LEGISLATIVE COUNCIL

Tuesday 26 September 1978

The PRESIDENT (Hon. A. M. Whyte) took the Chair at 2.15 p.m. and read prayers.

PLYMPTON PRIMARY SCHOOL REDEVELOPMENT

The PRESIDENT laid on the table the report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence, on Plympton Primary School Redevelopment.

QUESTIONS

CITRUS INDUSTRY

The Hon. R. C. DeGARIS: I seek leave to make a brief explanation prior to asking the Minister of Agriculture a question about the Industries Assistance Commission's recommendations.

Leave granted.

The Hon. R. C. DeGARIS: In the *Advertiser* of 22 September 1978, the Minister of Agriculture was reported as saying that he did not regard the Premier's remarks on the I.A.C. submission made by the Minister as a personal rebuke. The Premier said:

> We have been in very close contact all the time.

One would consider from that statement that the basis of the submission had been discussed with the Premier. Was the Premier, or the Cabinet, informed of the basis of the submission by the State Government to I.A.C. for a reduction in tariff protection for citrus products from 65 per cent?

The Hon. B. A. CHATTERTON: The Opposition has displayed a remarkable degree of economic illiteracy in not understanding the basis of the submission or what protection will be provided for citrus growers in this State. It is interesting that for 1977-78 the mechanism suggested in the submission to the I.A.C. would have provided greater protection to citrus growers than that provided following the Temporary Assistance Authority (T.A.A.) inquiry, and I think it displays the lack of knowledge of how such protection works when people try to latch on to one single thing, namely, the reduction from 65 per cent to 25 per cent in tariff, completely ignoring—

The Hon. R. C. DeGaris: What about answering the question?

The Hon. B. A. CHATTERTON: The question implied that there had been a reduction in the protection provided to the citrus industry, and I am telling the Leader that the submission did not reduce that protection.

The Hon. M. B. Cameron: You had better tell the citrus industry that.

The Hon. B. A. CHATTERTON: I have. People in the citrus industry understand how the mechanism works; they understand that the recommendation was a responsible one that provided the citrus industry with protection when prices were low and not excessive protection when prices were high. That point has been completely missed in this whole issue. Let us take the present position, where the price of imported citrus juice is such that the equivalent price of oranges is $180 a tonne.

The Hon. R. A. Geddes: Is that for oranges?

The Hon. B. A. CHATTERTON: No, that is the price equivalent to the price for oranges in terms of imported juice. The citrus juice price now is about $100 a tonne, so obviously the 65 per cent protection has not been used. The level of protection being used at present in the citrus industry is 20 per cent, and the excess protection there is only revenue for the Federal Government. It is not of any benefit to the industry. The industry knows well that, if the domestic price increased to $180 a tonne, the fall in consumption throughout Australia due to consumers substituting other juices for citrus juice would be such that the whole industry would lose much revenue.

That is the real position, and the 65 per cent tariff that applies now is an illusion of protection when import prices are high. It is only when import prices are low that the industry needs protection, and that is why our formula of providing a minimum level of 6c a litre, which comes into force when prices are low, is the vital thing that gives the industry the protection that it needs.

Regarding the remainder of the honourable member's question, the submission was prepared last September and went through the normal procedure, including the screening committee of the Premier's Department. That committee has the duty to report if there is a change of Government policy but, if there is not, it does not report the matter to the Premier and Cabinet. As I have emphasised previously, the submission provides the protection that has been the policy of the Government and, therefore, it was not reported in any way. That protection has been provided, and it has been completely misunderstood and misinterpreted in this claim that the submission to the I.A.C. did not provide the industry with the protection that it needed.

The Hon. C. M. HILL: I seek leave to make a statement before asking the Minister of Agriculture a question about the mechanics of Cabinet practice and procedure and the Minister's role and responsibility in Cabinet.

Leave granted.

The Hon. C. M. HILL: My question deals with the same matter as has been raised in the previous question, and I will quote from statements reported in last Friday's *Advertiser* as being made by the Premier. He made these three comments:

> There is an industries assistance steering committee which examines all submissions from departments before they go to the I.A.C. The submission—

that is, the one involving the citrus industry—

> was submitted to that committee. However, no information from that steering committee was provided to me, as is normally the case.

I suggest that the last sentence is in direct contradiction to the Minister's statement in this Council when he said, in effect, that only certain of those reports were referred to the Premier, whereas the Premier stated:

> . . . no information from that steering committee was provided to me, as is normally the case.

Will the Minister comment again on that aspect and stress why his submission to I.A.C. was not disclosed to the Premier and Cabinet?

The Hon. B. A. CHATTERTON: The honourable member is merely playing with words and is trying to have me say that what I said was in contradiction to what the Premier said. That is not the case at all. The situation is as I have described it. It is a statistical fact that more cases are reported than are not reported, but that situation is not in any way a contradiction between what I said and what the Premier said.

The Hon. J. A. CARNIE: My question to the Minister is supplementary to the two questions already asked dealing with the Minister's submission to the I.A.C. In the *Advertiser* report of 22 September 1978 the Minister is quoted as saying:

> Quite a lot of submissions to the I.A.C. had not been shown to the Cabinet or the Premier.

I presume from what the Minister has said today that he has been correctly reported, because he has reiterated that not all submissions are shown to Cabinet or the Premier. Therefore, will the Minister disclose what submissions made to the I.A.C. on behalf of primary industry have not been shown to Cabinet or the Premier?

The Hon. B. A. CHATTERTON: I cannot recall that exactly offhand, but I have just described in the previous replies to questions the mechanism that exists which ensures that the co-ordination of Government policy is achieved. That is the aim and objective of the committee to which I have referred. Many examinations do not involve referral, and I can think of one recent submission to the I.A.C. concerning the dairying industry and tariffs on imported cheeses. The submission contained much technical information about the dairy industry. That submission, which gave the statistical background to production quality of cheeses, and so on, went to the I.A.C.; it did not go to Cabinet. The information it contained was available to the department and was factually correct, and there was no change in policy regarding that matter. However, I cannot recall offhand which submissions have or have not been reported.

UNEMPLOYMENT

The Hon. N. K. FOSTER: I seek leave to make a brief statement before asking the Leader of the Council a question concerning unemployment.

Leave granted.

The Hon. N. K. FOSTER: It would be opportune for me to remind this Council that last Saturday we saw in New South Wales a by-election resulting in a swing of 11 per cent or even more against the Fraser Budget. Certainly, it points to a—

The PRESIDENT: It may be opportune to ask the question, but it is certainly not within Standing Orders.

The Hon. N. K. FOSTER: But it will be, as you will see from what I say next. Following the denouncement by the people of the Federal Budget, Fraser, this inept Prime Minister, got up and said that he had told lies and misled the electorate in relation to the unemployment figures. He admitted that he had done so deliberately for the purpose of thieving, stealing from and plundering the community.

Members interjecting:

The PRESIDENT: Order! The honourable member asked the Council's permission to explain his question.

The Hon. N. K. Foster: Yes, I'm coming to that.

The PRESIDENT: The honourable member is almost giving a policy speech.

The Hon. N. K. Foster: I am not.

The PRESIDENT: If the honourable member wishes to explain his question—

The Hon. N. K. FOSTER: They can call "Question" if they do not like the truth.

The Hon. C. M. Hill: Question!

The Hon. N. K. FOSTER: If the President takes note of that call for "Question", I will ask my question. However, I give fair warning—

The PRESIDENT: Order! "Question" has been called.

The Hon. N. K. FOSTER: Thank you, Sir. However, members opposite need not go crook—

The Hon. C. M. Hill: Question!

The Hon. N. K. FOSTER: All right, I will call "Question" on any Opposition member who gets up.

The Hon. C. M. Hill: Question!

The Hon. N. K. FOSTER: I give members opposite fair warning.

The PRESIDENT: Order! The Hon. Mr. Foster must ask his question now.

The Hon. N. K. FOSTER: In view of the Prime Minister's reluctant admission that he misled the electorate in relation to the unemployment question, will the Minister of Health, as Leader of the Government in the Council, ask the Minister of Labour and Industry to renew his so-often rejected requests for grants of money to be made available directly to this State to permit the youth unemployment schemes initiated by this State Government to continue?

The Hon. D. H. L. BANFIELD: I will take up the matter with my colleague.

CITRUS INDUSTRY

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

Leave granted.

The Hon. R. A. GEDDES: The Premier was reported in the *Advertiser* as saying—

The Hon. N. K. Foster: Question! You asked for it, and you'll get it.

The PRESIDENT: "Question" has been called.

The Hon. R. C. DeGaris: Wake up to yourself.

The Hon. N. K. Foster: I object to what DeGaris says. If he cannot control his nitwits over there, he can take a bit of the same thing.

The PRESIDENT: Order!

The Hon. R. A. GEDDES: The Premier was reported in the *Advertiser* as saying:

> It gives me cause for concern about the result in the economy to some growers in the Riverland area.

Has further evidence been given to the Minister regarding the citrus industry that might show that more economic factors could be of concern to the Riverland area?

The Hon. B. A. CHATTERTON: The submission was prepared last September, which is about 12 months ago, and, of course, the economic situation in the Riverland has deteriorated considerably since then. We made clear in the submission, as well as in oral evidence given to the Industries Assistance Commission at Berri on 5 October, that 6c a litre, the minimum rate of tariff provided, would have to be adjusted in accordance with economic conditions: this was not something that could remain immutable. Of course, economic factors in the Riverland have made the position of growers in that area much worse. This involves not only the problems associated with inflation of costs for Riverland growers but also the currency devaluations in the countries of some major suppliers of imported concentrates.

Of course, the most serious thing of all in connection with the Riverland is the rapidly deteriorating situation as regards wine grapes. With the savage increase in the brandy excise added to their existing problem, growers are facing a surplus next year of more than 100 000 tonnes of grapes. Because the fruit blocks in the Riverland are integrated enterprises, this must have a very adverse effect on the economic position of the growers. For those reasons we have recalculated the figures and recommended that the 6c a litre minimum rate of tariff be lifted.

FOOTBALL TICKETS

The Hon. C. J. SUMNER: I seek leave to make a brief statement before asking the Minister of Tourism, Recreation and Sport a question about the sale of grand final football tickets.

Leave granted.

The Hon. C. J. SUMNER: Honourable members will be aware that the South Australian National Football League has adopted a new policy this year of pre-selling tickets to next Saturday's grand final. If all tickets are pre-sold, the league will consider televising the grand final. The league has announced that there will be a number of outlets selling the tickets (Football Park and 11 others), but I find that there are no country outlets. The farthest outlet from Adelaide is Elizabeth. So, the league is not making any attempt to provide country people with the same opportunity that exists for city people to purchase these tickets. The tickets are available only during this week, and it would have been reasonable for the league to provide some outlets in the country, at least in the major centres. Is the Minister aware that no outlets have been made available by the South Australian National Football League for the sale of grand final tickets in country areas, and will he approach the league to see whether tickets can be made available in the country?

The Hon. T. M. CASEY: The reply to each of those questions is "Yes". I will definitely take up the matter with the South Australian National Football League to see whether some consideration in the future can be given to country areas. Many members of this Council live in the country, and I think it is high time that centres in the North, Mid North, South and Deep South should be considered and also, of course, Broken Hill, just across the border. Many Broken Hill people take the opportunity (or they used to) of coming to Adelaide to see the grand final, because Australian rules football is played in Broken Hill. I cannot understand why the league did not make some effort to provide outlets in country areas, and I sincerely hope it will do so in the future. I will do my best to see that that is done.

CITRUS INDUSTRY

The Hon M. B. CAMERON: Does the Minister of Agriculture accept that the Citrus Organisation Committee is representative of the citrus industry in the Riverland?

The Hon. B. A. CHATTERTON: As the honourable member is aware, the C.O.C. is a statutory body that has particular responsibilities: it is not a grower representational body. I think the honourable member is also aware that recently a petition was signed and presented to me to call a poll of growers on the future of C.O.C. That poll was conducted and, while the majority of the growers voted in favour, a substantial number of growers voted against the continuation of C.O.C. The majority were in favour, but I make the point that not all the growers favoured the continuation of C.O.C. I do not think the honourable member's question is relevant. C.O.C. is not a representational body in terms of organisations which represent the growers, such as the Australian Citrus Growers Federation and other such organisations.

RURAL BROADCASTING

The Hon. F. T. BLEVINS: I seek leave to make a brief statement prior to asking the Minister of Agriculture a question about rural broadcasting.

Leave granted.

The Hon. F. T. BLEVINS: In the *Australian* on 20 September 1978 a feature article headed "ABC country news services face extinction" stated, in part:

> The ABC *Breakfast Sessions* and *Country Hours* that thousands of Australians are so devoted to are on the blink. If one of the Australian Broadcasting Commission's 25 regional broadcasters resigns today, radios will no longer tell loyal listeners that their shire council is going to raise the noxious insects levy or now is the best time to castrate lambs. So what? you ask. You should try living in the bush. The livestock market reports broadcast at 7 a.m. can mean the difference between profit and loss in a farm business, between staying on a lonely station or packing up and going to swell city unemployment.
>
> The ABC's financial purge is hitting its rural department with a vengeance and the commissions most loyal devotees, country people, are about to see the losses. Horizon 5 goes off the screen at the end of this year, and Australia loses its most valuable electronic link between city and country. A poll by National Farmer recently showed that 30 per cent of farmers watch Neil Inall's friendly face on Horizon 5—a rural audience of 75 000 in addition to city viewers. The audience gave this lunch-hour show one of the highest rural media approvals—50 per cent said it was good and 16 per cent excellent. Only the Country Hour on ABC radio scored higher—53 per cent good, 20 per cent excellent. But Horizon 5 gets the chopper in 1979.

The article goes on in far more detail describing the results of the reduction in the finances available to the ABC to conduct its affairs. I am aware that the Minister is very concerned about rural people and is certainly concerned, as I am and as I hope all honourable members are, about the very real rift between country and city people. It is a terrible shame that a programme such as *Horizon 5,* which I watch as often as possible, as do many other people in an industrial city like Whyalla, and which to some extent bridges this gap between city and country, will, according to that news report, disappear. Would the Minister approach the Federal Government on behalf of rural listeners and viewers, with a view to stopping the reduction of ABC services provided to country areas?

The Hon. B. A. CHATTERTON: I am certainly prepared to approach the Federal Government on this matter. The remarks made by the honourable member about *Horizon 5,* under its very competent compere Mr. Neil Inall, are very true: it is a programme that appeals to both rural and city audiences. My only criticism of this programme is that I feel the ABC should have given it a better time slot. It was not really a time when a lot of rural people were able to watch the programme, because they tend to have their lunch from 12 to 1 o'clock and this programme starts at 1.10 p.m.

The honourable member also mentioned the great importance of both the *Country Hour* and the *Breakfast Session* in country areas, and this is extremely true. In many country areas newspapers are not delivered for a number of days, and it is important to have the news broadcast through the *Breakfast Session* or the *Country Hour* quickly and effectively. Both of these programmes have been of great benefit to rural people, and the Agriculture and Fisheries Department has adopted a policy of using those two programmes more to get our messages across to farmers.

SUPERANNUATION

The Hon. D. H. LAIDLAW: I seek leave to make a brief statement prior to addressing a question to the Minister of Health, representing the Premier, regarding provisions for superannuation by certain statutory authorities.

Leave granted.

The Hon. D. H. LAIDLAW: Officers employed by the

State Government Insurance Commission, the State Bank and the Savings Bank of South Australia belong to the South Australian Superannuation Fund.

In the financial account for the year ended 30 June 1977, the directors of the State Bank provided $660 000 to cover the bank's commitment towards staff superannuation, whilst the directors of S.G.I.C. provided $300 000. The Trustees of the Savings Bank do not disclose their provision for superannuation but hide it in a single-line provision for management expenses, amounts written off against bank premises, computer equipment replacement, officers retiring allowances, superannuation and long service leave.

Insurance companies and banks within the private sector attempt to provide each year for the likely commitment towards their employees' superannuation entitlement. The Premier has said on a number of occasions that, when statutory authorities compete in the market place against private organisations, it is the intention of the Government that they should compete on equal terms.

My question is in two parts—

1. How many times greater were the provisions made for superannuation by the S.G.I.C., the State Bank and the Savings Bank of South Australia than the respective aggregate contributions by their employees in the years in question?

2. Since the Premier wishes the statutory authorities to compete on equal terms with the private sector do the Trustees and directors of these three authorities believe that they made adequate provisions for superannuation in the years in question, or do they fear that their annual reports are false to the extent of under-provisions for superannuation?

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

CORPORATE AFFAIRS

The Hon. N. K. FOSTER: I seek leave to make a brief statement before asking the Leader of the Council a question about corporate affairs.

Leave granted.

The Hon. N. K. FOSTER: The Corporate Affairs Commission is a very important body in most States, and at the moment it is investigating in New South Wales a matter involving a senior Minister of the Fraser Government, namely, the Minister for Primary Industry (Mr. Ian Sinclair). He is one of a long list of Ministers in the Fraser Administration who have fallen by the wayside since that Government was elected to office in 1975 and re-elected in 1977. Indeed, there is a long line of people in the queue for investigation either by their Executive Head, the Prime Minister, or from other areas. Is the power of investigation in South Australia comparable with the powers of the Corporate Affairs Commission in New South Wales?

The Hon. D. H. L. BANFIELD: I will obtain a reply from my colleague.

DRIVING TESTS

The Hon. JESSIE COOPER: I seek leave to make a short statement before directing a question to the Minister of Health regarding driving tests.

Leave granted.

The Hon. JESSIE COOPER: Recently, experience overseas has shown me once more that the tests applied to would-be drivers in England and Europe are much more stringent than those applying in South Australia. Applicants for driving licences must show that they can handle their vehicles with reasonable speed and flexibility in difficult conditions before any full licence is issued. In view of the alarming number of road deaths reported in the past month, will the Minister inquire into the possibility of making tests of potential licencees more difficult? Further, will the Minister consider the possibility of introducing a system of educational classes, including films, at which attendance would be mandatory before any licence was issued?

The Hon. D. H. L. BANFIELD: I will take the matter up with the Government and find out what can be done.

HOSPITAL BEDS

The Hon. J. R. CORNWALL: I seek leave to make a short statement prior to directing a question to the Minister of Health regarding the use of hospital beds.

Leave granted.

The Hon. J. R. CORNWALL: From time to time the Federal Minister for Health (Mr. Hunt) has been trenchantly critical of those members of the medical profession who are alleged to be abusing the hospital and medical benefits scheme by gross over-utilisation. Last Thursday, in the House of Representatives, he said:

> We are determined to stamp out this abuse and overuse of pathology services by irresponsible and unscrupulous doctors and also by pathology operators and laboratory operators in this country. I condemn them because I believe that there is nothing more loathsome than a group of people in a privileged position who are using the health of people to make their millions at the expense of the community.

Despite this, the only so-called control that Mr. Hunt has imposed is an extension of the gap between the common fee and the benefit paid. In other words, the only people against whom any action has been taken are the patients. For members of the medical profession involved in private practice, the situation remains that the only cost and quality controls imposed are imposed by the Commonwealth Fraud Squad and the Coroner. Based on New South Wales figures, Australia has the highest rate of operations in the world. We even beat high-flyers like Canada and the United States.

However, it was reported last weekend that the Federal Government was now pressuring the States to tighten admission policies at public hospitals and to reduce the time that people stayed in hospital. The Government reportedly has set a national target of a 17 per cent reduction in bed occupancy over three years. This is apparently to be achieved by squeezing funds available to the States through the Commonwealth-States hospital cost-sharing agreement. The report also stated that the Federal Government was seeking co-operation from the States to increase State control over private hospitals. This is apparently to ensure that the tightening on public hospitals does not merely push more patients into the private hospital sector. Some rationalisation of hospital bed usage doubtless is urgently required in public hospitals and particularly private hospitals. However, as there is no effective monitoring of medical performance, there is no effective means of defining areas of over-utilisation of hospital beds.

Mr. Hunt's so-called rationalisation proposals, by merely reducing financial assistance, must therefore necessarily disadvantage patients who are in genuine need of hospitalisation, particularly standard patients requiring public hospitalisation. Furthermore, I understand that

there is no provision under existing State or Federal legislation for monitoring performance in private hospitals.

Can the Minister say whether there are any proposals to monitor the performance of medical practitioners by such means as medical and surgical audits? Can he say whether the South Australian Health Commission plans to collect information on the alleged over-utilisation of acute beds in this State's Government and teaching hospitals? Further, can he say whether there are any proposals to extend this survey so as to include community and private hospitals, and can he say whether additional legislation would be necessary to allow the commission to do so.

Can he say whether the proposal to limit utilisation by merely reducing funding will be resisted strongly until such information is available? Can he say whether any recent figures are available to indicate the number of additional beds required to meet the needs of geriatric and other chronic long-term patients? Finally, does the Minister believe that, if an equitable and efficient rationalisation programme can be instituted for acute hospital beds, the money saved should be used to upgrade other areas such as child-care services, preventive medicine, and geriatric accommodation, and not merely returned to the Federal Government's coffers?

The Hon. D. H. L. BANFIELD: The honourable member lost me after about the fourth question, so it would not be fair for me to give a reply now. I will get a considered reply.

LAND TITLES

The Hon. K. T. GRIFFIN: I seek leave to make a short statement prior to asking a question of the Minister representing the Minister for Planning about new certificates of title.

Leave granted.

The Hon. K. T. GRIFFIN: At present persons who own land in broad acres can, by request in writing to the Registrar-General of Deeds lodged with the certificate of title and plan, obtain separate titles for allotments of more than 30 hectares without any other consent being required. Where a road or other identifiable feature traverses the land in a certificate of title, thus giving two or more distinguishable pieces on the one title, a similar request to the Lands Titles Office will result in the issue of two or more titles for those distinguishable pieces. I have been told of concern that the Registrar-General has been directed not to deal with applications or transactions that would fall into the categories to which I have referred, pending the enactment of legislation to deal with these matters.

The Hon. N. K. FOSTER: I rise on a point of order, Mr. President. Is that legislation currently before this Chamber or the Parliament?

The PRESIDENT: No, not that I have any knowledge of.

The Hon. N. K. Foster: Has it been introduced in the House of Assembly?

The Hon. K. T. GRIFFIN: Has the Minister or any other person issued any directive, request or order to the Registrar-General not to issue new titles in these cases? If he has, what is such directive, request or order and to what applications or transactions does it refer? What is the authority under which the Minister or other person purports to issue such directive, request or order? What is the reason for that directive, request or order?

The Hon. B. A. CHATTERTON: I will refer the question to my colleague and bring back a reply.

The Hon. N. K. FOSTER: I rise on a further point of order. I am not quite clear about whether the subject matter to which the question refers has been the subject of notice in the House of Assembly or whether it will be the subject of a Bill to be brought before Parliament, and I seek your guidance on whether it is competent or reasonable for a question to be asked on a matter of which notice has been given in either House of Parliament and when it is common knowledge that it will be the subject of amending legislation in the Parliament.

The PRESIDENT: I think I said in reply to the earlier point of order that I had no knowledge of it. If notice has been given in another place, I am not aware of that.

MARY WHITEHOUSE

The Hon. J. C. BURDETT: Has the Minister of Health a reply to the question I asked regarding statements by the Attorney-General about Mary Whitehouse?

The Hon. D. H. L. BANFIELD: The Premier has stated that he does not propose to involve himself in the honourable member's petty exercises in semantics.

INSURANCE COSTS

The Hon. ANNE LEVY: I seek leave to make a brief statement before asking the Minister representing the Premier a question regarding life insurance company costs.

Leave granted.

The Hon. ANNE LEVY: A report in today's *News* indicates that life insurance companies are spending more than 35 per cent of their total premium income on operating expenses. The Australian Commissioner for Life Insurance has described the expense rate as distressingly high. I understand from the report that operating costs as a proportion of premiums received have increased in recent years from 28 per cent in 1972 to 35 per cent in 1976—

The Hon. R. C. DeGaris: Stamp duty would play an important part.

The Hon. ANNE LEVY: Can the Minister say whether information is available regarding the corresponding proportion of premiums to operating costs for the life insurance section of the State Government Insurance Commission?

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

ENERGY CONSERVATION

The Hon. R. A. GEDDES: Has the Minister of Agriculture, representing the Minister of Mines and Energy, a reply to my question of 22 August 1978 about an energy committee?

The Hon. B. A. CHATTERTON: The South Australian Government has established the State Energy Research Advisory Committee (SENRAC) and the South Australian Energy Council (SAEC). SENRAC was set up in May 1977 and SAEC in July of this year. The membership of those bodies is as follows:

1. SENRAC

   Mr. R. K. Johns (Chairman); Mr. W. Schroder; Mr. W. L. C. Davies; Mr. B. M. Dinham; Mr. J. P. Burnside; Dr. D. Scrafton; Professor R. E. Loxton; Dr. E. L. Murray; Mr. A. M. Smith; Mr. Colin Harris; Dr. R. F. I. Smith; and Mr. R. C. Sprigg.

2. SAEC

Mr. S. E. Huddleston (Chairman); Mr. B. P. Webb; Mr. G. Stokes; Mrs. M. Fitzgerald; Professor R. E. Luxton; Mr. J. P. Burnside; Mr. E. Scarborough; Mr. H. Den Ouden; Mr. G. Inglis; Mr. J. O. Zehnder; Mr. P. Aplin; Mr. G. Meikle; Dr. S. Richardson; and Dr. P. Davis.

SENRAC now acts as a subcommittee of the Energy Council. A summary of energy research approvals is available from the Minister of Mines and Energy.

ENERGY RESEARCH

The Hon. R. A. GEDDES: Has the Minister of Agriculture, representing the Minister of Mines and Energy, a reply to my question of 23 August concerning energy research?

The Hon. B. A. CHATTERTON: The $4 000 000 allocated to energy research in the Federal Budget will be distributed to energy researchers throughout Australia following recommendations to the Federal Government by the National Energy Research, Development and Demonstration Council (NERDDC). The Minister of Mines and Energy informs me that no allocations have been made to date to any applicant.

I.A.C. REPORT

The Hon. J. A. CARNIE: My question to the Minister of Agriculture is supplementary to the question that I asked a short time ago concerning submissions to the I.A.C. I asked the Minister what submissions concerning primary industry had been made to I.A.C. that had not gone to Cabinet or the Premier, and the Minister stated that he could not recall all of them and, in fact, he gave only one example. Therefore, will he ascertain what submissions concerning primary industry have been made to the I.A.C. in the past two years that have not been referred to the Premier or Cabinet? Also, will he provide information about the substance of each of those submissions?

The Hon. B. A. CHATTERTON: I will try to get that information for the honourable member.

McDONALD'S

The Hon. N. K. FOSTER: Has the Minister of Health a reply to my recent question concerning McDonald's?

The Hon. D. H. L. BANFIELD: The attention of the Consumer Affairs Branch was drawn to McDonald's Hamburgers practice of distributing vouchers several months ago. In June 1978 the firm was advised that the issue of a particular voucher appeared to contravene the Trading Stamp Act, and that, as such, it should discontinue the practice and, if necessary, seek its own legal advice to confirm the position.

More recently, the branch's attention has been drawn to the issue of a fresh voucher of a different type by McDonald's. This matter is currently being investigated. A number of food establishments have recently been notified that their vouchers appeared to infringe the Trading Stamp Act, and they have been advised to discontinue the practice and seek legal advice. There is no provision in the Act to either permit, or refuse to permit, the issue of such vouchers. The Act would be contravened in those instances where a valuable consideration is offered by a trader in exchange or in redemption of articles defined as a trading stamp in connection with the sale and advertising of goods (which include meals or refreshments).

LEGAL AID

The Hon. N. K. FOSTER: Has the Minister of Health a reply to my recent question concerning legal aid?

The Hon. D. H. L. BANFIELD: The Attorney-General has advised me that the agreement between the Commonwealth and the State with regard to the commencement of operations of the Legal Services Commission is still being negotiated. I understand that every possible assistance has been given to the South Australian Law Society, both the Attorney-General and the Director-General of the Law Department having conferred with that society concerning its approach to the Commonwealth Attorney-General.

MENTAL HEALTH ACT

The Hon. C. M. HILL: Can the Minister of Health explain why the South Australian Mental Health Act, which was passed by Parliament and assented to last year, has not yet been proclaimed?

The Hon. D. H. L. BANFIELD: The honourable member has asked this question before in this session, and the answer is just the same. It is necessary to establish certain boards under the Act and draw up regulations before the Act can be proclaimed, and we are proceeding with these matters as quickly as possible.

RAPE SEED

The Hon. R. C. DeGARIS: Has the Minister of Agriculture a reply to my recent question on rape seed?

The Hon. B. A. CHATTERTON: There are two species of *Brassica* grown as rape seed crops for oil extraction in South Australia, namely, *Brassica napus* and *Brassica campestris*. The former is the more important. The following are the four main varieties of rape seed grown in South Australia:

Midas	varieties of *Brassica napus*
Tower	varieties of *Brassica napus*
Zephyr	varieties of *Brassica napus*
Span	variety of *Brassica campestris*

Together they constitute over 90 per cent of the area sown and Midas alone constitutes over 60 per cent of the South Australian crop. The erucic acid level in Midas, Tower and Zephyr is less than 1 per cent in each case, with a near zero level in Tower. The erucic acid level in the variety Span is 2-3 per cent.

Other varieties which are grown in small areas include Oro (*Brassica napus*) and Torch (*Brassica campestris*) both of which also have low erucic acid levels (less than 1 per cent). A variety of *Brassica napus*, namely, Target, was formerly widely grown in this State and had an erucic acid level exceeding 40 per cent but since then there arose a world-wide trend to lower erucic acid levels in rape seed oil for human consumption for health reasons. Consequently, with the introduction or pending introduction of regulations to limit the level of erucic acid permitted in edible oils in many countries including Australia, the variety Target has lost favour and is now grown in only small areas. In South Australia this trend was also hastened by the State's leading crusher refusing to write contracts for high erucic acid varieties.

For the above reasons low to zero erucic acid levels in rape seed oil are now a foremost objective in breeding programmes throughout the world. As a consequence, all the more recently released overseas varieties such as Midas, Tower, Regent, Torch and Candle and the first Australian bred variety, Wesreo, have very minimal acid levels. Regulations are about to be gazetted in which the maximum level of erucic acid as a percentage of total fatty acids permitted in rape seed oil to be used in edible fats and oils will be 5 per cent.

The Hon. R. C. DeGaris: Most of those presently used are below 5 per cent?

The Hon. B. A. CHATTERTON: All of them are, I think.

CITRUS INDUSTRY

The Hon. R. A. GEDDES: Can the Minister of Agriculture provide for members a copy of the submission to I.A.C. on the citrus industry, or can the submission be tabled, whichever is appropriate for the Minister?

The Hon. B. A. CHATTERTON: The whole of the submission can be made available to the honourable member: it has been available for nearly 12 months and has been widely distributed. That makes this matter all the more extraordinary, as the honourable member and the member for Chaffey in another place have had access to it. It has been available to honourable members and people in the Riverland since 5 October 1977 when it was presented to the I.A.C. It has been published and distributed through Agriculture Department offices in the Riverland.

The Hon. M. B. CAMERON: Does the Minister of Agriculture consider that the variation, which I believe has occurred in the South Australian submission to the Industries Assistance Commission regarding the citrus industry, that is, of 25 per cent to 35 per cent *ad valorem* protection, and a tariff of 6c to 8c a litre, is a major change in the Government's submission, and does he expect that this sort of change, which has occurred just 12 months after the previous submission was made, is likely, in the interests of the industry, to occur annually?

The Hon. B. A. CHATTERTON: The decision on whether the industry will require this sort of annual change in protection is very much in the Federal Government's hands.

The Hon. M. B. Cameron: No, it's not. It's with you.

The Hon. B. A. CHATTERTON: If economic conditions continue to cause a depression such as that which has occurred in the past 12 months, this sort of change will be necessary annually. This is why the figures have been adjusted. If the Federal Government's present economic policies continue, this sort of adjustment will indeed be necessary. However, if the Federal Government sees reason and decides to alter its economic policies in order to support Riverland growers, this sort of adjustment will not be necessary.

PSYCHIATRIC DEATHS

The Hon. R. C. DeGARIS: I seek leave to make a statement before asking the Minister of Health a question regarding psychiatric deaths.

Leave granted.

The Hon. R. C. DeGARIS: A report on psychiatric deaths in South Australia compiled by the Citizens Committee on Human Rights Incorporated has been placed in my post box and, undoubtedly, in many other honourable members' boxes. The report cites many cases which, if they are factual, would require further action. I quote from page 4, where, under the heading "Under-nourished woman dies after e.c.t.", it is stated that, in July last year, a middle-aged woman died after undergoing e.c.t. Previously a friend had witnessed that the woman was under-nourished and therefore physically weak. The woman haemorrhaged shortly after the e.c.t. and later died. Another heading is, "Fourteen-year-old boy dies on trial drug—no antidote", and yet another "Woman dies—cause not revealed". The report also quotes other cases. First, is the Minister aware of the organisation known as the Citizens Committee on Human Rights Incorporated? Secondly, has the Minister or his department seen the report? Thirdly, will the Minister make any comment on the allegations in the report? Finally, does the Minister intend to take any action on the information contained in the report?

The Hon. D. H. L. BANFIELD: Having had some dealings with it, I know of the organisation to which the honourable member has referred. Some of the things that the honourable member has put to me, as referred to in the report, are not factual, just as some of the things that this organisation has tried to put before Parliament are not correct. I have seen the report to which the honourable member has referred, but the cases referred to therein have not been put to me. I remind the Leader that, if anyone has suspicions about the cause of death of certain patients, he can always refer the matter to the State Coroner. I am not initiating any specific inquiries until something more substantial is put before me.

LEGAL SERVICES COMMISSION

The Hon. J. C. BURDETT (on notice):

1. How many admitted legal practitioners will be employed on a salaried basis by the Legal Services Commission in 1978?
2. What will be the approximate monthly salaries bill of admitted legal practitioners employed by the Legal Services Commission in 1978?
3. How many admitted legal practitioners will be employed on a salaried basis by the Legal Services Commission in 1979?
4. What will be the approximate monthly salaries bill of admitted legal pracitioners employed by the Legal Services Commission in 1979?

The Hon. D. H. L. BANFIELD: The information sought cannot be supplied at this stage, because plans for staffing the Legal Services Commission cannot be finalised until the agreement between the Commonwealth and South Australia has been settled and signed. Staffing arrangements will be a matter for the commission, which is an independent statutory body.

PAYNEHAM ROAD TRAFFIC

The Hon. J. A. CARNIE (on notice):

1. On how many occasions have traffic restrictions due to work on underground services applied in Payneham Road during the current calendar year?
2. What is the total length of time that restrictions have applied during this period?
3. What work was done on each of the separate occasions?
4. Is it anticipated that there is to be more work done in Payneham Road in the immediate future?

5. Is any of this work being done in anticipation of the widening of Paymeham Road and, if so, when is it intended that road-widening will take place?

The Hon. T. M. CASEY: As the honourable member's question requires detailed investigation, it would be appreciated if the question could be placed on notice for next week.

MINES AND WORKS INSPECTION ACT AMENDMENT BILL

Read a third time and passed.

SHEARERS ACCOMMODATION ACT AMENDMENT BILL

Read a third time and passed.

JURIES ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

A number of very long criminal trials in recent years have pointed up the need to amend the Juries Act to deal with the case where a juror becomes ill or is incapacitated during the course of a trial. As criminal trials become longer, the danger of their being aborted for this reason becomes correspondingly greater. At present, section 56 of the Juries Act provides that a criminal case may continue with a reduced number of jurors, provided that the number does not fall below 10. This provision does not apply, however, to murder or treason. As capital punishment for these offences has now been abolished, there seems no further reason for maintaining this distinction. Accordingly, the Bill amends section 56 to make it applicable to criminal cases generally. Corresponding amendments are made to section 55a, which enables the judge to excuse a juror during the course of a trial. However, amendments are made to section 56 (2) to ensure that, even if the size of a jury is reduced in a case of murder or treason, the requirement of a unanimous verdict in these cases will remain.

Clause 1 is formal. Clause 2 amends section 55a. The amendment enables the judge to excuse a juror during the course of a trial including a trial for murder or treason. Clause 3 amends section 56. The amendment allows any criminal trial to continue with a reduced number of jurors providing that the number does not fall below 10. Subsection (2), which allows for majority verdicts in certain circumstances, is amended so that it will not apply to cases of murder or treason.

The Hon. K. T. GRIFFIN secured the adjournment of the debate.

LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

In Committee.

(Continued from 21 September. Page 1083.)

Clause 21—"In what court action to be commenced."

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

Page 4, line 20—After "action" insert "upon a contract, or for breach of contract,".

The Hon. J. C. BURDETT: The amendments down to and including new section 115 seem reasonable. In regard to actions in contract where the defendant is a natural person, the action will normally be commenced in the court closest to the place where the contract was made or closest to where the defendant resides. In actions in tort, it is normally the court closest to where the cause of action arose. If there is some good cause to transfer the action to some other local court, and that can be done, the transfer can be effected. I support the amendment.

Amendment carried; clause as amended passed.

New clause 21a.

The Hon. D. H. L. BANFIELD moved:

Page 5, after line 6, insert new clause as follows:

21a. Sections 115, 116, 117 and 118 of the principal Act are repealed and the following section is enacted and inserted in their place:

115. Where it appears to a local court that—

(a) an action has been commenced in the wrong local court;

or

(b) an action could be more conveniently dealt with if it were transferred to some local court other than the local court in which it has been commenced,

the local court may, upon the application of any party to the action, or of its own motion, order that the action be transferred to a local court specified in the order.

New clause inserted.

Clauses 22 to 25 passed.

Clause 26—"Interlocutory orders."

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

Page 5, lines 19 to 24—Leave out all words in these lines.

There are important proceedings in all civil actions known as interlocutory proceedings, that is, proceedings ancillary to the main action itself in order to clarify the issues and set the pleadings in order. As it stands, clause 26 will delete certain interlocutory proceedings in regard to the small claims jurisdiction. Those proceedings are the answering of interrogatories, discovery of documents, giving of particulars of a claim or counterclaim, and immediate relief. The small claims court was established to make matters as simple as possible, but they must also be just.

I am particularly concerned about the discovery of documents. At present, if an action is commenced and a defence filed in the small claims jurisdiction, or any other jurisdiction, and documents are relevant, the other party may call for discovery of those documents. Many claims, even in the small claims jurisdiction, may be based entirely on documents. It would be ridiculous if one party had to go into court not knowing on what documents the other side would rely. Documents may take the form of invoices or letters, and discovery is usually made by one solicitor sending a written request to another solicitor. Discovery may be ordered by a court, although it is usually given voluntarily.

If this interlocutory proceeding is taken away there will not be the incentive to make discovery, because there is not the sanction, and the court may not order it. Even in the small claims jurisdiction, many actions may depend on documents of all kinds, including receipts and letters. Parties may have to go into court not knowing, and not being able to find out in advance, on what documents the other party relies. This would be a grave injustice. All four provisions are important: paragraph *(d)*, relating to

"immediate relief", provides for an interlocutory proceeding for summary judgment, which may be a very quick way of preventing delay where a defence is entered only for the purpose of delay. To take away this right of proceedings for immediate relief could be a grave injustice to a plaintiff. The other provisions are quite important also. Paragraph *(a)*, relating to the answering of interrogatories, provides for cases where it is obvious that a party, usually the plaintiff, cannot know all the evidence that is in the knowledge of the other party, the defendant, and it is proper that, under the supervision of the court, the defendant may be ordered to answer such questions prior to the action. The provision relating to the giving of particulars of a claim or counterclaim involves situations where it is necessary, if a claim or counterclaim does not give sufficient particulars, to let the other party know what the claim is all about. Even if it is a small claim this is necessary, so that a claimant can be answered, and in the last resort the court should be able to order that those particulars be given.

The Hon. C. J. SUMNER: I support the original clause, which abolishes interlocutory proceedings, answering interrogatories, the discovery of documents, and providing particulars of claim or counterclaim and immediate relief in small claims jurisdiction matters. As I explained last week, lawyers are not permitted to appear formally for clients in small claims jurisdiction, and there is greater speed, simplicity and, therefore, cheapness in the proceedings. It is in that spirit that this proposal of the Government to do away with these interlocutory proceedings should be seen. These proceedings tend to interfere with the philosophy that I have outlined as being behind the small claims court.

The Hon. R. C. DeGaris: Is there a chance of a miscarriage of justice?

The Hon C. J. SUMNER: I do not believe there is a chance of a miscarriage of justice, because, as I will explain, one of the aspects of the small claims jurisdiction is the simplicity of the proceedings. By retaining interlocutory proceedings, a case can, before it gets before a magistrate, become very complicated. Parties can use these proceedings to defeat a claim for a defence. A party may serve interrogatories on another party, and these interrogatories have to be answered within a certain time. If they are not answered that party can then obtain an order from the court that the interrogatories be answered. For those who do not know, interrogatories are questions asked by one party of another party and must be answered under oath. After obtaining an order that the interrogatories be answered, the party who filed them, if the interrogatories still are not answered, can then apply for judgment on the basis that the other party has been in default in answering them.

Many parties have used this tactic to get judgment against other parties before the matter comes to trial. Even though it is a small claim, in order to answer interrogatories satisfactorily the party who has to answer them may have to seek legal advice. The Hon. Mr. Burdett knows full well that the answering of interrogatories is sometimes a complex and time-consuming business, and a party may be faced with considerable cost in having to go to a solicitor to have the interrogatories prepared, particularly if they are complex. This, of course, attacks the very spirit of the small claims jurisdiction, which is to do away with the need to involve lawyers and to do away with the costs that necessarily follow when lawyers are involved. Some parties are using this in an unscrupulous manner, by asking for particulars, filing interrogatories, asking for discovery of documents and forcing the opposite party to see a solicitor, thus forcing that opposite party to incur costs he may not be able to afford. If he feels he cannot afford them, he does not respond to the interrogatories, or to the requests for discovery or particulars, and he therefore finds that a judgment has been entered against him. That attacks the very rationale of the small claims jurisdiction, which was to keep proceedings simple and cheap.

The Hon. Mr. Burdett suggested that an injustice would be done if these interlocutory proceedings were removed, but the opposite is true. If interlocutory proceedings become part of the procedure of the small claims court there will be more injustices to the parties, because many parties will be forced into a situation of having to seek legal advice and being unable to afford it. The Hon. Mr. Burdett mentioned an injustice that may occur when a party feels that he ought to obtain immediate relief, that is, an immediate judgment on a claim, because a defendant may have entered a defence, or an appearance, merely to delay the claim. That might be a problem if the trial lists were very long.

However, the point about the small claims jurisdiction is that the trial lists are kept short. An attempt is made to hear claims quickly, so the complaint that a plaintiff would not be able to get immediate relief is not valid. The essential point is that these proceedings that can be used to force parties to engage lawyers and, therefore, force parties to involve themselves in expense. It can complicate the pre-trial situation in a way inconsistent with the philosophies or rationale of the small claims jurisdiction. I support the Government's proposal to do away with these interlocutory procedures, and I oppose the amendment.

The Hon. K. T. GRIFFIN: I support the amendment. The law with respect to interlocutory proceedings that are the subject of the amendment is necessary for the fair and reasonable resolution of disputes. Some people do abuse the process of the court, but then it is a matter for the judge or magistrate to ensure that the procedures and privileges are not abused and, in the small claims jurisdiction, I consider that it is more incumbent on the judge or magistrate to ensure that they are not so abused.

Several areas, in which the abolition of the interlocutory procedures would create hardship on and likely injustice to one party come to mind. In a road accident claim, where there may be a claim for the cost of repairs to a motor vehicle, the defendant may dispute not only liability but also the quantum of the claim. If there is an interlocutory procedure for discovery of documents, the defendant will be able to require the plaintiff to produce a detailed repair account for perusal prior to the hearing, rather than be in the position of turning up at the trial, being confronted with the document, and not having had the opportunity to have the detail in the account checked by his own repairer. That may involve an adjournment to enable the defendant to get the information, and that may be an imposition for both parties in having to come back later.

Also, with a badly drafted claim, a consumer credit provider may have a claim against the defendant and may draft the claim without giving sufficient detail. Unless interlocutory procedures were available, the debtor would be at a distinct disadvantage in court, because he would not have had the opportunity to obtain the necessary detail and documentation of how the claim had been calculated to be able to dispute it. Further, in some circumstances, if he had the detail he may be able to agree to pay all or part of the claim.

Also, one can envisage circumstances in which interlocutory procedures would facilitate the prosecution of the claim. With a small claim or one larger than that appropriate in the small claims jurisdiction, the parties

ought to have interlocutory procedures available so that they know the detail of the claim and which document each party relies on for either prosecution of the claim or the defence.

The answering of interrogatories may be complex, and the drawing of them may be equally complex. However, the area of interrogatories is not the area of prime concern to me: my prime concern is about the discovery of documents and particulars of a claim or counterclaim being readily available to the party against whom they are made. There can also be pressure brought to bear on one party to resolve a frivolous or vexatious claim or one that has no foundation in law. Then, it seems appropriate for the party claiming that position to have the opportunity to resolve the matter quickly, instead of having to go through a lengthy procedure of getting the matter to court and having the trial disposed of there.

The other point I make is that in an interlocutory hearing, whether on a small claim or in any other jurisdiction of the Local Court, the judge is given the opportunity to hear the parties on the principles of the claim and at that stage to suggest possible settlement of the dispute. Far from prolonging the case in those circumstances, the dispute may be resolved more quickly and efficiently and in a less costly way than if the matter goes to trial.

The Committee divided on the amendment:

Ayes (9)—The Hons. J. C. Burdett (teller), M. B. Cameron, J. A. Carnie, Jessie Cooper, R. C. DeGaris, R. A. Geddes, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

Noes (8)—The Hons. D. H. L. Banfield (teller), T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. J. E. Dunford.

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 28—"Repeal of ss. 154 to 173 of principal Act."

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

Page 6—

Line 4—Leave out "173 (inclusive)" and insert "174h (inclusive)".

Line 4—After "repealed" insert "and the following section is enacted and inserted in its place:

154. (1) The clerk of a local court may upon the application of a person entitled to the benefit of a judgment or order given by, or registered in, that local court transfer the judgment or order for registration in some other local court.

(2) The transfer shall be effected by memorandum in writing addressed to the clerk of the local court to which it is desired to transfer the judgment or order accompanied by a copy of the judgment or order and such other documents as may be relevant to the proceedings in which it was given.

(3) Upon receipt of a memorandum transferring a judgment or order under this section, the clerk of a local court shall register the judgment or order in the court and thereafter proceedings may be taken upon and in relation to the judgment or order as if it were a judgment or order of that local court."

The substantive amendment is a recommendation of the Select Committee.

The Hon. J. C. BURDETT: Where it is necessary at present to transfer a judgment, either a default judgment or a judgment following an actual hearing, the procedure is rather complicated, and unnecessarily so. The new section provides a much simpler and more direct way of transferring judgment.

Amendments carried; clause as amended passed.

Clause 29—"Repeal of ss. 175 to 196 of principal Act."

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

Page 6, line 5—Leave out "196" and insert "195".

The Select Committee suggested that we do not repeal section 196.

Amendment carried; clause as amended passed.

Clause 30—"Repeal of ss. 197 to 207 of principal Act."

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

Page 6, line 6—After "repealed" insert "and the following section is enacted and inserted in their place:

197. (1) Where a person is in possession of property, or proceeds of the sale of property, and he has been, or expects to be, sued in respect of that property, or those proceeds, by two or more persons making adverse claims thereto, he may, subject to this section and the rules of court, apply to a local court for relief by way of interpleader.

(2) An application may be made under this section—

(a) where the value of the property, or the amount of the proceeds of sale of the property does not exceed thirty thousand dollars—to a local court of full jurisdiction; and

(b) where the value of the property, or the amount of the proceeds of sale of the property, does not exceed ten thousand dollars—to a local court of limited jurisdiction.

(3) A court may grant relief by way of interpleader upon such terms as may be just.

This amendment is in line with the Select Committee's recommendation.

The Hon. J. C. BURDETT: Proposed new section 197 is best explained by reading it. Perhaps I can give an example that arose not so long ago in the case of a deceased estate. A sale was put in the hands of an agent of auctioneers to sell furniture and the chattels in a house belonging to the estate. It was an old house, and there were parcels of things, including an old-fashioned washstand and all the jars and basins on it, which were sold as one lot. A cupboard and its contents were sold as one lot, and a wardrobe and its contents were sold as one lot. The person in question bid for the wardrobe, was successful, and the wardrobe was knocked down to him. Subsequently, that person discovered that on top of the wardrobe was a tin containing about £5 000 in old notes. They were worth much more than their face value because they had collectors value, and the person who bought the wardrobe and its contents was honest enough to approach the auctioneer saying, "I am not sure whether or not this really belongs to me."

The auctioneer took charge of the notes so that they were, as the provision provides, in the possession of the auctioneer, although they did not belong to him. They might have belonged to the estate, to the seller, the owner of the goods that were sold, or they might have belonged to the person who purchased the wardrobe and its contents. The auctioneer was in the invidious position of having what was not his, but he did not know whose it was. The procedures that followed are called interpleader proceedings. In this case they had to be taken in the Supreme Court, because the procedures in the Local Court were not adequate. This new section sets out to provide proper interpleader proceedings in the Local Court within the various jurisdictions.

Amendment carried; clause as amended passed.

Remaining clauses (31 to 50) and title passed.

Bill reported with amendments. Committee's report adopted.

ENFORCEMENT OF JUDGMENTS BILL

In Committee.

Clauses 1 to 3 passed.

Clause 4—"Interpretation."

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

Page 2, after line 4, insert definition as follows:

"banking account" includes an account maintained with a building society or credit union:

The amendment enables a banking account to be recognised in accordance with the Bill.

Amendment carried.

The Hon. D. H. L. BANFIELD moved:

Page 2, after line 8, insert—

and the expression "the court" in relation to a writ means the court to which an application for the issue of the writ has been made, or out of which the writ has been issued (as the case may require):

Amendment carried.

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

Page 2, line 26—Leave out "fifteen thousand" and insert "seven thousand five hundred".

It is obvious that, whatever figure is expressed, it should be the same as the limit in the Debts Repayment Bill. This amendment is consequential on the one carried previously to reduce from $15 000 to $7 500 the limit in the Debts Repayment Bill.

The Hon. D. H. L. BANFIELD: True, the figure should be the same in both Bills. However, as the Government opposed the amendment to the Debts Repayment Bill, it also opposes this amendment.

The Committee divided on the amendment:

Ayes (9)—The Hons. J. C. Burdett (teller), M. B. Cameron, J. A. Carnie, Jessie Cooper, R. C. DeGaris, R. A. Geddes, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

Noes—(9)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. J. E. Dunford.

The CHAIRMAN: There are 9 Ayes and 9 Noes. As the amendment is similar to and in accordance with the one passed to the Debts Repayment Bill, I give my casting vote for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 5 —"Transitional provision."

The Hon. D. H. L. BANFIELD moved:

Page 3, lines 1 and 2—Leave out subclause (1) and insert subclause as follows:

(1) Subject to this section—

(a) this Act applies in respect of any judgment whether given before or after the commencement of this Act; and

(b) no writ or warrant of execution shall be issued by a court except in pursuance of this Act.

The Hon. J. C. BURDETT: This and the following amendment are meant simply to clarify certain matters and to make the Bill, as it stands at present, clear. The amendment followed evidence given to the Select Committee. Subclause (1) *(a)* makes clear that the Act will apply in respect of any judgment, whether given before or after the commencement of the Act, and subclause (1) *(b)* makes clear that no writ or warrant of execution shall be issued by a court except in pursuance of this Act. I support the amendment.

Amendment carried.

The Hon. D. H. L. BANFIELD moved:

Page 3, after line 9—Insert subclause as follows:

(4) This Act does not affect the enforcement of a judgment or order *in rem* given or made in the exercise of the jurisdiction of the Supreme Court in admiralty.

The Hon. J. C. BURDETT: There are two forms of order in this regard: orders *in rem* and orders *in personam.* The former orders are made in respect of a thing and the latter are made in respect of a person. It was pointed out in one of the submissions presented to the Select Committee that it was not made clear whether this Bill applied to the admiralty jurisdiction, in which one can proceed against a ship and not against a person. The amendment makes clear that the jurisdiction of the Supreme Court in admiralty in relation to actions and orders against a ship are not interfered with.

Amendment carried; clause as amended passed.

Clauses 6 to 8 passed.

Clause 9—"Writ of sale."

The Hon. D. H. L. BANFIELD moved:

Page 3—

Line 31—Leave out "Where" and insert "Subject to subsection (2a) of this section, where".

Lines 34 to 36—Leave out paragraphs *(b)* and *(c)* and insert paragraphs as follows:

(b) his furniture and household effects that are reasonably necessary for the accommodation of himself and his family;

(c) his tools and implements of trade, his professional instruments, or reference books; or

(d) any property exempted from execution by the court.

After line 36 insert subclauses as follows:

(2a) Where the court is of the opinion that there are special reasons justifying the seizure and sale of property of the kind referred to in paragraph *(a), (b)* or *(c)* of subsection (2) of this section, the court may by endorsement on the writ, authorize the seizure and sale of any such property described or referred to in the endorsement.

(2b) Where the court is of the opinion that the seizure and sale of certain property would cause extreme hardship to the judgment debtor, the court may exempt that property from execution.

Page 4, lines 10 to 16—Leave out subclauses (5) and (6) and insert subclause as follows:

(5) The sheriff shall, as soon as reasonably practicable after seizure of personal property in pursuance of a writ of sale—

(a) cause it to be removed to some appropriate place for the purpose of sale; or

(b) place it in the care of some appropriate person until the date of sale.

The Hon. J. C. BURDETT: These amendments follow evidence given in the Select Committee in regard to the items that may be seized in execution and in regard to the exemptions. While furniture and wearing apparel are exempted, what about a wardrobe full of mink coats or a suite of Queen Anne furniture? On the other hand, you have the situation of professional books. Professional books do not come into the category, but they ought to. The purpose of the amendments is to clarify what may be seized and exempted and to give power to the court to exercise its discretion in a proper case. I support the amendments.

Amendments carried; clause as amended passed.

Clause 10—"Sales of chattels and land under writ of sale."

The Hon. D. H. L. BANFIELD moved:

Page 4, line 28—Leave out "he" and insert "the sheriff".

Amendment carried.

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

Page 4, line 33—After "auction" insert "unless the court, by endorsement on the writ, authorises the sale of property in some other manner".

This enables the court to make a different decision if it so desires.

Amendment carried.

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

Page 4, line 39—Leave out "the owner" and insert "the court".

As the Bill stands, the owner can give a direction but, under the amendment, the court will be able to give a direction if necessary.

Amendment carried.

The Hon. D. H. L. BANFIELD moved:

Page 5, lines 5 and 6—Leave out "registered pursuant to statute" and insert—

(a) that has been registered; or

(b) of which public notice has been given, pursuant to statute.

Amendment carried; clause as amended passed.

Clause 11 passed.

Clause 12—"Effect of writ."

The Hon. D. H. L. BANFIELD moved:

Page 5, after line 29—Insert subclause as follows:

(2) Where a person against whom a writ of possession has been enforced resumes possession of any land or other property—

(a) a writ of attachment may, by leave of the court, be issued against that person; or

(b) the writ of possession, by leave of the court, be re-issued.

The Hon. J. C. BURDETT: As the Bill stands, there is some doubt as to what happens in the circumstances where a writ of possession is issued, the sheriff takes possession pursuant to the writ, the person who is in possession is evicted, and that person subsequently comes back. It is not clear what can be done about this, if anything. The purpose of this amendment is to make clear that, if the sheriff claims possession and the person against whom possession was obtained subsequently returns, something can be done about it, either by writ of attachment or by re-issuing the writ of possession. I support the amendment.

Amendment carried; clause as amended passed.

Clause 13—"Application for writ of attachment."

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

Page 5, lines 37 and 38—Leave out subclause (3).

The Select Committee recommended that subclause (3) be struck out.

Amendment carried; clause as amended passed.

Clause 14—"Effect of writ."

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

Page 5, lines 40 and 41—Leave out "at such time and place as are mentioned in the writ" and insert "as soon as reasonably practicable".

The amendment is self-explanatory.

Amendment carried; clause as amended passed.

Clauses 15 to 17 passed.

Clause 18.

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

Page 6, lines 26 to 32—Leave out clause 18 and insert new clause as follows:

18. (1) Where an application for a writ of execution is made more than six years after the date of judgment, the writ shall not be issued except by leave of the court.

(2) A writ of execution may be issued, by leave of the court, in the name of a person who was not a party to the proceedings in which the judgment was given, upon proof that that person is entitled to the benefit of the judgment.

The new clause provides that it is only by leave of the court that a writ of execution can be issued more than six years after the date of judgment.

Amendment carried; new clause inserted.

Clauses 19 to 25 passed.

Clause 26—"Orders for periodic and other payments."

The Hon. D. H. L. BANFIELD moved:

Pages 8 and 9—Leave out clause 26 and insert new clause as follows:

26. (1) Where the court has given a judgment for the payment of a sum of money, the court may, upon the application of the judgment creditor—

(a) where the judgment debtor is a natural person—

(i) forthwith after pronouncing judgment, examine the judgment debtor as to his income, assets and liabilities; or

(ii) summons the judgment debtor to appear for the purpose of examination as to his income, assets and liabilities; or

(b) where the judgment debtor is a body corporate—summons any director or officer of the body corporate to appear for the purpose of examination as to the income, assets and liabilities of the body corporate.

(2) The court may dispense with the examination under this section if—

(a) the judgment debtor is out of the State;

(b) the judgment debtor cannot be found; or

(c) it is otherwise impracticable or inexpedient to conduct any examination under this section.

(3) Where—

(a) a judgment debtor (not being a judgment debtor who has submitted to the court in pursuance of this Part a proposal, approved by the judgment creditor, for satisfaction of the judgment debt); or

(b) a director or other officer of a body corporate, fails to appear in obedience to a summons under this section, the court may, upon the application of the judgment creditor, or of its own motion, issue a writ of attachment against that person.

Amendment carried; new clause inserted.

New clause 26a—"Order for payment of instalments, etc."

The Hon. D. H. L. BANFIELD moved to insert the following new clause:

26a. (1) The court may, after conducting (or dispensing with) an examination under this Part, order the judgment debtor—

(a) to pay the judgment debt forthwith, or within a period stipulated by the court; or

(b) to pay such periodic or other instalments towards the satisfaction of the judgment debt as may be stipulated by the court.

(2) In making an order for the payment of instalments against a natural person, the court shall have due regard to—

(a) the necessary living expenses of the judgment debtor and his dependants; and

(b) any other liabilities of the judgment debtor, so far as they are ascertainable by the court.

(3) The court may, on the application of a judgment creditor of a judgment debtor, rescind, suspend or vary an order under subsection (1) of this section.

(4) Where a judgment debtor who is liable upon a prescribed judgment submits to the court, at least five days

before the day appointed for an examination under this Part, a proposal for satisfaction of the judgment debt by periodic or other payments and the proposal—

(a) is endorsed with a certificate of a debt counsellor to the effect that the proposal is, in his opinion, a fair and practicable proposal for the satisfaction of the judgment debt; and

(b) is endorsed with the approval of the judgment creditor,

the court may, without proceeding to conduct the examination, make an order under subsection (1) of this section in terms of the proposal.

The Hon. J. C. BURDETT: The new clause should be agreed to. I intend to move to add a new subclause (5).

New clause inserted.

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

After subclause (4) insert new subclause (5) as follows:

(5) Where, in proceedings under this section in relation to a prescribed judgment, it appears to the court that the judgment debtor submitted to the judgment creditor a reasonable proposal for satisfaction of the judgment debt and that the judgment creditor, having been given a reasonable opportunity to consider the proposal, did not approve the proposal, the court shall if satisfied that the judgment creditor's failure to approve the proposal was in the circumstances of the case unreasonable award the costs of the proceedings (including the reasonable costs incurred by the judgment debtor in appearing at the proceedings) against the judgment creditor.

Members of the Select Committee on this side agreed that where a proposal was made, and it was not accepted by the judgment creditor, the costs of subsequent proceedings by the judgment creditor could be awarded against him. This should be done only in cases where the failure to agree to the proposition was unreasonable.

The Hon. D. H. L. BANFIELD: I oppose the amendment. This proposed amendment is unnecessary as a court will decide whether a creditor has had a reasonable opportunity to consider the proposal and the reasonableness of the proposal but to require this additional consideration of the reasonableness of the creditor's failure to approve the proposal is unnecessary. The court will not award costs if the debtor proves that he gave the creditor a reasonable opportunity to consider the proposal and that on the facts it was reasonable. The proposal is superfluous.

The Hon. J. C. BURDETT: The amendment is necessary because it may be difficult for the creditor to prove that his non-acceptance was reasonable. It should be necessary for the court to be satisfied that his non-acceptance was unreasonable.

The Hon. C. J. SUMNER: This proposed amendment is designed to replace clause 26 (9) in the original Bill. The difference between the Government's original proposal and that of the Hon. Mr. Burdett is that he wants the court to be satisfied that the judgment creditor's failure to approve the proposal was unreasonable before the court awards costs against the judgment creditor. As the Minister has said, that would be a matter within the discretion of the court. Accordingly, the additional protection that the Hon. Mr. Burdett is seeking is unnecessary.

The Hon. B. A. CHATTERTON (Minister of Agriculture): We have already indicated the Government's disagreement to this amendment, as we consider it superfluous. The Government strongly objects to it but, if by any chance the vote should go against us, we will agree to it.

The Hon. J. C. BURDETT: The Government has claimed that the amendment is superfluous and unnecessary. If that is its argument, I cannot see any harm in writing it into the Bill to make the position quite clear.

The Committee divided on the amendment:

Ayes (9)—The Hons. J. C. Burdett (teller), M. B. Cameron, J. A. Carnie, Jessie Cooper, R. C. DeGaris, R. A. Geddes, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

Noes (9)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. J. E. Dunford.

The CHAIRMAN: There are 9 Ayes and 9 Noes. I give my casting vote for the Ayes.

Amendment thus carried.

New clause 26b—"Issue of writ of sale against person liable upon prescribed judgment."

The Hon. B. A. CHATTERTON moved to insert the following new clause:

26b. (1) The court may, after conducting (or dispensing with) an examination under this Part in relation to a judgment debtor (being a judgment debtor who is liable upon a prescribed judgment)—

(a) issue an unconditional writ of sale in respect of the real and personal property of the judgment debtor;

(b) issue a writ of sale subject to conditions—

(i) limiting execution to certain real or personal property of the judgment debtor specified in the writ; or

(ii) protecting from execution certain real or personal property of the judgment debtor specified in the writ; or

(c) decline to issue a writ of sale in respect of property of the judgment debtor.

(2) In deciding whether, or in what manner to exercise its powers under subsection (1) of this section, the court shall have regard to the following matters—

(a) the question of whether a writ of sale is the only effective means of obtaining satisfaction of the judgment; and

(b) the hardship that would result—

(i) to the judgment debtor and his dependants; or

(ii) to the judgment creditor, according to whether the writ were issued or not, or were issued unconditionally or subject to conditions.

New clause inserted.

New clause 26c—"Offence."

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

After new clause 26b insert new clause 26c as follows:

26c. (1) A person who, without proper excuse (proof of which shall lie upon him) fails to comply with an order for the payment of money under this Part is guilty of an offence and liable to be imprisoned for a term not exceeding forty days.

(2) Where a judgment debtor fails to comply with an order for the payment of money under this Part, the court may, upon the application of the judgment creditor, or of its own motion, issue a writ of attachment against the judgment debtor.

(3) Where a judgment debtor is brought before the court upon a writ of attachment under subsection (2) of this section and the court is satisfied that there is reasonable ground to believe that the judgment debtor is guilty of an offence against this section, the court may refer the matter to the Attorney-General with a recommendation that the judgment debtor be prosecuted accordingly.

(4) Proceedings for an offence against this section shall not be commenced without the authorisation of the Attorney-General.

(5) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings for an offence against this section shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the Attorney-General's authorisation of the proceedings referred to in the document.

Under the Local and District Criminal Courts Act, when an order by the court to pay money is broken or an order to go before an unsatisfied judgment summons court is ignored, the plaintiff may then issue a warrant of commitment.

The defendant can be gaoled. The order made is usually for 10 days (although an order can be for 40 days) and, if a condition of the order is not complied with and the money is not paid, the plaintiff can issue a warrant of commitment and the debtor is forthwith placed in gaol. It is said that he is put in gaol for contempt, for not obeying a summons to appear, or for not obeying the order to pay the money, but it comes close to being the old imprisonment for debt.

The Bill takes that away, and I think properly so, but it retains a form of imprisonment. On listening to the evidence, particularly that of Dr. St.L. Kelly, the Opposition members of the Select Committee concluded that there should be some form of imprisonment but that it should be for an offence in the same way as other offences, namely, that when an order was broken without proper excuse it was a form of dishonesty and should be treated in the same way as other offences. There is nothing harsh in the new provision. The debtor gets every chance but, if he acts dishonestly, he can be charged.

The Hon. C. J. SUMNER: The proposed new clause is designed to replace clause 26 (7) of the original Bill. There was fairly strong evidence before the Select Committee that this clause took away rights that a defendant would have in a normal criminal prosecution, and it was argued that gaol for 40 days was not inconsiderable and that, if a judgment debtor had intended to defraud and failed to pay without having proper excuse, he should be subject to the normal protections of the criminal law, which are that the onus should be on the prosecution to establish these facts beyond reasonable doubt and that it should be done in separate criminal proceedings where the normal protections relative to evidence and the onus of proof applied.

The argument against clause 26 (7) was that it did not provide these protections and the gaol sentence of 40 days could be ordered in a court before which the judgment debtor was brought without any debtor's having the protections that I have mentioned. Members of the Select Committee accepted the force of that argument and a Government amendment was placed before the committee similar to that now being moved by the Hon. Mr. Burdett. Subclauses (2), (3), (4) and (5) of the proposed new clause are identical to those subclauses in the Government's proposed amendments. The only difference is in regard to subclause (1). The Government's proposal, which I foreshadow and would move if the clause that the Hon. Mr. Burdett seeks to insert were lost, is as follows:

(1) A person who—

(a) with intent to defraud; or

(b) wilfully and without proper excuse, fails to comply with an order for the payment or money under this Part, is guilty of an offence and liable to be imprisoned for a term not exceeding forty days.

Both proposals make a separate offence of failing to pay, which would be dealt with in accordance with the other subclauses that the Hon. Mr. Burdett has mentioned, through a normal criminal prosecution, but with the approval of the Attorney-General. That is in subclause (4) of the proposed new clause. The essential difference is that the Government does not believe that the onus of proof ought to be reversed: the Government believes that there should be the normal onus on the prosecution to establish its case beyond reasonable doubt.

The Hon. Mr. Burdett's proposal has the specific words "proof of which shall lie upon the debtor" where the provision deals with when a debtor has failed to comply with an order without having proper excuse. The Government considers that the onus ought to be on the prosecution to establish at least a prima facie case that would give the defendant something to answer, rather than write into the clause a reversal of the onus of proof. Sometimes the onus of proof is reversed but the Government does not consider it is warranted in these circumstances.

The Hon. J. C. BURDETT: The Government and the Opposition have been close in this matter, as the honourable member said. He has correctly outlined the one point of difference. Opposition members on the Select Committee thought in this case that it was not only proper but also necessary to reverse the onus of proof, which is often reversed in similar circumstances. How could the prosecution ever prove that the debtor did not have proper excuse? It could not, as it would not know what his circumstances or needs were.

It is common to reverse the onus of proof where matters of a technical nature are involved; that is, where there is no proper excuse. We consider it reasonable to reverse the onus of proof because of the considerable protections to the debtor provided in subclauses (2), (3) and (4). Then the Attorney-General may decide whether or not he will issue his certificate, and the debtor is protected by the latter part of the proposed new clause.

New clause inserted.

Clause 27—"Garnishee orders."

The Hon. D. H. L. BANFIELD moved:

Leave out subclauses (1), (2) and (3) and insert the following new subclause (1):

(1) The court may, upon the application of a judgment creditor (which may be made *ex parte*) order that—

(a) any moneys owing or accruing to the judgment debtor from a third person ("the garnishee") not being any pension, allowance or benefit payable under the *Social Services Act* 1947 of the Commonwealth, or workmen's compensation; or

(b) any moneys of the judgment debtor in the hands of a third person (including moneys in a banking account)

be attached to answer the judgment and paid to the judgment creditor.

Amendment carried.

The Hon. J. C. BURDETT: I move to insert new subclauses as follows:

(2) No order shall be made under subsection (1) of this section in relation to a judgment debtor who is liable upon a prescribed judgment in respect of salary or wages owing or accruing to the judgment debtor, unless the judgment debtor has failed to comply with an order for the payment of moneys under Part III of this Act.

(2a) In making an order for the garnishment of salary or wages, the court shall have due regard to—

(a) the necessary living expenses of the judgment debtor and his dependants; and

(b) any other liabilities of the judgment debtor, so far as they are ascertainable by the court.

Under the Mercantile Law Act wages cannot be attached.

There is no garnishee against wages. The Bill provides that there could be garnishee against wages with the consent of the debtor, not otherwise. This seemed to Opposition members of the committee, and to many of the witnesses, to be rather futile. It would be most unlikely that a debtor would agree, especially as he would be unwilling to let his employer know his circumstances and allow his wages to be garnisheed. We were indebted to Dr. Kelly for his clear and thorough evidence on this matter. He pointed out that there must be some ultimate sanction. Having no law for the recovery of debts completely destroys the whole commercial system if, in the last resort, a creditor cannot recover a debt. Generally, people who intend to pay their debts pay them. Dr. Kelly indicated that there are only two ultimate sanctions.

The first is imprisonment, and the second is the garnishment of wages. With the acceptance of my previous amendment, the ultimate sanction of imprisonment is removed. In some circumstances a debtor can be imprisoned if he has committed an offence and is dealt with in the same way as anyone else who has committed an offence against the law, but it is no sanction to merely make him pay his debt. As the sanction of imprisonment is taken away, some action is necessary, and garnishment of wages, as suggested by Dr. Kelly, is the correct sanction. Many actions must be taken before garnishment of wages can apply. A court cannot deprive a debtor of all his wages, and it must have regard to his necessary living expenses, his dependants, and liabilities.

We cannot be left with no sanction at all: there must be some sanction by which a debtor can be made to pay his debts. As we had removed the other sanction, we must provide this one, with the safeguard that the court must have regard to the things referred to.

The Australian Law Reform Commission was to bring down another report in this area later this year. Some witnesses suggested that this Parliament should proceed no further with this bracket of five Bills until the report was brought down. Dr. Kelly, having been asked whether he agreed with this, said that he did not and that it was in order for us to proceed. However, he did not think we should do so unless the matter of security was examined and unless garnishment of wages was provided for.

Of course, we have provided in the amendments recommended by the Select Committee for the matter of security. I now seek to provide for the other condition: the compulsory garnishment of wages as a final sanction. Dr. Kelly told us that this matter was considered by the Payne Committee in England in 1969 and that that committee sought submissions from the trade unions. Those excellent submissions recommended that there be a garnishment of wages as an ultimate sanction, the sanction of imprisonment having been taken away. That was implemented in England in 1971.

The Hon. C. J. SUMNER: I will not recite the Government's proposal as contained in the original Bill or the Hon. Mr. Burdett's amendment. Suffice to say that the basic difference between the Government's position and that of the honourable member is that the Government believes that garnishment of wages should occur only if the debtor consents to it. The Hon. Mr. Burdett believes that the court should be able to make an order garnisheeing wages in certain circumstances, irrespective of opposition from the debtor.

There has been a long tradition in South Australia whereby wages cannot be garnisheed. This goes back to before the turn of the century. One can certainly see the reasons for that position being adopted in South Australia. For most working people in this State, the only thing that enables them to live from week to week is the receipt of their weekly wages, and to have that intruded upon by a court order can produce a tremendous amount of suffering and unhappiness for such people and their families.

The receipt of a man's wages in this State at least has been fairly sacrosanct, the garnishment of wages having been abolished before the turn of the century. There is a section in the Industrial Conciliation and Arbitration Act which provides that an employee must be paid in cash to ensure that week by week he gets his money from his employer. So, given that historical situation, I oppose the proposal for a compulsory garnishee of wages.

The Hon. Mr. Burdett said that a debtor would never consent to having his wages garnisheed. However, I do not accept that. I think a debtor, who wanted to get his financial affairs sorted out and who could see that by garnisheeing his wages he would be able to do so, would agree to garnishment. Of course, this would be on the terms laid down by the debtor and under terms that he thought, wanting to repay his debts, he could realistically abide by.

So, there is a change in the existing situation, in that garnishment can occur, provided that the debtor agrees. I do not believe this would be as uncommon as the Hon. Mr. Burdett suggested. The honourable member also said that there was no sanction unless we had garnishment. However, we have just inserted in the Bill a clause which, in certain circumstances, would make a debtor liable to 40 days imprisonment.

The Hon. R. C. DeGaris: In a very limited area.

The Hon. C. J. SUMNER: If a debtor, without proper excuse, failed to abide by a court order, that could happen. This is provided for in the clause that has been inserted in the Bill. So, that gives some protection and provides some sanction. Therefore, the Hon. Mr. Burdett is not completely correct when he says that there is no sanction without garnishment of wages.

There is still provision for imprisonment on a specific charge where there has been failure to obey a court order without proper excuse. For those reasons, I support the Government's original proposition for garnishment with the debtor's permission, and oppose the Hon. Mr. Burdett's suggestion of compulsory garnishment of wages.

The Hon. N. K. FOSTER: I bitterly oppose the amendment. The Hon. Mr. Burdett has obviously never been financially embarrassed through no fault of his own, or that of his wife or the more senior members of his family. Also, the honourable member has failed miserably to examine the consequences of this amendment, and he has not adequately considered the wage earner. I say "wage earner", because the Hon. Mr. Burdett's amendment does not refer to income or salaries: it refers to wages, and the honourable member has used that term in a context that would be applied to those who were more unfortunate in relation to income.

I must emphasise that the honourable member did not, when moving his amendment, stipulate to what group of people it would apply. No worse thing could happen to a person than having his wages garnisheed. The Hon. Mr. Burdett should not say that this has not applied or could not apply in this State, as I have worked in an industry where it did apply. Indeed, this happened so abruptly that the children of the people concerned were without food for a week. This involved the Taxation Department just after the war.

I refer to the situation where the Commonwealth Treasury can require a paymaster to use the gross amount of a person's salary to meet that person's debt. If that happened in a totalitarian country, we would condemn it. Has the Hon. Mr. Burdett ever had representations made to him by workers who are in financial difficulties at the

festive season, particularly prior to the time when annual leave loadings become available? The Hon. Mr. Burdett is inflicting a terrible hardship on families. I have found that, provided people do not habitually fail to pay their accounts on the prescribed dates, organisations like the Electricity Trust are sympathetic. A person, having received advice from officers of the Community Welfare Department, may believe that he can allow his weekly debt repayments to form a certain proportion of his weekly income. However, that person could have a road accident, and we must bear in mind that there is no total compensation scheme in this country. Further, the person could have a home accident, against which very few people are insured. Many people do not know about the forms of financial assistance that they can receive from State and Federal Government departments.

On hearing that a person has had proceedings taken against him by a company, other companies will apply for a court order, too. The court decides what percentage of a person's salary will be taken. There is no justice in the lower courts of this land, no justice at all. We saw that recently in regard to a hotel on Yorke Peninsula; this matter was the subject of an appeal. Magistrates can be totally unfair and inconsiderate. They should take into consideration the social consequences of a garnishee order. I fear that the court may say, "We will make an example of this man, with no regard for his wife and children."

The Hon. Mr. Burdett has said that it took some years for a provision of this kind to be enacted in the United Kingdom. He said that the trade union movement in the United Kingdom approved it, but I point out that the influence of the trade union movement in the United Kingdom is different from the influence of the trade union movement here. Has the honourable member contacted the Community Welfare Department or the social welfare committee of the A.C.T.U.? The honourable member has not availed himself of the opportunities he has as a member of Parliament. He has failed miserably to discharge his responsibilities.

Another difficulty arises if mistakes are made when a computer is programmed, resulting in people being deprived of income for a considerable time. The sole wage earner in a household may not be aware of the debt repayments for which he will be held responsible.

A wife may take over the book-keeping and household accounting, and the debt is incurred by the husband. The wife may have planned a short holiday, and the whole set-up collapses. The social implications of this situation are considerable, and it does no credit at all to the honourable member to try to change the present provision in this Bill. The Hon. Mr. Burdett knows that, although it is a step from tradition, it is a step towards giving protection to the rights of the individual. The Liberal Party boasts that it is a Party for the individual and for freedom, yet when we come to this sort of measure we find, unfortunately, the very opposite. I suggest to the Hon. Mr. Burdett that he withdraw the amendment and leave the Bill as it is and as outlined by the Hon. Mr. Sumner. The debtor should have the last say; most of the debtors in this country more than measure up to their obligations, and only a small percentage default.

The Hon. J. C. BURDETT: I appreciate the Hon. Mr. Foster's concern for the debtors, and I agree with his final comment, which I have also made, that the majority of debtors pay up without default. We are dealing only with people who ignore a whole set of proceedings which I will detail once again. At its first meeting, as is usual, the Select Committee drew up a list of organisations to which letters were to be written in case they wished to give evidence. A letter was written to the Trades and Labor Council, but it did not respond.

The Hon. N. K. Foster: That is quite false the way you have put it.

The Hon. J. C. BURDETT: What I have said is perfectly true.

The Hon. N. K. Foster: You never approached them on the amendment.

The Hon. J. C. BURDETT: I did not say that I did. I said that a letter was written to the Trades and Labor Council, among other concerned organisations, to see whether it would like to make a submission. The Hon. Mr. Foster referred to garnishee orders under the Income Tax Act and to the fact that under that Act a gross amount of wages could be garnisheed; that does not apply here.

The Hon. N. K. Foster: It wouldn't need to.

The Hon. J. C. BURDETT: It does not, either. It is well to examine again what the steps are. First, the debtor did not pay his debt when it fell due, otherwise none of this would happen. Secondly, he has used up the good grace of his creditor, and the Hon. Mr. Foster mentioned the case of Electricity Trust of South Australia restriction notices and said that if they were spoken to they were usually prepared to be reasonable. He also mentioned the case of somebody overspending his income in the festive season and said that people are usually prepared to be reasonable. People are prepared to be reasonable and they will continue to be so. It is only after this reasonableness has been used up, after the Electricity Trust or the tradesmen, or whoever they may be, have run out of patience and have decided to collect the debt that then, in almost every case, a demand will be issued for the payment of the debt.

If the debtor then makes some reasonable offer, it is usually accepted. If the demand has not been complied with and a summons is issued, it is open to the debtor at that time to make some offer, and it is open to a reasonable creditor to accept that offer. The next step occurs when the amount claimed on the summons has not been paid and a judgment has been obtained or an order has been made. When an order is made the judgment debtor is brought before the court and examined as to his means, liabilities and income. The court is directed to take into account his needs to sustain himself and his dependants and other liabilities which he may have, whether they are court orders or not. An order will then be made by the court taking all these things into account. If that order is broken, there is no way under the Bill for the plaintiff, as he can at present, to send the defaulting debtor to prison.

There is no further step that the plaintiff can take unless there is the garnishment of his wages. An order must have been broken and then, under the amendment, an application is made to the court, in its discretion, to garnishee wages. If the court does this, it must take into account the necessary living expenses of the debtor and his dependants, and other liabilities, so far as they can be ascertained. The step of garnishment of wages is a last resort after all these other steps have been taken. The Hon. Mr. Foster, with respect (and I do respect what he said, because he has spoken with concern for people who are in difficulty), has overlooked the Debts Repayment Bill, with which we dealt earlier. He said that, if it becomes known that a debtor has had his wages garnisheed, everybody else might try to get on to the band waggon.

If they do, undoubtedly the debtor will seek the assistance of a debt counsellor, and I suggest that, although it may hurt his pride, long before an order for garnishment of wages is made he should have sought the

assistance of a debt counsellor to have a scheme set up under the Debts Repayment Bill. If such an order is made under the Debts Repayment Bill, then there is a moratorium, no further legal proceedings can be taken in respect of debts that are the subject of the scheme, and an order for garnishment of the debts cannot be made. While I understand the sacrosanct nature of wages, which is all that an ordinary working man has, with all these steps that have to be taken first and with the protection provided in the Debts Repayment Bill, if a debtor will not use these protections given to him there must be some final sanction, and I commend my amendment to the Committee.

The Hon. N. K. FOSTER: I said that, regarding his amendment, the Hon. Mr. Burdett had made no approach to the bodies to which I referred. People in the community who are interested in legislation may consider that they have no access to the minds of members opposite who want to move amendments to that legislation. We can catch the innocent but never the smart; that's life. The Social Security Department, under various Governments of different political persuasions, has for years been catching up with people who try to touch the taxpayer, but it never catches up with the really smart person.

However, we must recognise that, in trying to catch up with the smart one, we deny all sorts of innocent people. Last Saturday morning a young couple saw me about a letter they had received from the Housing Trust telling them to vacate the house by next Friday because they were in arrears of rent. I spoke to the trust, and there was not even an apology that a gross error had been made. That is why I am deeply opposed to this amendment.

The Hon. K. T. GRIFFIN: In this and other Bills in the parcel, a balance is sought to be achieved between the rights of the creditor and the needs of the debtor, to see that a creditor has a right to expect, in most circumstances, that the debtor will pay the debts and that the debtor will not suffer undue hardship by the use of the debt procedures in an unjust or unwarranted way, with regard not being had to individual or family circumstances. In my view, more hardship is likely to be caused by a warrant of commitment for 10 days for not attending court on an unsatisfied judgment summons or by a suspended order for failing to meet an order than is likely if a debtor is required to have a regular payment to the creditor deducted from his wages. The enforcement of a warrant of commitment often means that the person is put in gaol and loses his job. That puts his family in a predicament that is unlikely to be the result of the garnishee order. In the Bill as it was before us before the amendment, imprisonment for debt was retained and the Select Committee reached the conclusion, which many who gave evidence shared, that imprisonment for debt was an outmoded method of enforcement and that it was harsh and often created hardship.

However, it was obvious from the evidence that there had to be some sanction, to be applied not when the debtor did not have the opportunity to present his case but only after there had been full and proper inquiry. Members in this place have drawn attention to the fact that a garnishee order will be made only if the debtor has been before the court on an examination summons and, again, on an attachment order, when an order made at his original examination has not been complied with. I read from the discussion paper issued by the Law Reform Commission of Australia on Debt Recovery and Insolvency (pages 28 and 29) as follows:

> Orders for the compulsory attachment of wages are common in Australia but forbidden in two States, South Australia and Western Australia. Despite the dangers of attachment of wages, there must be some sanction for unreasonable failure to pay one's debts. In many cases of this type, execution on goods will not be available, and attachment of wages is likely to give the sole hope of recovery. Attachment may be an unnecessary remedy when, as in S.A., imprisonment in the form of contempt orders is retained as a final sanction . . . An order for the attachment of wages should be available to the court in circumstances where it appears that a debtor is unwilling to pay the debt by instalments, intends not to comply with an instalment order against him, or has failed to comply with such an order in circumstances which indicate that he is not making reasonable and satisfactory attempts to comply with that order.

In the context of this and the other Bills in the parcel, it seems necessary to have a final sanction. Otherwise, the enforcement procedures for debts will become a farce.

The Hon. D. H. L. BANFIELD: The Government's case against this amendment has been put very well by the Hon. Mr. Sumner and the Hon. Mr. Foster, and we strongly oppose the amendment.

The Hon. R. C. DeGARIS (Leader of the Opposition): I support the statement made by the Hon. Mr. Burdett about the evidence on which the committee reached its conclusion. The Select Committee advertised in all newspapers and wrote to several organisations, one of which was the trade union movement, in relation to evidence that people wanted to give. I think it fair to say that all the evidence given to the committee favoured the amendment moved by the Hon. Mr. Burdett. Dr. Kelly stressed strongly that there ought to be an ultimate sanction, and in the original Bill the ultimate sanction was imprisonment. That was retained by the Government.

The Hon. N. K. Foster: Your ultimate sanction was deportation and death in those days.

The Hon. R. C. DeGARIS: The Hon. Mr. Foster claims constantly that he is the only member here who has compassion for people. He accuses people on this side of being without compassion on this issue.

The Hon. N. K. Foster: Why shouldn't I do that?

The Hon. R. C. DeGARIS: When the Bill came before his Party originally, did he consider it better to have imprisonment as the ultimate sanction? Imprisonment causes far more damage to the family than does the garnishment of wages. There must be an ultimate sanction, and we must decide what is the most humane and compassionate system that will provide the best justice. As the Hon. Mr. Burdett has said, we have dealt with many changes in the law on debts and debt repayment, and in that range many things are available to the debtor. I believe that a fair balance has been achieved.

My last point is that there must be a final sanction. If there is not, all we will have done will become as nothing and we will be going back to where the Government started, namely, with imprisonment as the ultimate sanction. I have done far more work as a layman in this field than has the Hon. Mr. Foster, and I believe that the most humane and compassionate thing to have as a final sanction is the garnishment of wages.

The Hon. C. M. HILL: I am impressed by the second part of the amendment. Indeed, without it, I would find it hard to support the change suggested by the honourable member. Nevertheless, the principle of debtors' prison has gone out the window and, if we seek to ensure by this legislation that the debt must be repaid, there is no other alternative but to at least put the question to the court that some of the debtor's wages must be used for repayment.

The dignity of the individual is of concern not only to me but also to all honourable members and is protected by the second part of the amendment. Having regard to the

safeguards, it is not unreasonable for a court to be given the power to go as far as it can within the guidelines of the amendment. For those reasons, I support it.

The Committee divided on the amendment:

Ayes (9)—The Hons. J. C. Burdett (teller), M. B. Cameron, J. A. Carnie, Jessie Cooper, R. C. DeGaris, R. A. Geddes, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

Noes (9)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. J. E. Dunford.

The CHAIRMAN: There are 9 Ayes and 9 Noes. There being an equality of votes, as this is one of many amendments that must be further considered, I give my casting vote for the Ayes.

Amendment thus carried.

The Hon. D. H. L. BANFIELD moved to insert the following new subclause:

(3) An order under this section shall bind the moneys in the hands of the garnishee upon notice of the order being given to him in such manner as the court directs but execution shall not issue against the garnishee—

(a) until the expiration of one month from the date on which notice of the order is given under this subsection; or

(b) where proceedings are instituted under subsection (4) of this section before the expiration of that period of one month—until the determination of those proceedings,

whichever last occurs.

The Hon. J. C. BURDETT: The real effect of this provision is to provide much the same as we have with the present garnishee order *nisi* that has been done away with. Its effect is that an order for garnishment shall bind money so that it cannot be disposed of. The order shall bind money in the hands of the garnishee, upon notice, but there is a period before execution may be issued so that he has the opportunity of doing something about it. I support the amendment.

Amendment carried.

The Hon. D. H. L. BANFIELD moved:

Page 10, lines 16 and 17—Leave out "before execution as issued against the garnishee" and insert "and may vary or rescind the order under sub-section (1) of this section".

Amendment carried; clause as amended passed.

Clauses 28 and 29 passed.

New clauses 29a, 29b, 29c, 29d, and 29e.

The Hon. D. H. L. BANFIELD moved to insert the following new clauses:

Page 11, after clause 29, insert new clauses as follows:

29a. Where a body corporate fails to obey a judgment—

(a) a director of the body corporate, or any other officer of the body corporate who is responsible for the management or administration of the affairs of the body corporate, is liable to be attached; and

(b) the judgment may be enforced, by leave of the court, against any director, or any such officer, of the body corporate.

29b. (1) The court may charge any property of a judgment debtor with a judgment debt or any part thereof.

(2) An order may be made under this section on such terms and conditions as the court considers just.

(3) Where the court has made an order under subsection (1) of this section, it may make consequential or ancillary orders—

(a) requiring registration of the charge;

(b) prohibiting or restricting dealings with the property subject to the charge;

(c) providing for the sale, or conversion into money, of the property; or

(d) relating to any other matters.

29c. (1) The court may, for the purpose of enforcing a judgment, appoint a receiver by way of equitable execution.

(2) A receiver may be appointed under subsection (1) of this section notwithstanding that all remedies of execution at law have not been exhausted.

(3) Where a receiver is appointed under this section, the court may make consequential or ancillary orders—

(a) conferring on the receiver any powers that may be necessary or expedient for the purposes of the receivership;

(b) providing for accounts to be rendered by the receiver; or

(c) relating to any other matter.

(4) A receiver appointed under this section has no powers in relation to any pension, allowance or benefit payable under the Social Services Act, 1947 of the Commonwealth, or in relation to workmen's compensation.

29d. (1) Where a court is satisfied on the application of party to proceedings (which may be made *ex parte*)—

(a) that some other party to the proceedings has property situated in the State;

(b) that there is a substantial risk that the property may be—

(i) disposed of; or

(ii) removed from the State,

by, or at the direction of, that other party; and

(c) that the disposal or removal of that property would seriously prejudice the enforcement of the judgment that the applicant seeks to recover in the proceedings,

the court may, by order—

(d) prohibit the disposal of that property or its removal from the State; or

(e) otherwise restrict dealings with that property.

(2) The court may, for proper cause, vary or revoke an order under this section at any time.

29e. Proceedings under Part III or Part IV of this Act in relation to a judgment of the Supreme Court may be instituted, heard and determined in a local court.

The Hon. J. C. BURDETT: These amendments involve a proper means of ensuring that, in the last resort, everything to which the debtor has a proper title may be available to the judgment creditor.

New clauses inserted.

Clause 30 passed.

Clause 31—"Amendment of Mercantile Law Act."

The Hon. D. H. L. BANFIELD moved:

Page 11, lines 16 to 19—Leave out subclauses (1) and (2) and insert subclauses as follows:

(1) The Companies Act, 1962-1974, is amended as shown in the schedule to this Act, and, as so amended, may be cited as the "Companies Act, 1962-1978".

(2) The Debtors Act, 1936, is amended as shown in the schedule to this Act, and, as so amended, may be cited as the "Debtors Act, 1936-1978".

(3) The Mercantile Law Act, 1936, is amended as shown in the schedule to this Act, and, as so amended, may be cited as the "Mercantile Law Act, 1936-1978".

Amendment carried; clause as amended passed.

Clauses 32 and 33 passed.

New clause 34—"Regulations."

The Hon. D. H. L. BANFIELD moved:

Page 11, after clause 33—Insert new clause as follows:

34. The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient

for the purposes of this Act.

The Hon. J. C. BURDETT: I support the amendment. It was a rather remarkable omission in the Bill that, although certain things were to be prescribed, and while it was obvious that there was meant to be a regulation-making power, none was included in the Bill. This amendment is necessary to include that regulation-making power.

New clause inserted.

Schedule.

The Hon. D. H. L. BANFIELD moved:

Page 11—Insert the following schedule at the end of the Bill:

THE SCHEDULE

Amendment of Certain Acts

(1) The Companies Act, 1962-1974, is amended by striking out section 390.

(2) The Debtors Act, 1936, is amended—

(a) by striking out paragraphs *(c)* and *(d)* of section 3; and

(b) by striking out paragraph (iii) of the proviso to section 3 and inserting the following paragraph:—

(iii) nothing in this section affects the powers of arrest or imprisonment under the Enforcement of Judgments Act, 1978.

(3) The Mercantile Law Act, 1936, is amended by striking out section 18.

Schedule inserted.

Title.

The Hon. D. H. L. BANFIELD moved:

Page 1, after "to amend", insert "the Companies Act, 1962-1974, the Debtors Act, 1936 and".

Amendment carried; title as amended passed.

Bill reported with amendments. Committee's report adopted.

SIR JOHN BARNARD'S ACT (EXCLUSION OF APPLICATION) BILL

(Second reading debate adjourned on 14 September. Page 744.)

Bill read a second time.

The Hon. D. H. LAIDLAW moved:

That it be an instruction to the Committee of the Whole Council on the Bill that it have power to consider a new clause relating to prohibition on the short selling of securities.

Motion carried.

In Committee.

The CHAIRMAN: As the amendment proposed to the short title of this Bill is dependent on the acceptance by the Committee of new clause 1a proposed to be inserted in the Bill, I suggest that consideration of clause 1 be postponed until the decision has been made on the proposed new clause. It is not necessary to alter the title.

The Hon. D. H. L. BANFIELD (Minister of Health): I am pleased to accept your suggestion, Sir.

Consideration of clause 1 deferred.

New clause 1a—"Short selling."

The Hon. D. H. LAIDLAW: I move:

Page 1, after line 4—Insert new clause as follows:

1a. (1) Subject to this section, a person shall not sell securities to a purchaser unless, at the time he sells them—

(a) he has or, where he is selling as agent, his principal has; or

(b) he believes on reasonable grounds that he, or where he is selling as agent, his principal has—

a presently exercisable and unconditional right to vest the securities in the purchaser.

Penalty: For a first offence, one thousand dollars or imprisonment for six months; for a second or subsequent offence, five thousand dollars or imprisonment for two years, or both.

(2) For the purposes of subsection (1) of this section—

(a) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person;

and

(b) a right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of money.

(3) Subsection (1) of this section does not apply in relation to—

(a) a sale of securities by the holder of a dealers licence or a recognised dealer who is a member of a stock exchange and specialises in transactions relating to odd lots of securities being a sale made by him as principal solely for the purpose of—

(i) accepting an offer to purchase an odd lot of securities; or

(ii) disposing of a parcel of securities that is less than one marketable parcel of securities by means of the sale of one marketable parcel of those securities;

(b) a sale of securities as part of an arbitrage transaction;

(c) a sale of securities by a person who before the time of sale has entered into a contract to purchase those securities and who has a right to have those securities vested in him that is conditional only upon all or any of the following:

(i) payment of the consideration in respect of the purchase;

(ii) the receipt by him of a proper instrument of transfer in respect of the securities;

(iii) the receipt by him of the documents that are, or are documents of title to, the securities; or

(d) a sale of securities where—

(i) the person who sold the securities is not associated with the body corporate that issued or made available the securities;

(ii) arrangements are made before the time of the sale that will enable delivery of securities of the class sold to be made to the purchaser within three business days after the date of the transaction effecting the sale; and

(iii) if the sale is effected on the stock market maintained or provided by a stock exchange—

(A) the price per unit in respect of the sale is not below the price at which the immediately preceding ordinary sale was effected; and

(B) the price per unit is above the price at which the immediately preced-

ing ordinary sale was effected unless the price at which the immediately preceding ordinary sale was effected was higher than the next preceding different price at which an ordinary sale had been effected—

and the stock exchange is immediately informed that the sale has been made short in accordance with this subparagraph.

(4) A person who requests a holder of a dealer's licence or a recognised dealer to effect a sale of securities to which subsection (1) of this section would apply but for paragraph *(b)* or *(d)* of subsection (3) of this section shall, at the time of making the request, inform the holder of the licence or recognised dealer that the sale is a short sale.

(5) A person, who on a stock market that is maintained or provided by a stock exchange, effects, whether as principal or agent, a sale of securities to which subsection (1) of this section would apply but for paragraph *(b)* or *(d)* of subsection (3) of this section shall cause to be endorsed on any document evidencing the sale that is given to the person who, whether as principal or agent, purchases the securities a statement that the sale was a short sale.

(6) In this section—

"securities" means—

(a) debentures, stocks or bonds granted, issued or proposed to be issued by a government;

(b) debentures stocks, shares, bonds or notes issued or proposed to be issued by a body corporate or unincorporate;

(c) any right or option in respect of any such debentures, stocks, shares, bonds or notes; or

(d) an interest as defined in section 76 of the Companies Act, 1962-1974.

The amendment is identical in wording to the interpretative clause 4(1), and to section 54 of the Securities Industry Act, which was passed in 1975 and 1976 in New South Wales, Victoria, Queensland and Western Australia, with the exception that this amendment does not provide for other forms of short selling to be approved subsequently by regulation.

Subclause (1) of the new subclause forbids the selling of securities unless the principal or his agent can have or has reasonable grounds to believe that he can vest securities in the purchaser.

Subclause (2) enacts that a person who has bought shares but may have not yet received the relevant documents or who has pledged shares as security for a loan is deemed to be in a position to vest securities in the purchaser and not be regarded as short selling.

Subclause (3) lists three situations where short selling will be permitted. First, in some stock exchanges, but not in Adelaide at present, there are official odd-lot dealers. As part of their normal business, they sell odd parcels of shares and at the time of the transaction may not own the shares sold.

Secondly, short selling as part of arbitrage transactions will be permitted. For many years groups of stockholders, say, between Adelaide, Melbourne and Sydney or Adelaide and London, have operated to take advantage of price differences of a particular stock in different centres and to share any profit that results. For example, if B.H.P. was quoted at $8·80 seller in Adelaide and $8·90 buyer in London, the arbitrage brokers could buy some B.H.P. shares in Adelaide and sell them in London on the same day. Because of different operating hours, one broker may have sold the B.H.P. shares before his associates in the other centre bought. This would be short selling, but for the exemption proposed.

Arbitraging in shares was common in the early part of this century when communications between capitals were somewhat primitive and price differences were magnified. It is still carried on by some Adelaide stockbrokers. The practice serves to even out the difference in prices between centres and is constructive rather than harmful.

The third instance which is permitted is where a person has, for example, bought B.H.P. shares one day and sells them the next. He may not have paid for the shares or received the relevant documents by the time he made the sale on the following day. Technically he would be guilty of short selling but this situation is exempted.

Subclause (3) *(d)* provides that no person associated with a company can short sell in any circumstances. This refers to a director or an employee. It also provides that the odd lot dealer or the arbitrage operator or the person who buys then sells immediately thereafter must be in a position to deliver the securities sold to the purchaser within three days after the transaction.

Subclause (3) *(d)* (iii) prescribes the market conditions under which a person can short sell. This is a concept which has been promoted in the United States and has been incorporated in the Securities Industry Acts in the other four States.

For example, if the last two sales of B.H.P. shares were at $8·80 he can sell short at $8·80. However, if the last sale was at $8·80 he cannot sell short at $8·75 in order to generate a slide in the market price. Similarly, if the sale before last was at $8·85 and the last sale at $8·80, if he wants to sell short, he must do so at $8·81 or above. This means that short selling is permitted on a rising but not on a falling market.

Subclause (4) provides that a principal who intends to sell short must inform his stockbroker that it is a short sale. Subclause (5) provides that when a stockbroker sells short he must show evidence of that on the contract note that is delivered to the purchaser. Subclause (6) defines securities for the purpose of this amendment and is copied from the interpretative clause 4 *(A)* of the Securities Industry Act to which I have referred.

The Hon. D. H. L. BANFIELD (Minister of Health): I accept the amendment.

The Hon. R. C. DeGARIS (Leader of the Opposition): I commend the Hon. Mr. Laidlaw for the research he has done and for coming across what was, I believe, something that the Government did not intend to do: permit short selling of shares on the Adelaide Stock Exchange. When this Bill was first introduced, it was received with some merriment by some honourable members, but the work that has been done in this place is beneficial to this State. As originally introduced here, the Bill would have had some drastic implications for the State.

New clause inserted.

Clause 1—"Short title."

The Hon. D. H. LAIDLAW moved:

Page 1, lines 3 and 4—Leave out all words in the clause after "the" in line 3 and insert "Short-Selling of Securities (Prohibition) Act, 1978".

Amendment carried; clause as amended passed.

Clause 2 passed.

Title.

The Hon. D. H. LAIDLAW moved:

After "An Act to" insert "prohibit the short-selling of securities and to".

Amendment carried; title as amended passed.

Bill reported with amendments. Committee's report adopted.

HARBORS ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 19 September. Page 962.)

The Hon. J. A. CARNIE: I support the Bill, which makes several disparate amendments to the principal Act. I have no query concerning the amendments, except for those dealt with by the Hon. Mr. Dawkins: namely, those dealing with the acquisition of property and the question of providing for proclamations to be issued rather than regulations. I am pleased to see that clause 22 increases the minimum size of vessels for which compulsory pilotage is required from 100 tons to 200 tons. The growth of the fishing industry in South Australia has resulted in an increase in the size of fishing vessels. Because many vessels now exceed 100 tons, it is unreasonable to expect them to take in a pilot every time they come into port. Of course, in many cases an exemption is obtained for a particular port: for example, the master of the *Troubridge* would hold exemption certificates for Kingscote and Port Lincoln.

On the other hand, fishing vessels can and do go into any port, and it is unreasonable to expect them to hold an exemption certificate for every port. I questioned the Minister of Marine some time ago and he said he was considering the matter. When this Bill was being dealt with in the Lower House the Minister said that he had given an undertaking that he would amend the Act to alter this limit which, he admitted, had been overlooked. Because he gave this undertaking and did not honour it, he waived the question of fees. Although this was appreciated it did not prevent the inconvenience, and I am pleased that the limit on vessels has been raised to 200 tons.

I now refer to the question of proclamation *versus* regulation, which was canvassed in the House of Assembly when amendments were discussed but not proceeded with because the Minister said:

> I have no strong objection to the amendment except that I would like the opportunity to check with the department to see whether there is any extraordinarily difficult administrative reason why the term should be proclamation rather than regulation. What the honourable member is suggesting is a much more expensive procedure. It enables members to peruse whatever is involved, object to it, and move for its disallowance if they disagree with it. I do not wish to take that advantage away from members, provided there is no difficulty of the kind to which I have referred. I undertake to have the matter examined. If I find that the amendment is reasonable, we will certainly move it in another place. If we find that the amendment is not reasonable, I will inform the honourable member who can then take whatever steps he wishes to take.

The Government has not moved that amendment, and I ask the Minister dealing with the Bill in this Council to say why this was not done. If the explanation is not saitsfactory, I intend to support the foreshadowed amendments mentioned by the Hon. Mr. Dawkins. It could be that there is a perfecty sound administrative reason why the Minister has not proceeded with the amendment, and I should like to hear any reason that can be given. Other clauses make machinery amendments concerning metric conversion. The Hon. Mr. Dawkins, in his contribution to this debate, referred to the definition of "mile", which means a nautical mile of 1 852 metres. He said that this seemed rather odd, because there were two different standards of measurement.

This is not so, because a nautical mile, which is one minute of latitude at the earth's surface, bears no relation whatever to the land measurement of one mile. There is now a 200-mile limit on coastal waters and many people do what they think is the right thing and convert that to 320 kilometres; that is not so, because the limit is 200 nautical miles, and is about 370 kilometres. Subject to the question I have raised with the Minister, I support the Bill.

The Hon. K. T. GRIFFIN secured the adjournment of the debate.

ADJOURNMENT

At 6.5 p.m. the Council adjourned until Wednesday 27 September at 2.15 p.m.