as evident in the case of a large builder. Nevertheless, for the large commercial and industrial builder and the person for whom he is building, the question of arbitration assumes great importance.

Perhaps we should be looking at limiting the application of this legislation. At present arbitration clauses deal with any matter that may arise in a dispute, but I think it is reasonable to suggest that it should be permissible to provide for arbitration on technical matters in a contract, but that disputes over money should be excluded. Technical matters are better resolved by technical experts, rather than a court of law, to the benefit of both parties, whereas money matters raise a slightly different question. Arbitration clauses should be permitted in relation to commercial and industrial building; or, if one does not like that phrase, perhaps I could say that arbitration clauses should be permitted where the total contract is in excess of a specific sum—perhaps $30 000 or $50 000. If the contract is for more than that amount, the arbitration clause could be legal and binding.

The Public Buildings Department of South Australia is involved in some large contracts involving multi-storey buildings. Has the Government sought the department's opinion in relation to arbitration clauses? If it has, did the department make any submission to the Government, and what was the nature of that submission? It would be very strange if the Government did not seek the department's opinion. On balance, I support the Bill, but I thought some submission should be made in defence of the arbitration clause situation and the methods at present in use in respect of arbitration clauses, because in some cases arbitration methods of the *Scott v. Avery* type are still possibly the most efficient way of resolving disputes. Particularly in relation to technical matters, in contracts we should try to ensure that arbitration is used.

As the Bill stands, there is some possibility in some areas that we may be throwing away a process of value to the community. I support the second reading of the Bill but I will consider amending some clauses in the Committee stage, depending on the information the Minister gives in reply to this debate and on any information I can gather before the Committee stage is reached. The question of

uniformity cannot be overlooked. In New South Wales a similar type of Bill will be introduced soon, but I believe it will not go as far as this Bill goes.

The Hon. R. A. Geddes: This Government always has to be first.

The Hon. R. C. DeGARIS: Victoria already has this type of legislation, but I have not had time to ascertain its details. There are exclusions in the Victorian legislation. So, South Australia is the second State to move into this field. I have not touched on the insurance industry; I support the Bill entirely in that regard. Regarding the building industry, there is a need to examine the question of uniformity in relation to arbitration clauses. Legislation will be introduced in New South Wales, but I think it will be related solely to insurance contracts. I support the second reading, and I thank the Hon. Mr. Potter and the Hon. Mr. Burdett for their contributions to the debate, but I thought the other side of the question should be put to the Council. In relation to technical matters and large commercial and industrial building contracts, we should examine the situation carefully before we abandon the present situation in regard to arbitration clauses.

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

LOCAL GOVERNMENT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from September 11. Page 859.)

The Hon. R. C. DeGARIS (Leader of the Opposition): Yesterday the Hon. Mr. Story said that he thought the Bill should be divided into two, because of the situation that existed last session in connection with a similar type of Bill. I strongly support the honourable member's suggestion. There is no argument about most of the provisions in this Bill; there is disagreement on only one point. It would be a shame if the same situation existed this session as existed in the previous session, where, because of disagreement on one clause, all other clauses failed to pass both Houses of this Parliament. There may be some variations in the rest of the Bill, but I do not believe that this Parliament should have the right to dictate to local government on any matter concerning council sittings. That should be a matter for local government itself to decide.

I know this is virtually a black and white situation: either one believes that the majority of the people has the right to decide in which direction local government shall go with its sittings or one comes up with some other concoction for which there is no logic. I put this point very strongly. Last session we had a Bill in which one person in a council could object to day sittings, and that one person could dictate to the rest of the council. That position I found untenable; I could not support it.

Now we have a Bill in which two-thirds of the number of members of the council must vote for day sittings before the council can sit in the day-time. Once again, I find this an illogical situation. Can anyone tell me why one should choose 66⅔ per cent? It is just as illogical as saying one person can dictate to the council on the time of sitting. Therefore, this whole matter comes down to a question of "yes" or "no". It would be an injustice if the other clauses of this Bill failed because of any disagreement on this one issue. That is all I wish to say to the Bill. I support the second reading, but I strongly support the move made yesterday by the Hon. Mr. Story to divide the Bill into two parts so that the two sections can be dealt with without one affecting the passage of the other.

The Hon. M. B. DAWKINS secured the adjournment of the debate.

MOTOR FUEL DISTRIBUTION ACT AMENDMENT BILL

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

ADJOURNMENT

At 3.5 p.m. the Council adjourned until Tuesday, September 17, at 2.15 p.m.