LEGISLATIVE COUNCIL

Wednesday, February 22, 1978

The PRESIDENT (Hon. F. J. Potter) took the Chair at 2.15 p.m. and read prayers.

QUESTIONS

AGRICULTURAL LAND

The Hon. R. A. GEDDES: I seek leave to make a short statement before asking a question of the Minister of Agriculture about the way in which the desert is encroaching on agricultural lands.

Leave granted.

The Hon. R. A. GEDDES: The Minister will recall that near the end of last year I asked several questions about what steps had been taken to prevent the desert from encroaching on agricultural land in northern parts of the State. The Minister replied in this Chamber and I later received a letter. Both replies were couched in the same terms, that the problem had long been recognised in pastoral areas. The letter I received during the Parliamentary recess referred to arid areas. Recently a learned professor from Flinders University has been claiming on Australian Broadcasting Commission programmes that he has made a survey of the problems of encroaching desert areas in the agricultural zone of Upper Eyre Peninsula. He uses the logical agrument that great care must be taken, because much land that has been cleared in recent years could possibly be lost to all forms of agriculture within a short time. Is the Minister aware of the professor's survey, and is there any action that the Government contemplates to take advantage of the research work that the professor is doing?

The Hon. B. A. CHATTERTON: I, too, heard the comments made by Professor Peter Schwerdtfeger, the Professor of Meteorology at Flinders University. I was not aware that he had actually undertaken any research into this problem. I thought that he made his statements merely as a result of visits to the area. The problem of soil conservation on Eyre Peninsula greatly concerns everyone, including the soils branch of my department, which is doing all it possibly can to help and advise farmers who have soil problems caused by drought in that area. The Mallee, too, is in serious difficulties in this connection.

DROUGHT RELIEF

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

Leave granted.

The Hon. A. M. WHYTE: During Question Time yesterday the Minister and I seemed to lose the thread when I asked a question and the Minister replied. When the Minister spoke of household sustenance, I thought he was referring to the request made for some sustenance assistance—non-repayable loans which many organisations have been requesting.

I understood the Minister was referring to household sustenance, which has been available under normal drought relief provisions and not through the drought aid that is presently available. To outline the question further, the farmers are making requests and organisations have taken up this matter with the authorities, pointing out that it is impossible for a farmer to leave his property and take employment or offer himself for employment; yet at the same time that he is not earning anything from his property. It is plain that he should be eligible for unemployment relief or sustenance to that value.

The Minister is no doubt aware of this request. What work has been done and how far have negotiations gone with the Commonwealth for this provision? An unemployed person living in the city can live in quite a substantial home, repaint his boat, put a new roof on his caravan, and still be getting unemployment relief; but the farmer, who still has no income because he is at home looking after some stock, does not qualify. I know the Minister is aware of this but, to put the record straight in relation to two questions I asked yesterday, has his office been in negotiation with the Commonwealth to try to overcome this problem?

The Hon. B. A. CHATTERTON: As the honourable member points out, there are considerable difficulties in the way of farmers getting unemployment benefits but those difficulties appear to be much more in the administration of the Department of Social Security than in actual policy. It was about two years ago that the Federal Minister for Primary Industry first announced the relaxation of unemployment benefits for farmers; in fact, that relaxation does not seem to have taken place at the district office level, and the indications we have had (certainly this has been true of farmer organisations as well) is that it is just not taking place and farmers are not able to get unemployment benefits; in spite of the Government's announced policy publicised by my department, they appear to be eligible and yet they are still being refused at district level.

I took that matter up with the Federal Minister recently at the Agricultural Council meeting held in Adelaide and pointed out the discrepancy between what had been publicly announced and what was actually happening. I think the farmer organisations in South Australia have also written to the Federal Minister pointing out that, in spite of those statements, very few farmers have qualified for unemployment benefits.

The other point raised by the honourable member was the call by a number of farmer organisations for household support and household sustenance. This will certainly be one of the topics to be discussed at a meeting of officers on drought, and that proposal and also the proposal for relief on an acreage basis will be discussed at that meeting of officers on drought. The point I wanted to make yesterday was that I thought many farmers were not aware that household support existed already. Admittedly, it does not go the whole way.

The Hon. A. M. Whyte: It is a repayable loan?

The Hon. B. A. CHATTERTON: Yes, if the farmer stays in agriculture. If he does not, it is converted to a grant. I do not think farmers understand that this assistance is available, because we have had no applications under this scheme. I am sure that some farmers would want to take advantage of it if they were aware of the provisions of the Rural Adjustment Act.

CREDIT UNIONS

The Hon. F. T. BLEVINS: I seek leave to make a brief explanation before asking the Minister of Health, representing the Attorney-General, a question regarding credit unions.

Leave granted.

The Hon. F. T. BLEVINS: I am a member of a credit

union, as perhaps are some other members.

The Hon. M. B. Cameron: Already you are—

The Hon. F. T. BLEVINS: The Hon. Mr. Cameron is interjecting. I should not have thought that I had said anything provocative.

The PRESIDENT: Order! Let us not get into a debate across the floor on the matter of credit unions.

The Hon. F. T. BLEVINS: I certainly was not doing so. However, the Hon. Mr. Cameron interjected. In case anyone thinks that I am hiding anything, it can be seen that I am disclosing my pecuniary interests. Attached to the latest statement from the credit union of which I am a member (the Waterside Workers of Australia Credit Union Limited), in which statement I was given a credit of $1·52, was a notice, part of which was as follows:

> Loan Funds—There are ample funds now available to lend to members. Loans up to $3 000 can, in most cases, be lent without the need for security. Applications for loans to $10 000 are being considered from members on the security of mortgage on houses or land. However, owing to State legislation the credit union is unable, at this stage, to grant loans in excess of $3 000 to Queensland or South Australian members.

That surprised me. Will the Minister inquire from his colleague whether it is correct that it is not possible for Waterside Workers of Australia Credit Union Limited to lend more than $3 000 to its members in this State and, if it is, why, when the union's members in other States can be granted a loan of $10 000 towards a house? If it is the case, does the Government intend to amend whatever Act it is necessary to amend to allow members of this credit union such as me, residing in South Australia, to have the same benefits that apply to members in all States except Queensland and South Australia?

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

MODBURY HEIGHTS COMMUNITY SCHOOL

The PRESIDENT laid on the table the report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence, on Modbury Heights Community School—Pedare Component.

GIFT AND SUCCESSION DUTIES

The Hon. R. C. DeGARIS (Leader of the Opposition): I move:

> That in the opinion of this Council the Government should, within the life of the present Parliament, abolish gift and succession duties and give consideration to reducing the incidence of capital taxation in other areas of State taxes.

Over a number of years, honourable members of this Council have moved motions regarding gift and succession duties and the general incidence of capital taxation in our community. Most of those motions have had a particular application on the impact of death duties on real assets of family firms and businesses. Indeed, honourable members were so concerned about this matter that in 1971 a Legislative Council Select Committee was established. That committee reported on the effects of capital taxation on the survival of privately owned businesses, as well as on manufacturing and primary industries in South Australia. Even seven years later, I recommend to honourable members that they study the report made by the Select Committee in 1971, because it is still relevant.

The Hon. D. H. L. Banfield: What did you do during your period of Government from 1968 to 1970 regarding this taxation?

The Hon. R. C. DeGARIS: I do not think the question is relevant, but from 1968, as I will show, until 1978, the amount collected in death duties has multiplied three times. Therefore, it is not what one does: it is what one does not do.

Members interjecting:

The Hon. N. K. Foster: I beg your pardon, Mr. Dawkins? That is out of order. Did you hear him, Mr. President? He goes crook and says that I am talking in this place. Did you hear the remark that he made?

The PRESIDENT: No.

The Hon. N. K. Foster: You had better get a microphone. He is the Acting President in this place at times. I tell him not to be in the Chair when I am making remarks. He could be tossed out for what he said.

The PRESIDENT: Order! The Hon. Mr. Foster is out of order, and the Hon. Mr. Dawkins was out of order, too, if he interjected.

The Hon. R. C. DeGARIS: In the early 1970's, with much emotion but without accuracy, the Premier set out by a legislative programme to take more from the family assets pool and put the money into the Treasury. He did that through amendments to the succession duties legislation that was on the Statute Book. The emotion was attached to a false claim that the wealthy would be paying more whilst the less wealthy would be paying less. An examination of that legislation by this Chamber showed that that was not the position. Thomson, an economist at the University of Adelaide, points that out in his work, and the Select Committee report deals at length with his submission. I should like to quote paragraph 9, on the first page of the report, as follows:

> But a survey of wool-growing properties undertaken by Mr. N. J. Thomson of the University of Adelaide in 1969 reveals that the actual incidence of death duties falls more heavily on the medium-sized farm, *i.e.*, in the range of $100 000 to $150 000 which is not the intention of the legislation. The owners of larger estates are often able to avoid duty by divesting themselves of assets before death; but the owner of a small or medium-size holding cannot afford to do this because his business would be immediately reduced to an uneconomic level.

That is the real position. The impact of this sort of taxation does not rest heavily on the wealthy, but it makes serious inroads into the family business and small business affairs. This can be seen if one studies the *Pocket Year Book of South Australia*, for 1977. Although I do not want to quote many figures that are given in the book, I point out that, in 1975, the last year for which I have pocket book statistics, of the 6 153 estates of deceased persons in South Australia, 5 915 were valued at less than $100 000.

More than 96 per cent of the total estates processed in South Australia were below $100 000. Of the estates below $100 000, the total net value was more than $100 000 000, while the total of the 6 153 estates was $140 000 000. Therefore, of the total net value of estates processed, about seven-eighths (about 71 per cent) were under $100 000. The real impact of death duties falls in that area, and it is that area with which this Council should be most concerned at this stage.

I refer to the figures given in evidence to the Select Committee and to the statistics in South Australia, which show that the real impact of such duties falls on the estates of family businesses. The impact falls on the ordinary citizen who, in his lifetime, has been able to own a house,

a car, an insurance policy or superannuation. Most honourable members in this Council, no matter from which background they come, will in their lifetime accumulate assets of $100 000, with their superannuation and other things attachable to it. It is in that area that the real impact falls: not upon the extremely wealthy, but upon the ordinary citizen in the street. In South Australia the collection of succession duties in recent years has been as follows:

Year	Amount
	$
1970-71	9 900 000
1971-72	12 200 000
1972-73	12 400 000
1973-74	13 900 000
1974-75	16 800 000
1975-76	21 800 000
1976-77	22 300 000
1977-78 (est)	20 000 000

Allowing for changes that have taken place in recent legislation, that is, the change in procedure providing for brother-sister relationships and the exclusion of payment of duty by a surviving spouse, the actual estimated fall in the collection of duty this year will be 10 per cent or less than the amount collected in the preceding year. Since 1971 the escalation has been more than double the collection of this form of taxation.

The Hon. J. R. Cornwall: What about in real terms?

The Hon. R. C. DeGARIS: I am talking not about real terms but about actual collections. If the honourable member wants to talk about real terms, he can ascertain that by reference to consumer price index figures. I will come to that in a moment. Regarding the escalation in real terms, if we are working in real terms, it has been higher in South Australia than in any other State, and I will come to that, too, in a moment. I could go on and give details, but I have done so before in previous speeches on this matter and have referred to individual cases of extreme hardship (I go further and describe them as cases of unconscionable hardship as a result of the impact of death duties).

However, that is not the main point that I wish to make in this motion. Details have been given to the Council of what I term, and what every honourable member would agree, were cases of unconscionable hardship. If examples are required of such cases, I refer the Council to the report of the Select Committee. Other people who have seen me recently agree about such cases of unconscionable hardship. I refer to the many instances given of extreme hardship as a result of the impact of death duties.

My point is this: Queensland has already abolished the impact of death duties, and the Commonwealth intends moving in that direction shortly, if it has not already done so. The Governor-General's Speech yesterday indicated that gift duties and death duties, so far as the Commonwealth is concerned, will be abolished immediately.

So, one can take it that that will happen shortly, if the legislation has not been introduced already. Further, the Victorian and Western Australian Governments have given firm undertakings that they intend to abolish death duties during the life of the present Parliaments in those States. The Premier of New South Wales (Mr. Wran) has made his position clear. I believe that New South Wales will follow suit and that this form of taxation will be abolished there during the period of the Wran Government; if it is not abolished then, the promise of abolition will be made to the people by Mr. Wran during the next campaign in New South Wales.

The Hon. D. H. L. Banfield: Are you writing Mr. Wran's policy?

The Hon. R. C. DeGARIS: No, but I have studied what Mr. Wran has said. So, South Australia will be left as the only mainland State that has not made any announcement in this connection. I will not canvass in detail what the impact will be on this State if South Australia is the only mainland State with the iniquitous form of taxation known as death duties, but there are many ramifications in this regard. Practically every Liberal member of this Council has drawn the Government's attention over many years to the plain fact that, because of the deliberate policy decisions of this Government, South Australia is in a difficult position as a competitor with the other States.

The PRESIDENT: Order! There is too much audible conversation. The Hon. Mr. DeGaris has the floor.

The Hon. N. K. Foster: I don't see why he doesn't sit down.

The PRESIDENT: Order!

The Hon. R. C. DeGARIS: Industry is tending to avoid South Australia because of our cost structure. One has only to examine reports of debates on workmen's compensation, long service leave, and a host of other matters to see that honourable members on this side of the Council have drawn the Government's attention to this matter time and time again, and also to the wider question of capital taxation. As a result of these factors and many other changes, South Australia is clearly no longer attractive to industry and to investors; that is an accepted fact in industry in Australia today. I wish to quote some 1973-74 figures, and I assume, in view of the general movements in the taxation field, that the figures would still be proportionately the same, in comparison with other States. About 34 per cent of State taxation in South Australia comes from capital taxation; that is, taxation on property itself. That figure in 1973-74 was the highest percentage of any State.

Of the total State taxation levied in the various States, undoubtedly South Australia has the highest element coming from capital taxation in relation to succession duties and probate. From 1971 to 1974-75, South Australia, of all the States, had the highest percentage increase in the amount of death duties collected. One can examine other forms of capital taxation, too, and find that in that period the highest escalation occurred in South Australia. That is another factor that has caused industry to avoid South Australia as a place in which to invest. Labor Party members have branded Liberal Party members as non-progressive, conservative, and anti-union, because Liberal Party members have expressed that view.

The facts now speak for themselves: practically every South Australian would agree that over those years we have placed ourselves in a non-competitive position in comparison with the other States. And we must add to that disadvantage the fact that South Australia could be the only mainland State left with a heavy tax on family assets or family business assets. Honourable members should therefore appreciate the depth of my concern about this matter. I shall give a couple of examples. I was informed that 12 months after Queensland had removed death duties 44 000 people had migrated to Queensland from New South Wales alone, and no doubt people moved to Queensland from other States, too. On its own, such a loss of population would be extremely serious.

The Hon. J. E. Dunford: Did the people shift permanently?

The Hon. R. C. DeGARIS: Yes. They are on the Queensland electoral roll. The next point could be even more dramatic: it must be recognised that death duties are payable to other States' Treasuries where company shares

held by the deceased are in an interstate company. If South Australia is to be the only State left with death duties, will that affect the financial basis of South Australian companies?

For example, a person I know in South Australia has shares in a company in another State, and that State where the company is registered collects the death duties from this State. If South Australia is going to be the only State left with death duties, what will be the impact upon South Australian companies when even people in another State owning those shares will be up for death duties in this State?

That fact alone will have a further effect upon the ability of South Australia to maintain itself as a viable economic unit. How dramatic that will be remains to be seen. Therefore, on the first part of my motion, I believe it is a matter of urgency that the Government make an immediate announcement on its policy in regard to the future imposition of this iniquitous form of taxation. If it does not make that announcement, some damage will be done to the future of South Australia.

I know that over the years the Government has made great emotional play of statements such as, "We are going to rip it off the wealthy." It will be difficult for this Government to move realistically away from that point but, unless it does, the financial decline in South Australia that we have experienced in the last few years will be hastened. I urge the Government to make its intentions known as quickly as possible about the future of this form of taxation.

The Hon. J. E. Dunford: You're not suggesting that Mr. Schroder, of Brighton Cement, will leave South Australia because of succession duties?

The Hon. R. C. DeGARIS: I make no suggestion—all I am doing is pointing out the factual position that, if South Australia is left as the only State in the Commonwealth on the mainland with this form of taxation, it will seriously affect the financial base of this State. The facts I have outlined to the Council will substantiate that viewpoint.

My next point is the impact of capital taxation generally, in all forms of taxation. This covers the basic taxation in local government, where almost 99 per cent of the total collection of local government taxes comes from a direct rate on property. Turning to State taxation, the collection is 34 per cent in the capital taxation area. That whole area deserves examination, because it is not possible to go on taxing property, using the revenue for State purposes. As I say, this whole area deserves examination, and a more equalitarian taxation policy deserves to be examined.

If we examine the total impact of capital taxation, whether on water and sewerage, whether on local government or land tax, death duties or succession duties, we can see the tremendous impact made upon capital in South Australia. The escalation in this area has been the highest in Australia over the last few years; and also, as a part of our total Budget, local and State, the component that comes from that area of taxation is higher in South Australia than in any other State. Therefore, I break the motion into two parts: first, the Government must announce as quickly as possible its intentions in regard to the abolition of gift duties and death duties.

The PRESIDENT: Order! There is too much conversation going on. Members are actively and loudly talking to each other.

The Hon. F. T. Blevins: It is Mr. Hill.

The PRESIDENT: I see four members sitting on my right, including the Hon. Mr. Hill.

The Hon. N. K. FOSTER: On a point of order, does not your position give you the right to insist that the honourable member remain in his seat?

The PRESIDENT: I call on honourable members to remain silent while the Hon. Mr. DeGaris is speaking.

The Hon. R. C. DeGARIS: Secondly, the Government must consider this whole matter of capital taxation, whether at local government or State level.

The Hon. R. A. GEDDES: I rise to support this motion and, to add to the Hon. Mr. DeGaris's concluding words that the Government must make an announcement soon, I go so far as to say I would support any retrospective—

The Hon. D. H. L. Banfield: What about your views in areas of retrospectivity? You are not consistent. Now, you are urging it.

The Hon. R. A. GEDDES: I am pointing out that there can always be an exception.

The Hon. D. H. L. Banfield: When it suits you it is all right. This happens to suit the wealthy and you would be prepared to support it.

The Hon. R. A. GEDDES: It is unwise not to be prepared to change one's mind, and the Leader of the Government in this place must always recognise that point—

The Hon. D. H. L. Banfield: You have got your orders.

The Hon. R. A. GEDDES: —because it is an essential of life. He knows that the person who runs on a straight line on a set course does not usually get very far. Even though the motion asks that the Government should abolish gift and succession duties within the life of the present Parliament, I make the point that there should be a relaxation of gift and succession duties between families, between the parents and the children, as a first step towards the solution of this problem. Gift duty was designed many years ago as a revenue-raising measure for the State, and one would agree that as a means of maintaining higher succession duties so that—

The Hon. J. E. Dunford: That was Labor's policy in 1910: it was to equalise the wealth of the community in a proper manner.

The Hon. R. A. GEDDES: I think those times have changed.

The Hon. J. E. Dunford: No, they have not. With the drought, you give farmers more relief.

The Hon. R. A. GEDDES: We will get to the point later involving primary industry. Gift duty was introduced many years ago but, because of inflationary times and because of the additional taxes that the Government has imposed over many years, the Government can more afford to give relief on gift duty as it applies between families (parents and children) today than it could when this legislation was originally enacted.

The Hon. J. E. Dunford: We have done that in the last few years: we have given relief on succession duties.

The Hon. R. A. GEDDES: I said "gift duty". I argue that today the number of people who on retirement now receive reasonable superannuation payments has increased considerably since the original concept of gift duty was introduced. The blue collar worker, who has given faithful service, and the white collar employee now receive sensible superannuation and, in many instances, long service leave payments which were once available only to executive and sub-executive members of companies.

Surely, it is reasonable that a man on retirement, if he wishes to give some of his money to his children to help them pay for or improve their house, or to help educate his grandchildren, should be given some concession. Money is meant to go around and, in this modern day, the Government is well able to receive money from a much wider tax base than it could when the original $4 000 tax was imposed.

As I have said, although the Government might lose some income in the short term, it will not lose it permanently. This motion does not, as the Hon. Mr. Dunford suggested, try to help the rich, The Minister of Mines and Energy has often said when dealing with succession duties that it is the Government's aim to take from the rich and give to the poor. Regrettably, we will always have poor people. The blue collar worker, who was once considered to be a poor relation, can now receive substantial superannuation and long service leave payments, which he should be free to give to his children, if he so desires, without losing some of his asset by the payment of taxes to the State.

The problem that the Act imposes on the people of South Australia is out of place in this decade. The duties payable on a deceased estate cause much hardship to a wide section of the community. The figures quoted by the Hon. Mr. DeGaris showing the percentage increase involved over the years lend weight to this argument. The real estate inflationary spiral has resulted in many estates having to pay succession duties because of the high value of the family home. Certainly, the Government has made remissions for the husband leaving to his wife the full value of his estate, and vice versa.

Ultimately, however, the duty on that estate could be payable to the State when the sole survivor died, or the sole survivor would have to pay gift duty to give away the surplus of that estate in his lifetime. This means that the Government receives this money one way or the other. It must be emphasised that many homes of modest design, classified as belonging to the working-class employee, are now caught because of the high land values.

The Hon. Mr. Dunford referred to farmers, and I should like to touch on the plight of primary producers. The payment of succession duties creates a serious problem for this part of the industry. Again, land values are high and, to the uninitiated, it would appear that the primary producer has terrific assets in the capitalist class.

However, it must be remembered that the primary producer has an average income lower than the basic wage. It is claimed that less than 10 per cent of arable land in South Australia receives 14 in. of rain a year. The remaining 90 per cent is marginal to pastoral land. If a farmer is lucky enough to own land which is capable of being cropped and on which sheep and cattle can be run, its value will always be high because of the supply and demand factor, when the availability of good land is so scarce.

The Hon. N. K. Foster: You've got to be joking on that, mate. You must be crazy. Go on!

The Hon. R. A. GEDDES: Obviously, the honourable member has not listened.

The Hon. N. K. Foster: Supply and demand doesn't determine the value, and you know it.

The Hon. R. A. GEDDES: I argue that it does, and I am speaking in support of that argument. Many farmers have sold out in recent years in South Australia because they could not afford to buy more land for their sons. These people have gone to other States and bought double the acreage in comparable rainfall areas where there is a similar type of soil. The fact that they have been able to do this for a reasonable price is proof of my argument.

The Hon. N. K. Foster: Tell us the number of people—

The Hon. R. A. GEDDES: For the Hon. Mr. Foster's benefit, I refer to 10 farmers in the hundred of Appila who have sold out in the past 20 years to go to other States and buy land. I will not, I am sure, hear any interjections from the Hon. Mr. Foster when I talk about the realistic attitude that the Government has taken regarding drought relief. This is the first time that such a degree of mercy has ever been shown to the primary producer in South Australia. This initiative should be carried on to a review of the Succession Duties Act, with a view to reducing and eventually eliminating succession duties.

Regarding the final part of the motion, I should like to argue about the difficulties being experienced in many rural council areas, where the rates and taxes have been increased, not because of the demands of electors in the council area involved for additional services but because of the additional costs being imposed on local government by the State Government. I refer to the hospital levy and the costs incurred under the Pest Plants Act, two examples of increased costs. Also, the Government's ridiculous aim to provide free library books to every man, woman and child in the State will ultimately impose another statutory levy on local government, for which the taxpayer will have to pay. This service has been provided for nearly a century by the Institutes Association, which asks for nothing more from one who wishes to borrow books than a payment of a subscription of only $5 a year.

Taxes such as gift duty and succession duty are taxes of a capital nature. With the changing style of the economy, it is not this aspect that makes the wealth of this State, as it did 50 or 60 years ago. I commend the Leader for moving the motion, which I support.

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

MINING ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from February 21. Page 1640.)

The Hon. R. A. GEDDES: I support the principles of this Bill, the amendments in which will have far-reaching effects on the future of the mining industry in South Australia. The Bill amends the Act to assist the miner of precious stones, and to give him some flexibility in his operations. The Council will recall the amendments to allow for strata titles in connection with the mining of precious stones, where a miner who wished to develop a mineral claim could have a lease underneath the precious stones lease.

The original amendment restricted the opal miner (precious stones) to a depth of 50 metres. However, like the agricultural industry, on which it is said that we cannot make a hard and fast statement, we cannot make a hard and fast statement on the mining industry. Consequently, clause 4 will permit regulations to be gazetted to allow an opal miner to explore below the 50 metres limit. At the same time, no strata title can be given to any other form of mining above the 50 metres depth.

Clause 12 gives more flexibility to the miner with a precious stones claim that will allow him to abandon his claim and immediately re-peg his claim, even though part of the old claim is included in the new area claimed, without having to apply to the Warden's Court. This was requested by the opal miners in the Andamooka and Coober Pedy area some time ago.

There are numerous other amendments, including a definition of "fossicking", which is in clause 3. By including this definition, it will now be legal for fossicking to take place as a recreational and non-commercial hobby. This must be wonderful news, and it is a shame that the press is too hide-bound to make a story of the many tens of thousands of tourists who have searched the dumps gouging for opals over the years and who all the time have been breaking the law.

Now, by the generosity of the Government, they will be able to search and fossick legally to their heart's content. I

suppose that the Minister considers fossicking to be a form of worker participation, and possibly he considers that this amendment could be used to regiment the fossickers on to boards, where they will be free to fossick as much as they like.

Clause 10 is interesting. It is headed "Retention of leases" and its objective is to allow the Minister to grant a retention lease for a registered claim where the holder is not ready to commence production, where the Minister considers it wise to defer the development of a mineral lease, or where the Minister thinks it neccessary to postpone the granting of a lease for the mining of radioactive materials. The three subclauses obviously are necessary because of the changing economic climate for the mining of minerals.

In the first instance, a company may have discovered an economic mineral area and may need time to raise sufficient finance to develop it further, or the market price for the mineral may be depressed, as is the copper market at present. The holder of the claim could lose it under the existing Act if he was not able to work it. He will now be able to apply for a retention lease and will not lose his legitimate claim. In the second instance, the Minister may consider that insufficient investigation has been carried out by the company concerned for the Minister to be able to determine what terms and conditions should be applied to the particular lease.

In the third case, authority is given to the Minister to defer the mining of radioactive minerals. This authority is considered necessary because at present the Federal Government has not announced its final plans for the mining and export of uranium. In a statement last year, headed "Uranium, Australia's decision", the Prime Minister (Mr. Fraser) stated:

> There shall be a uniform Australian code covering the mining and milling of uranium. The code will be mandatory and implemented progressively by legislation together with the States and Territories, commencing with the "Code of Practice on Radiation Protection in the Mining and Milling of Radioactive Ores" which has already been prepared and published by the Department of Health. The code of practice will be prescribed by Commonwealth legislation, but where State or Territory legislation has an equal or more stringent code, the Commonwealth legislation will be held in reserve and the administration of the code will be left entirely in the hands of that State or Territory.

Therefore, it is obvious that the Minister of Mines and Energy will have to comply with these instructions. One interesting feature of the retention of lease clauses is that the mining leases will be negotiable and transferable, which will give the mining industry, particularly uranium mining, the degree of flexibility necessary in these modern times. However, this is where the amendments to assist the mining industry cease.

The balance of the Bill deals with a radioactive mineral that the man in the street recognises by the name "uranium". Clause 6 gives the Minister complete control over the mining of all radioactive minerals, including full control over the disposal of any radioactive minerals that may be recovered during the course of mining for other minerals. The words in the Bill are much more sinister. They are:

> Provided that the radioactive mineral does not pass from the Crown and unless and until the Minister authorises the sale and disposal of the radioactive mineral.

The Government intends to restrict the freedom of the mining industry because of its deliberate moratorium on the sale and use of uranium, by a decision made at the Perth conference of the Australian Labor Party last year, when the Premier of this State seconded the motion to hobble the mining industry and to embarrass the Fraser Government in its desire to allow the mining and export of uranium. One could say that the A.L.P. was fossicking for votes at that time, but that Party fossicked with its head in the sand and did not receive any precious stones at the December 10 election.

The Hon. N. K. FOSTER: It is against Standing Orders to read a speech. Someone else has written it. I want a ruling on whether he is allowed to read that.

The PRESIDENT: The honourable member is making his speech in the same way as 98 per cent of members here make their speeches.

The Hon. N. K. FOSTER: That does not make it right. It is wrong, under Standing Orders, to allow him to read his speech.

The PRESIDENT: It is a longstanding practice in the Chamber.

The Hon. R. A. GEDDES: May I help the honourable member? I am using only copious notes. The import of the amendment to which I am referring can mean only one thing: already, the Western Mining Corporation has announced the discovery of significant deposits of copper in the Roxby Downs area, north-east of Woomera. The Minister has announced that this find, when developed, could rival the huge copper mine at Mount Isa, in Queensland.

Mixed with this copper ore are significant quantities of uranium. These minerals, in the ground, are as one. Every shovelful of ore will consist of a percentage of copper and a percentage of uranium, and if the company is to extract the copper from that ore, it will have to process the uranium and, having separated the uranium, it will then have to process it into what the trade calls "yellow cake".

Yellow cake comprises about 95 per cent pure uranium, and it is in this form that the uranium is being exported from Mary Kathleen in Queensland and from the stockpile at Lucas Heights in New South Wales.

However, in South Australia yellow cake will remain the property of the Crown. All the expense, the technical skills and the investment by the overseas investors and by private shareholders amounting to the millions of dollars required to get a mine into production will be in jeopardy because this uranium will be held and released only at the whim of the Minister, who is obviously under the direct control of his peers, the A.L.P. conference.

Further, there is nothing in the Bill to say that the Crown will hand the yellow cake back to the parent company. I should now like to give a hypothetical example. If the Minister in charge of the Bill in this Chamber, as a vigneron, built and paid for a winery to produce his wine, but the Government of the day believed that the drinking of wine was a health hazard or that wine drinkers made bad drivers, the Government could order the Minister's company to hand all the wine stocks to the Crown, so that the stocks could not be trucked or shipped interstate. The Government could refuse to allow any of that wine to be sold, which would mean that, although the growers had delivered the grapes and the grapes were processed and the wine was made, no payment whatever would be made.

The Hon. J. E. Dunford: The Minister has not made that point anywhere. He indicated that we could not have people dealing willy-nilly with the development of such a dangerous substance, that there must be controls. That is the Minister's intention, and I have read his speech in another place.

The Hon. R. A. GEDDES: I have not had the privilege of reading the Minister's speech, but I did preface my remarks by saying that this was a hypothetical example. The honourable member is concerned about uranium, but

many other people are concerned about the effects of alcohol. Both situations are relevant. Such an event would produce a violent reaction from all the growers involved, and the Government would be forced to reconsider its decision and at least agree to payment for wine stocks held by the Crown. Is that a ridiculous or impossible situation?

Nevertheless, this type of situation will arise and confront that section of the mining industry producing minerals containing uranium mixed in the principal ore body. South Australia hauled itself up from being dependent on a rural economy to finance its budget in past years by encouraging the manufacturing industry to invest and employ labour to strengthen the economy. It became no longer so dependent on one source of finance. It depended on primary industry and secondary industry, yet now the State's financial strength is being drained and once again we need to expand.

How best can we expand while still obtaining greater employment, more income for Treasury and more wealth to industry and the people? The mining industry and industries associated with copper and uranium mining, the development of a petro-chemical industry and the development of a uranium enrichment plant offer the most significant means of providing the type of economic security that this State needs to continue into the twenty-first century.

It is necessary for the Government to encourage these developments, rather than frustrate them. Our Government should be promoting and encouraging these companies to start operating in South Australia, rather than paying lip service by saying, "Yes, we will allow you to mine a mineral but, if it contains significant amounts of uranium after you process it, we will look after it for you, and you will not be allowed to sell it." This will turn back the clock, and people who have invested their funds in mining companies will not be impressed.

True, it may take the Western Mining Corporation many years to get started under its original plan, but I suggest that the company will not be enthusiastic to invest the many millions of dollars necessary when it realises the percentage of profits in stocks it will have to leave stacked, at its expense, with no market prospects because of the control the Minister will have over the uranium yellow cake that the corporation produced at its own expense.

The value of such stocks could amount to millions of dollars, and interest on such a sum would be significant to any country, and this could be a source of great embarrassment. Perhaps one way around this dilemma would be to amend the Bill to provide that this clause shall operate for one year only, say, to June 30, 1979, because by then this Government will have changed its mind about the mining and the sale of uranium. By then the unions, which are already divided, will have realised that uranium in the Northern Territory will be mined by non-union labour and, if the unions want to maintain their work force, they will have to comply with the Federal Government's plan.

The Hon. J. E. Dunford: Rubbish!

The Hon. R. A. GEDDES: I shall be pleased to see which of us is proved right in 1979. By then conservationists will by begging for the construction of conventional nuclear reactors so that the fast-breeder reactor will not be built. Already conservationists are advising their colleagues of the dangers of the fast-breeder, and are recognising that the conventional nuclear reactor, which has been operating safely and efficiently for 21 years, does not pollute the atmosphere as much as a coal-fired power station.

It is interesting to note that even coal has radio-active substances which are expelled into the air that we breathe and which fall back to earth and are absorbed by the plants eaten by man. In 16 months this Government will be forced to stop fossicking with the future prosperity of South Australia, and this clause will be redundant. Why have it at all?

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

UNIVERSITY OF ADELAIDE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from February 21. Page 1639.)

The Hon. J. C. BURDETT: I support the second reading of the Bill, and I support the greater part of the Bill, which has been adequately explained by several speakers. My only concern is the consequence of the compulsory union fee. I am satisfied that it is necessary for the fee to be paid, but I am concerned that part of the moneys compulsorily levied could be and indeed are used to support bodies that are largely concerned with political matters, and that the silent majority of students, without going to lengths to which they are not prepared to go, have little say in the matter.

I agree wholeheartedly with the first part of the Hon. Mr. Carnie's speech (indeed, I agree with it all), but he made a particularly cogent point when he said that there was no way in which Parliament, and this Council in particular, could be treated as a rubber stamp in relation to this or, indeed, any other Bill. The concept that we should have a bit of a look at the Bill and then pass it despite whatever we think about it is completely untenable to me. I support strongly the principle of the autonomy of the university. However, when the university needs to have a Bill passed to govern its activities, it must be recognised that the responsibility for that Bill rests with Parliament.

Parliament cannot be deprived of its right and duty to consider legislation brought before it. This Bill seeks to change the law, and the only body charged with the responsibility of changing the law is the Queen in Parliament. The Parliament must have the right of passing, rejecting or amending this Bill, in the same way as with any other Bill. Most honourable members accept that a major role of this Council is that of a House of Review. This Council, in particular, has a right and a duty to scrutinise this and any other Bill and to act on legislation in accordance with its scrutiny. My only concern is with clause 15 in so far as it provides for a new section 22a. This, in the practical circumstances that exist, provides for a compulsorily extracted union fee. I suppose my concern is not so much with the provision itself as with its consequences if these consequences are not controlled, and they are not controlled in the Bill as it now stands. In dealing with this Bill, the Hon. Mr. Sumner said:

> I am sure that that attack upon the compulsory levying of the union fee will create a chaotic situation within the university. It will certainly be a break with tradition.

That is the first indication I have seen that the Hon. Mr. Sumner is a hide-bound traditionalist, although I have recently suspected it on several occasions. The union fee has indeed been compulsorily collected for a long time. The Hon. Mr. Sumner mentioned 1961 as being the year when he first went to Adelaide University. The same applied when I first went to that university in 1946. But I am not complaining about the compulsory collection. If one wants to speak about tradition, let me point out that in 1946 nothing like the present proportion of the compulsorily collected fee was spent on the kind of political junketings that are funded from the fee

nowadays. It is in this area that the change has come, and this is what I am objecting to. Change is not necessarily wrong, although the Hon. Mr. Sumner seems to think that there is much merit in adhering to tradition. If we adhere to traditionalism, we adhere to all of the tradition. The Hon. Mr. Sumner also said:

> As far as I can remember, I commenced at university in 1961, and I undertood that the union set-up at Adelaide University had been the same as it was at that time for many years before that, so it would be a considerable break with the practice that has existed, without criticism, so far. Without the compulsory levy, how can a university maintain the refectory, the theatres, the sports grounds and all the activities considered to be legitimate by most people? There is an enormous investment in building through the university union on the campus, running into millions of dollars.

I do not object at all to there being a compulsory fee and to its being spent on amenities. It is when it is spent on other things that I have doubts and reservations. The activities of A.U.S. are considered to be totally irrelevant by most students. In support of this kind of argument, the Hon. Mr. Hill quoted from an article in the *Bulletin* of February 7, written by Malcolm Turnbull. That article states:

> The A.U.S. council heaved with paranoia. Many delegates refused to talk to "the traitor capitalist press". One journalist was asked to surrender his tape recorder to the Chairman for fear that he would record the delegates' deathless words. Sleepless is a better adjective. The council met for nearly 20 hours a day for 10 days. The debate last Tuesday night on the travel company troubles lasted until 6.30 a.m. They then adjourned until 9 a.m.
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> It was a sterile forum. The longest and most heated debates were those concerned with the alleged misdeeds of A.U.S. officials. The debates on policy were just battles of rhetoric, devoid of ideas. It was hard faced and grim, more like the meeting of corrupt municipal wire pullers than a gathering of the idealist leaders of the nation's intelligentsia . . .
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> The delegates seemed more intent on attacking each other and the floor was awash with leaflets defaming everyone from the N.C.C. on the right to the Maoists on the left. As one of the leading Maoists at the conference remarked: "A.U.S. is in imminent danger of going from a skeleton to a corpse." And if it does, there will be precious few mourners at the graveside.
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> Not many student mourners, that is. The real power in student politics is being exercised from outside the universities and colleges. The various communist groupings, the National Civic Council, the politicians and the judges are the ones who are really concerned. The simple statistic that less than 10 per cent of students bothered to vote for their campus delegation to the A.U.S. council is eloquent testimony of the monumental apathy.

The Hon. Mr. Sumner and the Hon. Miss Levy have rightly pointed out that students may, by their votes, withdraw the Adelaide campus from A.U.S., but the apathy in student voting is enormous. Many students are understandably preoccupied in getting an education, working hard at their studies, passing at a high level, and, among other things, qualifying themselves for a gainful occupation. The funds compulsorily collected are disbursed at the direction of a few. The majority are loath to go to the trouble of exercising their rights over this expenditure, and they should not have to. A university is not a body politic: it is not a Government. Students should be entitled to concentrate, if they wish, mainly on their studies, without having the fees (compulsorily collected from them) spent outside the university in ways which they consider to be totally irrelevant to them. The problem is difficult. Students should have the right to control their own affairs, but it should be a real right when it comes to massive disbursements of funds which they have been compelled to pay.

One method might be to provide that, before any of the bodies affiliated with the union makes any expenditure exceeding a stated figure, other than for goods and services, to bodies outside the university, notice of such intended payment should be posted on the notice board and published in the usual ways for, say, five academic days. During that time, students could call for a special meeting in accordance with the constitutional requirements of the student bodies. This is, of course, identical with the present at least theoretical position, except for the requirement of notice before (and I stress "before") the payment is made.

This is similar to the Parliamentary requirements in regard to regulations, which must be laid on the table for 14 sitting days and may be disallowed by notice moved during that time. The student body would, in effect, be given the right of disallowance of expenditure for purposes outside the university. In any event, I will in the Committee stage consider any amendments that may be made in this regard to try to solve what I think is a difficult problem. I support the second reading.

The Hon. D. H. LAIDLAW secured the adjournment of the debate.

MOTOR FUEL RATIONING BILL

Adjourned debate on second reading.

(Continued from February 21. Page 1637.)

The Hon. M. B. DAWKINS: I rise to support the second reading of this Bill with some reluctance because of the regret I have that it is apparently necessary to introduce legislation such as this. It is vitally important, as the Hon. Mr. Geddes said yesterday that the continuation of essential transport be maintained in times of fuel shortage. Locally produced motor fuel is dwindling and, failing the finding of further significant quantities of oil, we will be in an increasingly vulnerable position. South Australia could find itself in a particularly difficult situation, both in availability of supplies and in increasing costs of same. We have still to come to grips with the situation in this country, and I agree with the Minister when he stated:

> However, this State's reliance on petroleum products as a major source of energy makes it extremely vulnerable should the provision of such products cease or be severely restricted.

I agree with that entirely, and I agree with the comments made by my colleague yesterday, when he said:

> Union leaders, who know that they hold the handle of the whip and regardless of the consequences of their actions can hold the State to ransom.

It is not often that I quote my colleagues verbatim, especially on the day after they have made the comment, but I quote the Hon. Mr. Geddes because he says exactly what I believe and in words I could not improve upon. I underline the comments he made yesterday, to this effect, when he said:

> Because the Government lacks the courage to grasp the nettle, it has conveniently omitted to give itself the power to compel the members of the work force, whether they work at the refinery or in delivering refinery products to the hundreds of petrol outlets, to continue to supply the motor fuel. Therefore, in my opinion, the Bill is a farce. It has gums but no teeth.

The Hon. N. K. Foster: Did the honourable member say "guns" with no teeth?

The Hon. M. B. DAWKINS: My colleague said "gums".

It is difficult to get through to the Hon. Mr. Foster. I have found in the past that that is the case. I turn to the clauses of the Bill. First, my attention is directed to clause 7 (1) which states:

> The Minister may, in relation to a rationing period, in his absolute discretion, by notice in writing, authorise a person to sell or deliver rationed motor fuel to another person notwithstanding that the other person is not a permit holder.

I take up the words "or deliver". In the case of a transport strike, over which the Government has no control—

The Hon. N. K. Foster: Both Federal and State.

The Hon. M. B. DAWKINS: —how can this person deliver the petrol unless he is to be regarded by the union as a strike-breaker? Will the Minister explain that situation which is difficult for the person who has the permit and is required to deliver rationed motor fuel to another person, notwithstanding that that person has no permit? I believe there is not sufficient protection for the service station proprietor in this clause; it needs specific safeguards in regard to price and method of payment. A service station proprietor must not be forced to sell or transfer fuel without positive assurance of being paid. It is possible for a service station proprietor to have large amounts of fuel, running into thousands of gallons, for which he would normally be reimbursed by the travelling public and for which he is bound to pay, and he has no means of paying if he is to be restricted in the sale of that fuel.

The clause could include a provision that the Minister will direct that fuel be shifted from sites not permitted to trade to those that are permitted to do so. This will prevent companies filling their own sites first and give the non-trader some opportunity to clear stocks to cover funds. Will the Minister be prepared to do this? I should like to think that he at least would consider it. Clause 9 (1) states:

> A person shall not, during a rationing period, use, or cause, suffer, or permit another person to use, rationed motor fuel sold under a permit for a purpose, other than a purpose, if any, specified in a condition contained in that permit or a purpose necessarily incidental to that purpose.

That typical legal jargon is difficult to understand, but what worries me particularly about that, because the rest of it is confusing, is "purpose necessarily incidental to that purpose". Who decides what is the "purpose incidental to that purpose"? The penalty for disobedience there is $1 000. I do not complain about it now, but I should like the Minister, when he reples, to give some explanation of that clause. I have had it submitted to me that clause 13 goes too far, that it interferes with the freedom of the individual. It provides:

> (1) A member of the police force may during a rationing period—
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> *(a)* request the driver of a vehicle on a road to stop that vehicle;
>
> or
>
> *(b)* ask a driver or the person apparently in charge of a vehicle (whether on a road or elsewhere) questions for the purpose of ascertaining the name and place of residence or place of business of that driver or person or of the owner of the vehicle and questions relating to any motor fuel in or on the vehicle including questions relating the circumstances in which the motor fuel was obtained.

As I have said, I have had it put to me that that is an intrusion on freedom.

The Hon. N. K. Foster: For people who sent troops to Vietnam, that is an under-statement.

The Hon. M. B. DAWKINS: Instead of interjecting, the honourable member should listen and find out what I think about it. I doubt whether that would be an infringement of freedom in the circumstances that would obtain when this legislation came into force, because it would be put into force in a period of real difficulty. Therefore, I doubt whether in those circumstances this is an unreasonable infringement of freedom. However, having had it brought to my notice, I bring it to the notice of the Council.

As regards clause 14, I content myself by saying that I agree with the comments of the Hon. Mr. Geddes yesterday, especially having regard to the higher penalty involved. Clause 14 (1) provides:

> A person shall not make any statement or representation whether express or implied that is false or inaccurate in a material particular in connection with an application for a permit.

I believe that the word "knowingly" inserted before "make" would be some let out for a person who might inadvertently make a false declaration in good faith. The Hon. Mr. Geddes made a point regarding the high penalty of $1 000, which is the maximum penalty in this case. I should like briefly to refer to clause 15, subclause (1) of which provides as follows:

> In this section, "bulk fuel" means rationed motor fuel in a container having a capacity of not less than 180 litres.

I cannot for the life of me understand why the quantity of 180 litres is mentioned because, to my knowledge, no container of that size is available. The obvious container that would be used in times of difficulty would be what we used to know as the 44-gallon drum, which contains about 200 litres. I cannot see why the Government has referred to the quantity of 180 litres.

Of course, 44-gallon drums have to a considerable extent gone out of fashion, and many people in the more remote areas have tanks. There is no doubt that, under the emergency conditions in which this legislation will operate, drums will have to be used more than they are used at present, and it is obvious that 44-gallon drums would be the containers to be used. I suggest to the Government that an obvious alteration to this clause would be to amend the figure to the appropriate quantity, which is about 200 litres. This would equate with the 44-gallon drums that are available. I now refer to clause 18, regarding which I have received representations that might well be put to the Minister. That clause provides as follows:

> No proceedings of any kind shall be instituted or heard in any court in respect of any act or decision of the Minister or any person authorised by him in the exercise or purported exercise of his powers under this Act.

It was suggested that the words "any person authorised" should not be included in the clause. People unfamiliar with the methods of framing legislation could be concerned about the words "any person". I bring this matter to the Minister's notice. He may be able to give an assurance that "any person" will be a fit and proper person authorised by the Minister to administer the powers contained in the Act, and that no problems will be experienced regarding this clause. I hope that he can give me an assurance in terms of what I have suggested. Clause 21, the only other clause to which I wish to refer, provides as follows:

> Notwithstanding anything in paragraph *(a)* of subsection (3) of section 50 of the Prices Act, 1948-1976, the punishment for an offence alleged to have been committed during a rationing period and prosecuted summarily that is a contravention or failure to comply with subsection (1) of section 25 of that Act, where that offence related to declared goods being rationed motor fuel, shall be a fine not exceeding $1 000 or imprisonment for a term not exceeding six months or both.

That would, I believe, be a proper penalty in the case of profiteering. I share the concern expressed by the Hon. Mr. Geddes regarding service station proprietors who are at present charging 20·4c a litre for super grade petrol. They are charging this sum as the proper retail price. However, some oil companies have service stations that are doing better or worse (depending on how one looks at the matter) than the Hon. Mr. Geddes said. He referred to a figure of 15·7c, but I know that some service stations are charging only 15·4c. This means that the average service station proprietor is charging 5c a litre more than are some oil company service stations. I hope that the Minister will be able to assure the Council that there will be no suggestion of profiteering in that regard, and that proper safeguards will be provided for members of the Service Station Proprietors Association.

In closing, I should like to refer to the penalties prescribed in the Bill. In many cases, the penalty is $1 000, and in clause 21 it is that sum or a maximum term of imprisonment of six months, or both. That penalty may seem high. However, I could not dispute that such a maximum penalty might be necessary in the emergency situations that could obtain if this Bill is passed and its provisions had to be implemented.

I note the limitation of 30 days. If any difficulty that is experienced continues for longer than that, Parliament will have to be recalled. I suggest that, if we got into difficulties of that sort, which lasted for 30 days or more, we would be in considerable strife indeed. Probably, the 30-day period is a little long before it would be necessary to recall Parliament. With some reluctance, but because of the regrettable necessity to introduce this Bill, I support the second reading.

The Hon. A. M. WHYTE secured the adjournment of the debate.

LAND SETTLEMENT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from February 21. Page 1627.)

The Hon. C. M. HILL: I support the Bill.

The Hon. M. B. DAWKINS: After that profound speech from my colleague, I want to say a word or two in support of the Bill. The Land Settlement Committee was formed in, I think, 1945, after enabling legislation was passed. The preamble of that Act is as follows:

> An Act to provide for the establishment of a Parliamentary committee on land settlement and for the acquisition, improvement and closer settlement of under-developed lands, and for purposes incidental thereto.

I suggest that over the years the Land Settlement Committee has done much valuable work. Unfortunately, it has been allowed to go somewhat to seed under the present Government. The settlement in Western Australia in recent years (indeed, until about two or three years ago) was proceeding at the rate of 400 000 hectares a year. Unfortunately, in South Australia there would not be much more than 400 000 ha of land all told in the State that could still be settled. Much of this land has been dedicated by the Government as national parks. I am not against the dedication of national parks, although I consider it important that some consideration should be given to land that could be developed, and to whether it should be national parks or be developed for primary production.

However, as a former member of the Land Settlement Committee who was on the committee for eight years and Chairman for two years, I know of some of its frustrations under the present regime. About three years ago, the committee sought to have investigated areas on Southern Eyre Peninsula and, I think, in County Chandos, just to give two cases, with the idea of providing further settlement there. The Hon. A. F. Kneebone was Minister of Lands at the time, and, let me say, he was always a considerate gentleman and a person whom some of the present members of the A.L.P. could emulate.

However, all that we got from that Minister was sympathy: that was all he could give us, and there was no action. Unfortunately, that has been the pattern in land development under this Government. Therefore, at present the committee is little more than a rubber stamp for the provisions of the Rural Assistance Guarantee Act. However, in more propitious circumstances and under an enlightened Government, the committee may well become a valuable Parliamentary committee again.

I am pleased that section 2 *(a)* of the Act has been repealed. Under that section, the committee completed its life last December (the matter has been overlooked for rather longer than was necessary), but there will now not be any provision that the committee will cease to exist on a certain date as was the case for a long time previously. I am pleased that the Government has taken that action and I hope that, in more advantageous circumstances, it may be possible for this Government or future Governments to do more for land settlement in the State. For that reason, I support the Bill.

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

CONTRACTS REVIEW BILL

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

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

That this Bill be now read a second time.

The present law of contract reflects the nineteenth century philosophy of *laissez-faire*. It is largely based upon the assumption that everyone is free mutually to agree upon the terms of his contracts and, consequently, once agreed upon, those terms, interpreted objectively, are applied literally and enforced by the courts. This theory assumes that the parties enter into their contract from a position of equal bargaining strength. The principles of freedom of contract and sanctity of contract have little merit in 1977. In this age of big business and standard-form contracts, equality of bargaining power rarely exists. The consumer or small businessman is not able to negotiate the terms of his contract with a supplier of goods or services. His only "freedom" is to sign the contract offered to him, or go elsewhere.

In fact, going elsewhere will generally make no difference, as he will inevitably be offered yet another standard form contract. Consumer protection legislation recognises the practical limitations on the theoretical freedom of contract. It recognises that the consumer is in an inferior bargaining position and needs the protection of the law. The Government believes that a party ought not to be bound to harsh and unconscionable terms in a contract to which, in his inferior bargaining position, he has "agreed". The courts have provided relief in certain sorts of unconscionable bargains but judicial innovation is too slow to take account of the reality of twentieth century conditions.

The draft Bill confers on courts a new and wide discretion to strike down, or modify, unjust contractual provisions. Moreover, it contains a power enabling the Supreme Court on the application of the Attorney-General to grant an injunction against persons who

habitually embark upon commercial conduct that leads to the formation of unjust contracts. The Bill is to some extent based upon the very valuable work done by Professor J. R. Peden, who has prepared a report on this subject for the Attorney-General of New South Wales. I ask leave for the explanation of the clauses to be inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 sets out the various definitions necessary for the purposes of the new Act. The definition of "contract" is wide enough to embrace arrangements consisting of inter-related series of contracts or agreements. Such arrangements may occur in hire purchase transactions and in a number of other commercial contracts. The definition is designed to enable the court to look at such an arrangement as a whole to determine the effect of individual contractual provisions within the context of the total scheme.

Clause 4 provides that the new Act will bind the Crown. Clause 5 provides that the new Act will have effect notwithstanding the provisions of the Real Property Act. Clause 6 deals with the application of the Act. The Act will not apply to a contract made before the day on which the Act comes into operation. However, where an existing contract is varied the Act will apply in respect of the variation.

Clause 7 sets out the powers of the court in relation to an unjust contract. Subsection (1) enables the court, subject to limitations designed to ensure justice between all parties, to declare a provision or the contract void, or alternatively to vary the terms of a contract. The court is empowered to make ancillary orders in order to give effect to a variation in the contractual terms. It should be noted that in determining whether a contract is unjust, the court is not entitled to take into account any injustice that would not, at the time of the formation of the contract, have been foreseeable. A court may exercise the powers conferred by the Act in any proceedings founded on the contract. An aggrieved party may additionally institute proceedings of his own motion.

These proceedings must be commenced, according to the value of the consideration passing under the contract, either in the Supreme Court or a local court but, when the proceedings relate to an industrial matter, they may be instituted in the Industrial Court. The court is not to grant relief under the new provisions in respect of a contract that has been fully executed unless it is satisfied that it is reasonable in the circumstances of the case for the proceedings to be instituted after the execution of the contract and that the proceedings were commenced as soon as was reasonably practicable in all the circumstances of the case.

Clause 8 enables the Supreme Court, on the application of the Attorney-General, to grant an injunction against a person who has embarked, or is likely to embark, on a course of conduct leading to the formation of unjust contracts. The Supreme Court may prescribe or otherwise restrict the terms upon which the defendant may enter into contracts of a stipulated class. Clause 9 prevents persons from contracting out of the provisions of the new Act. It also provides that no estoppel arises from any acknowledgment, statement of representation of a party to a contract or any action taken with a view to performing an obligation arising under the contract. Clause 10 deals with the onus of proof. Clause 11 provides that the new Act will not apply to agreements settling claim for relief against unjust contractual provisions. Clause 12 provides that the new Act will not limit the effect of existing laws.

The Hon. J. C. BURDETT secured the adjournment of the debate.

RESIDENTIAL TENANCIES BILL

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

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

That this Bill be now read a second time.

It proposes a substantial revision of the law regulating the relationship of landlord and tenant in respect of premises occupied for residential purposes. It is a significant measure. It is the first attempt in Australia to legislate comprehensively for reform of the resident landlord and tenant relationship. It is the result of over two years work, involving the close study of similar Canadian legislation and overseas and Australian reports calling for long-overdue reform, and consultation with both landlords and tenants. The Government especially appreciates the co-operation and support of the Real Estate Institute in the preparation of the Bill.

In particular, the Bill relies upon the recommendations of the report of A. J. Bradbrook, M.A., LL.M., entitled "Poverty and the Residential Landlord-Tenant Relationship" prepared for the Australian Commission of Inquiry into Poverty, and the Law Reform Committee of South Australia in its thirty-fifth report relating to standard terms in tenancy agreements. Conversely, it is significant that British Columbia has just passed a Residential Tenancy Act which relies heavily on our work in preparing this Bill.

Housing is a basic human need. In our society, all people need to obtain, and to be reasonably secure in, housing of an acceptable standard. It is a crucial Government responsibility to see that this need is met. The present law is not assisting the meeting of this need.

From the point of view of tenants, the present law in this area does not recognise the inequality of bargaining power of landlords and tenants in respect of their agreements. A tenant has no security of tenure, his common law rights can be abrogated by standard-form agreements, there is no limitation or protection of the moneys he must pay as a security bond, and the Excessive Rents Act offers little protection, because of the expensive court procedures involved.

Landlords, although usually in a position to require their tenants to enter into agreements that are weighted in their favour, suffer from the complexities of the present law and the time and expense involved in legal proceedings, particularly in evicting tenants.

It can be argued that the existing law is a factor in reducing the availability of rental accommodation. A potential landlord, confused as to his rights and obligations under a tenancy agreement, may be reluctant to rent his premises. If he does, he will resort to a standard-form agreement which allows termination for any breach and purports to exclude or minimise his obligations, as much to clarify his situation at law, as to protect his premises.

An informed potential tenant is likely to be deterred from signing such an agreement. Any potential tenant will find a substantial security bond which is forfeited for any breach whatsoever a deterrence, or the fact that he has no security of tenure, no ready procedure to question excessive rent increases, or no right to require premises to be in a reasonable state of cleanliness or repair. He is

likely to seek home ownership in preference, often at a time when he cannot afford it.

The Government recognises that private tenancy arrangements are important in accommodating South Australians. It recognises that most such arrangements are entered into and carried out in a spirit of co-operation and harmony. This Bill should in no way deter parties who accept reasonable obligations, while protecting good tenants against unscrupulous and dishonourable landlords, and reasonable landlords against unfair tenants. It proposes to reform unsatisfactory law and provides:

(1) a fair and inexpensive settlement of disputes between the parties to a residential tenancy agreement; and

(2) a clarification of the rights and obligations which should reasonably exist for both landlords and tenants so as to protect the legitimate interests of both parties.

The Commissioner for Consumer Affairs is, under Part II of the Bill, given the administration of the measure and empowered to advise tenants, investigate complaints by tenants, and assume the conduct of legal proceedings on bahalf of tenants.

Part III of the Bill provides for the establishment of a tribunal, entitled the Residential Tenancies Tribunal, which is empowered to determine any matter arising out of a residential tenancy agreement. The jurisdiction of the tribunal is to be exclusive in respect of any claim arising out of a residential tenancy agreement for an amount not exceeding $2 500. It is intended that the tribunal function in a manner similar to the Local Court in its small claims jurisdiction and provide a relatively informal speedy and inexpensive means of justly resolving disputes.

Part IV of the Bill provides a statutory code of the fundamental rights and obligations of landlords and tenants under residential tenancy agreements. The amount of any security bond under a residential tenancy agreement is limited under that Part to an amount not exceeding three weeks rent under the agreement. Security bonds are to be paid into the tribunal and not retained by landlords. Rent under a residential tenancy agreement is to be subject to an increase not more frequently than once every six months and only after the tenant has been given 60 days notice of the increase. The tribunal is to be empowered to determine, upon application by a tenant, whether rent is excessive and, if so, to fix the maximum rent. This approach to the fixing of maximum rents corresponds in most respects to that under the Excessive Rents Act, 1962-1973, the repeal of which is provided for by the Bill. Statutory terms applying to every residential tenancy agreement are also set out in Part IV regulating the tenant's conduct on the premises, repair and upkeep of the premies, the landlord's right of entry on the premises, and other matters which will be explained in more detail in the explanation of the clauses included in that Part.

Part V of the Bill regulates termination of residential tenancy agreements. The provisions of this Part are designed to achieve a balance between the rights of the landlord in the disposition of his property and the rights of the tenant to be given adequate forewarning of the need to find a new place of residence. In this light—

(1) the landlord is to be able to terminate an agreement, where the tenant has breached a term of the agreement, by giving not less than 14 days notice to the tenant;

(2) where a tenant has caused or is likely to cause serious injury to person or property, the landlord may, by application to the tribunal, obtain an order terminating the agreement and an order for possession of the premises of immediate effect;

(3) the landlord may determine an agreement where he requires possession of the premises for demolition or substantial renovation, for occupation by himself or a member of his immediate family, or for any of certain other specified reasons, by 60 days notice to the tenant;

(4) a residential tenancy agreement is to be determinable by a landlord by not less than four months notice to the tenant where there is no reason.

Finally, the tribunal is to be empowered to terminate an agreement where the landlord is able to satisfy the tribunal that, if he is required to terminate the agreement by giving notice of the periods mentioned above, he will suffer undue hardship. This scheme, which has been outlined in broad terms only, will, I believe, achieve a proper balance between the interests of the two parties to residential tenancy agreements and provide the flexibility necessary to meet the many varying situations that arise in this context.

Part VI of the Bill provides for the establishment of a fund, to be entitled the Residential Tenancies Fund, into which will be paid security bonds and any other moneys paid into the tribunal. It is proposed that the fund will be invested and the income derived from the investment will be applied towards losses suffered by landlords through damage caused to their premises by tenants and for other appropriate purposes approved by the Minister. In summary, this Bill, if passed will serve as a model for other States to follow as a reasonable and moderate reform of landlord and tenant law, of assistance and benefit to both parties. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal, and clause 2 provides that the measure shall come into operation on a day to be fixed by proclamation. Clause 3 sets out the arrangement of the measure, and clause 4 provides for the repeal of the Excessive Rents Act, 1962-1973. Clause 5 sets out definitions of terms used in the Bill. "Residential premises" are defined as any premises that constitute or are intended to constitute a place of residence. "Residential tenancy agreement" is defined to include licences in addition to leases. This is considered necessary in order to eliminate a means of avoiding the application of the measure. The inclusion of licences has in turn created a problem, in that rights of occupancy in hotels, boarding houses and other similar places are usually granted by way of licences, but clearly should not be regulated by this measure. This problem is resolved partly by the fact that the Act applies only to occupation for the purpose of residence and partly by subclauses (2) and (3) of clause 6.

Subclause (1) of clause 6 provides that the measure shall apply to residential tenancy agreements entered into, renewed or transferred after its commencement. Subclause (2) excludes from the application of the Act certain classes of residential tenancy agreement. Subclause (3) excludes from the application of the Act certain classes of premises. Clause 7 provides that the application of any provision of the measure to any residential tenancy agreement or any residential premises may be modified by regulation. Clause 8 provides that the Commissioner for Consumer Affairs shall have the general administration of the Act and clause 9 provides that the Commissioner may delegate any of his powers.

Clause 10 provides that the Commissioner may carry out research and disseminate information in respect of matters affecting tenants, advise tenants, investigate complaints from tenants and prosecute offences. In addition, the Commissioner may assume the conduct of legal proceedings on behalf of tenants. The provisions of this clause are similar to the provisions in the Prices Act, 1948-1976, setting out the functions of the Commissioner in respect of consumers generally. Clause 11 protects the Commissioner or his delegate from personal liability for acts or omissions in good faith in the course of his duties. Clause 12 requires the Commissioner to prepare an annual report for the Minister and for it to be laid before Parliament.

Part III of the Bill provides for the establishment and functions of the Residential Tenancies Tribunal. Clause 13 provided for the establishment of the tribunal and the appointment of members of the tribunal. Clause 14 provides for the remuneration and expenses of members of the tribunal. Clause 15 provides for the appointment of a registrar and deputy registrars of the tribunal. Clause 16 provides that the registrar or a deputy registrar of the tribunal may, subject to any directions of the tribunal, exercise the jurisdiction of the tribunal in respect of any matters of a class prescribed by regulation.

Clause 17 protects members of the tribunal and registrars from personal liability for acts or omissions in good faith in the course of their duties. Clause 18 provides for declaration of declared areas by the Attorney-General, and clause 19 provides for an office of the tribunal and, where declared areas are declared, an office in each declared area. The clause provides that proceedings must be instituted at the office of the tribunal for the declared area in which the premises the subject of the proceedings are situated. Proceedings of the tribunal are to be heard by members nominated by the Attorney-General and at times and places directed by him. Members of the tribunal may hear different proceedings contemporaneously.

Clause 20 provides that the tribunal is to have exclusive jurisdiction in respect of any matter that may be the subject of an application to it. However, where the applicant claims an amount exceeding $2 500, the tribunal may not hear the application unless all parties consent to it doing so. Clause 21 provides that the tribunal may hear and determine applications relating to any dispute arising out of a residential tenancy. Upon such applications the tribunal may make orders in the nature of an injunction or specific performance or order the payment of compensation.

Clause 22 sets out the manner and form of applications to the tribunal. The procedure envisaged is informal in nature requiring no pleadings as such, other than the initial application form. Clause 23 sets out the procedural powers of the tribunal such as power to issue a summons, and power to take evidence on oath or affirmation. The clause provides that the tribunal shall not be bound by the rules of evidence. Clause 24 provides that a party to proceedings shall not, except in certain limited circumstances, be represented or assisted in the presentation of his case by another person.

Clause 25 provides that the tribunal may settle matters in dispute before the tribunal by conciliation. Clause 26 provides that the tribunal shall not award costs in respect of any proceedings unless all the parties were represented by legal practitioners and the tribunal is of the opinion that there are special circumstances justifying the award of costs. Clause 27 provides that the tribunal may reserve any question of law for the decision of the Supreme Court and that the costs arising therefrom shall be borne by the State. Clause 28 provides that orders of the tribunal shall be binding and not subject to appeal.

Part IV of the Bill, comprising clauses 29 to 57, deals with the rights and obligations of landlords and tenants. Clause 29 prohibits any requirement or receipt by a landlord of any payment by a tenant other than rent and a security bond, that is, payment of a fine or premium. Clause 30 prohibits requirement or receipt by a landlord of more than two weeks rent in advance at the commencement of a tenancy. Clause 31 provides that only one bond may be required and that the bond must be not more than three weeks rent. Subclause (2) provides that any person who receives a security bond must pay the bond into the tribunal within seven days of his receipt of the bond or in the case of licensed land agent within 28 days.

Clause 32 regulates the manner in which security bonds may be paid out by the tribunal to the parties to a tenancy agreement. Clause 33 regulates the manner in which the amount of the rent under a tenancy agreement may be increased by a landlord. The clause provides that the rent may be increased by the landlord every six months after giving to the tenant not less than 60 days notice in writing of the amount of the increased rent, but not otherwise. This right to increase rent applies to a fixed term tenancy if a right to increase rent is reserved by the landlord under such tenancy and, in any case, is subject to any agreement restricting the right.

Clause 34 provides that the amount of a security bond may be increased by the landlord where the rent has increased. This may be done not more often than every two years and by giving the tenant not less than 60 days notice in writing of the amount of the increase, but not otherwise. The amount of the security bond may not be increased to an amount exceeding three weeks rent at the current weekly rental. Clause 35 provides that a tenant may apply to the tribunal for an order declaring his rent to be excessive. Where the tribunal finds, having regard to criteria set out in the clause, that the rent is excessive, it may fix the maximum rent payable in respect of the premises. Orders fixing maximum rents are to have effect for a period of one year. This scheme corresponds to the scheme under the Excessive Rents Act, 1962-1973. The scheme under that Act has been rarely used, but it is thought that this has been because of ignorance of its existence and the time and expense involved in the legal proceedings necessary under it.

Clause 36 provides that a landlord must ensure that his tenant is given a receipt for rent paid within 48 hours of its payment, but that a licensed land agent need only do so upon request. Clause 37 requires a landlord to keep proper records of rent paid under the agreement. Clause 38 provides that a landlord must not require payment of rent by post-dated cheque. Clause 39 provides that rent payable under a tenancy agreement accrues from day to day and shall be apportioned upon termination of the agreement. Clause 40 prohibits distress for rent under residential tenancy agreements.

Clause 41 provides that it shall be a term of every residential tenancy agreement that the tenant shall keep the premises in a reasonable state of cleanliness, notify the landlord of any damage to the premises and not intentionally or negligently cause or permit damage to the premises. It is thought that this obligation as to damage to the premises more closely accords to the understanding of parties to a residential tenancy agreement as to their moral responsibilities than the wider obligation usually placed upon a tenant to repair certain damage not caused by him. Clause 42 provides that a tenant shall not use premises for illegal purposes, cause or permit a nuisance or cause or permit any interference with the use of adjacent premises occupied by the landlord or another tenant of the landlord

in reasonable peace, comfort and privacy. Clause 43 provides that the tenant shall have vacant possession of the premises on the day on which he is entitled to enter into occupation of them. Clause 44 provides that a landlord shall not grant a tenancy knowing that during the period of the tenancy the premises will not be lawfully usable for residential purposes.

Clause 45 provides that the landlord shall provide the premises in a reasonable state of cleanliness, that he shall keep the premises in a reasonable state of repair having regard to their age, character and prospective life, that he shall compensate the tenant for repairs that the tenant makes in an emergency where the tenant has not given the landlord notice of the state of disrepair but has made a reasonable attempt to give such notice and that he shall comply with all statutory requirements applying to the premises. Again most reasonable landlords regard themselves as obliged to keep premises in a reasonable state of repair, even though it may be the case that their formal agreements place that obligation on their tenants. Subclause (3) provides that this obligation does not apply to premises the subject of an order under Part VII of the Housing Improvement Act, 1940-1977, fixing the maximum rent in respect of the premises.

Clause 46 extends the usual obligation upon the landlord that the tenant's enjoyment of the premises shall not be interfered with by providing that there shall not be interference by a person having superior title to that of the landlord or any interference with the tenant's use of the premises in reasonable peace, comfort and privacy. The landlord is also obliged by this clause to take all reasonable steps to ensure that other tenants of his do not interfere with the tenant's use of the premises in reasonable peace, comfort and privacy. Subclause (2) provides that it shall be an offence for a landlord to so interfere with the tenant's peace, comfort and privacy as to amount to harassment of the tenant.

Clause 47 requires landlords to provide and maintain such locks or other devices as are necessary to keep the premises secure and prohibits alteration of the locks by either the tenant or the landlord without the other's consent. Subclause (2) provides that it shall be an offence for either the landlord or the tenant to alter the locks without the other's consent. Clause 48 regulates the manner in which a landlord may enter the premises while the tenant is in possession of the premises. The clause provides that the landlord must obtain the tenant's consent to his entry or give notice of the period specified in relation to the purpose of his entry, but that he may enter at any time in any case of emergency. This right of entry is more limited than that which landlords usually reserve for themselves under formal agreements, but at common law a landlord is not entitled to enter the premises at all without his tenant's consent unless he has reserved a right of entry under the agreement.

Clause 49 provides that the tenant may remove a fixture that he affixed to the premises unless its removal would cause irreparable damage and shall repair any damage caused by removal of a fixture. Clause 50 provides that a landlord shall bear all outgoings in respect of the premises other than excess water rates. Clause 51 continues the present rule that a tenant may assign or sub-let the premises unless there is any agreement to the contrary, but provides that assignment or sub-letting may not be totally excluded by agreement. Instead the landlord may require that the tenant obtain his consent, but may not unreasonably withhold his consent. Clause 52 provides that a tenant shall be vicariously responsible for any breach by any other person, such as a sub-tenant, who is lawfully on the premises.

Clause 53 requires that the tenant be notified in writing of the name and address of the landlord at the time of entering into the tenancy agreement and if there is any change in landlords or their names or addresses. Clause 54 requires that the tenant shall not falsely state to his landlord his name or place or occupation. Clause 55 provides that, where a landlord requires or invites his tenant to execute a written agreement, he shall ensure that the tenant has a copy of the document and a fully executed copy within 21 days or the tenant signing and delivering it to him. Clause 56 provides that the cost of a written agreement required by the landlord shall be borne by the landlord. Clause 57 prohibits discrimination against tenants with children, but excludes the case where the landlord resides in adjoining premises or where the premises are the principal place of residence of the landlord. Clause 58 prohibits the insertion in tenancy agreements of rent acceleration, penalty or liquidated damages clauses, and clause 59 provides that the rules under the law of contract relating to the duty to mitigate damages arising from a breach of a contract apply to a breach of a residential tenancy agreement.

Part V of the Bill, comprising clauses 60 to 82, deals with termination of residential tenancy agreements. Clause 60 sets out the various means by which a residential tenancy agreement may be brought to an end. Paragraph *(a)* of subclause (1) provides that a notice to quit, referred to in the Bill as a notice of termination, does not of itself terminate the agreement unless the tenant delivers up possession of the premises or the tribunal orders him to do so. This provision is consistent with the scheme of this Part, whereby under clause 72 the tribunal is given a discretion as to whether or not to order the tenant to deliver up possession of the premises after the period of the notice of termination. Paragraph *(d)* of subclause (1) provides that the agreement is terminated where the tenant abandons the premises, but should be read together with clauses 77 and 78 under which the landlord may obtain orders from the tribunal as to the time at which the tenant abandoned the premises and for compensation for loss arising therefrom.

Subclause (3) provides that, although the agreement may be expressed to come to an end automatically, as, for example, in the case of an agreement for a fixed-term tenancy, it continues upon the same terms until terminated by the appropriate notice or otherwise in accordance with the measure. The effect of this clause is, generally, that unless the parties agree that their tenancy agreement is at an end, that is, the tenant delivers up possession of the premises with the consent of the landlord, the agreement can only be brought to an end without any liability by one of the parties giving the proper notice of termination to the other. This again is consistent with the scheme under this Part which provides as it were, a "second chance" for the tenant who, for example, finds himself in circumstances of hardship.

Clause 61 regulates the form of a notice of termination by a landlord. Clause 62 provides that a landlord may give a notice of termination upon the ground of a breach by the tenant of any term of their agreement. The period of such a notice of termination must be not less than 14 days. Where the breach is failure to pay the rent, the rent must have remained unpaid for not less than 14 days.

Clause 63 provides that a landlord may give a notice of termination upon the ground that he requires the premises for substantial repairs or renovation or demolition, that he requires the premises for his own occupation or occupation by a member of his immediate family, or that he requires the premises for a purpose prescribed by regulation. The period of a notice of termination under

this clause must be not less than 60 days. A notice of termination under this clause in respect of a tenancy agreement that creates a tenancy for a fixed term cannot bring the agreement to an end before the end of the fixed term. Subclause (4) provides that it shall be an offence for a landlord to falsely state the ground for the notice.

Clause 64 provides that a landlord may give a notice of termination to the tenant without specifying any ground for the notice. The period of a notice under this clause must be not less than 120 days and, in the case of a tenancy for a fixed term, expire not earlier than the last day of the term. Clauses 65 and 66 provide that, where premises are subject to a rent order under this measure or a notice under Part VII of the Housing Improvement Act, 1940-1977, respectively, the tenancy agreement may not be brought to an end by the landlord by a notice of termination under clause 64 or by a notice of termination that has not been authorised by the tribunal.

Clause 67 provides that a landlord does not waive a breach by the tenant or a notice of termination that he has given by demanding, proceeding for or accepting rent under the agreement. Clause 68 prescribes the form of a notice of termination by a tenant. Clause 69 provides that a tenant may give a notice of termination to his landlord without specifying any ground for the notice. The period of a notice given by a tenant must be not less than 14 days and, in the case of a tenancy for a fixed term, expire not earlier than the last day of the term.

Clause 70 provides that, where the purpose of a residential tenancy agreement is frustrated by events outside the control of the parties, either party may give a notice of termination to the other and, until termination or restoration of the tenant's enjoyment the rent shall abate accordingly. Clause 71 removes the unnecessarily complicating requirement at common law that the last day of a notice of termination must fall on the last day of a period of a periodic tenancy. The clause also provides that periods of notice provided under the measure will not be modified by the common law requirements as to the period of notices to quit.

Clause 72 provides that the tribunal may terminate an agreement upon application by the landlord, where the landlord or tenant has given notice of termination but the tenant has failed to deliver up possession of the premises. Subclause (2) provides that the tribunal must be satisfied, in the case of a notice given upon a particular ground, that the landlord has established the ground and, where the ground is a breach of the agreement by the tenant, that the breach is such as to justify termination. Under subclause (3) the tribunal may suspend the operation of its order for termination and possession of the premises, having regard to the relative hardship that would be caused to the landlord or tenant by suspending or not suspending the orders.

The hardship envisaged by this provision is, for example, in the case of the tenant, inability to find alternative accommodation, old age or ill health. Subclause (3) of this clause also provides that the tribunal may refuse to make the orders if it is satisfied that the notice was retaliatory, or, in the case of a notice given upon the ground of a breach by the tenant, that the tenant has remedied the breach. The tribunal may also refuse to make the orders under subparagraph (iii) of paragraph *(b)* of that subclause if, in the case of a notice given by the landlord under clause 70 upon the ground that a part of the premises has been destroyed, it is satisfied that it would not be unduly burdensome for the landlord to rebuild.

Clause 73 empowers the tribunal to make orders of termination and for possession of premises that are of immediate effect if it is satisfied the tenant has caused, or is likely to cause, serious damage to the premises or injury to the landlord or his agent or any person in occupation of, or permitted on, adjacent premises. Clause 74 provides that the tribunal may order termination of an agreement if it is satisfied that the landlord would suffer undue hardship if he were required to terminate the agreement under any other provision of the measure. Clause 75 provides that the tribunal may terminate an agreement, upon application by the tenant, if the tribunal is satisfied that the landlord has breached a term of the agreement and that the breach is such as to justify termination. Clause 76 provides that a landlord shall be entitled to compensation if the tenant fails to comply with an order for possession of the premises, and clause 77 provides that a landlord may obtain a declaration from the tribunal as to whether a tenant has abandoned premises and, if so, the time at which he abandoned the premises. Clause 78 provides that, where a tenant has abandoned premises, the landlord shall be entitled to compensation for any loss, including loss of rent, caused by the abandonment.

Clause 79 prohibits recovery of possession of premises by peaceable entry where the premises are occupied by a tenant under a residential tenancy agreement or a former tenant holding over after termination of such agreement. Clause 80 is designed to protect sub-tenants under residential tenancy agreements from eviction without warning where the head-landlord terminates the head-lease thereby causing the sublease to fall in pursuant to paragraph *(c)* of subclause (1) of clause 60. Under clause 80, any court or the tribunal when hearing an application by a head-landlord for recovery of possession of premises must determine whether there is a subtenant in possession of the premises and, if there is, ensure that he has had reasonable notice of the proceedings. The subtenant may then intervene in the proceedings and the court or tribunal may vest a tenancy in him to be held directly of the head-landlord.

Clause 81 provides for the appointment of bailiffs of the tribunal. Clause 82 provides for the enforcement by the tribunal's bailiffs of orders for possession made by the tribunal. Part VI, comprising clauses 83 to 87, deals with the Residential Tenancies Fund. Clause 83 provides for establishment and administration by the registrar of the tribunal of a fund to be entitled the Residential Tenancies Fund. Any security bond or rent paid into the tribunal is to be paid into the fund and paid out again at the direction of the tribunal. Clause 84 provides for investment in such manner as the Minister may approve of any moneys standing to the credit of the fund and not immediately required for the purposes of the measure.

Clause 85 provides that income from investment of the fund may be applied, in such circumstances and subject to such conditions as may be prescribed by regulation, towards compensating landlords for damage caused by tenants, in payments towards the cost of administering the fund, and in such other manner as the Minister may approve. Clause 86 requires the registrar to keep proper accounts in respect of the fund and provides for auditiing of the fund by the Auditor-General. Clause 87 requires tha registrar to submit an annual report on the administration of the fund to the Minister and provides for tabling of the report in Parliament.

Part VII, comprising clauses 88 to 94, deals with certain miscellaneous matters. Clause 88 provides that any agreement inconsistent with, or excluding, modifying or restricting, the provisions of the measure, or any waiver of a right conferred under the measure, shall be void. Subclause (3) provides that it shall be an offence to enter into any agreement or arrangement with intent to defeat, evade or prevent the operation of the measure.

Clause 89 provides for the recovery of amounts paid by either party to a residential tenancy agreement to the other as a result of a mistake of law, especially, of course, a mistake as to the existence, or effect, of a provision of this measure. Clause 90 empowers the tribunal to make an order exempting a particular residential tenancy agreement or particular premises from the application of a provision of the measure. Clause 91 empowers the tribunal to make an order varying or rescinding any term of a residential tenancy agreement that it considers is harsh or unconscionable or such that a court of equity would grant relief. Clause 92 regulates service of documents required or authorised to be served under the measure. Clause 93 provides that offences against the measure shall be disposed of by summary proceedings. Clause 94 provides for the making of regulations.

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

LANDLORD AND TENANT ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

This short Bill makes an amendment to the principal Act, the Landlord and Tenant Act, 1936-1974, that is consequential on enactment of the Residential Tenancies Bill, 1977. Clause 1 is formal. Clause 2 provides that the measure shall come into operation on the day on which the Residential Tenancies Act, 1977, comes into operation. Clasue 3 inserts a new section 3a which provides that the principal Act shall not apply to or in relation to a residential tenancy agreement to which the residential Tenancies Act, 1977, applies.

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

HOUSING IMPROVEMENT ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

This short Bill makes amendments to the principal Act, the Housing Improvement Act, 1940-1973, that are consequential on enactment of the Residential Tenancies Bill, 1977. The amendments contained in the Bill all relate to the protection against eviction afforded to a tenant of a house in respect of which a notice under Part VII of the principal Act is in force. Provisions conferring protection against eviction in these circumstances have been included in the Residential Tenancies Bill, 1977.

Clause 1 is formal. Clause 2 provides that the measure shall come into operation on the day on which the Residential Tenancies Act, 1977, comes into operation. Clause 3 amends section 60a of the principal Act which provides that a notice to quit is void where a notice of intention to declare the house substandard is given under Part VII of the principal Act. The clause provides that this section shall not apply to a residential tenancy agreement to which the Residential Tenancies Act, 1977, applies. Clause 4 makes the same amendment to section 61 of the principal Act which regulates recovery of possession of a house subject to an order under Part VII fixing the maximum rent in respect of the house.

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

ADJOURNMENT

At 4.19 p.m. the Council adjourned until Thursday, February 23, at 2.15 p.m.