

HOUSE OF ASSEMBLY

Thursday 16 November 1978

The **SPEAKER (Hon. G. R. Langley)** took the Chair at 2 p.m. and read prayers.

Beach centre redevelopment and land acquisitions	260 000
Recreation boating	50 000
Research, consultancies and other projects...	80 000
Total	\$1 150 000

PETITION: SUCCESSION DUTIES

A petition signed by 49 residents of South Australia praying that the House would urge the Government to amend the Succession Duties Act so that blood relations sharing a family property enjoy at least the same benefits as those available to other recognised relationships was presented by Mr. Harrison.

Petition received.

PETITION: PORNOGRAPHY

A petition signed by 84 electors of South Australia praying that the House would pass legislation to provide for Ministerial responsibility to adequately control pornography was presented by Mr. Tonkin.

Petition received.

PETITION: VOLUNTARY WORKERS

A petition signed by 226 residents of South Australia praying that the House would urge the Government to take action to protect and preserve the status of voluntary workers in the community was presented by Mr. Tonkin.

Petition received.

PETITION: SUCCESSION AND GIFT DUTIES

A petition signed by 126 residents of South Australia praying that the House would urge the Government to adopt a programme for the phasing out of succession and gift duties in South Australia as soon as possible was presented by Mr. Tonkin.

Petition received.

QUESTIONS

The **SPEAKER**: I direct that the following written answers to questions be distributed and printed in *Hansard*.

COAST PROTECTION BOARD

In reply to **Mr. MATHWIN** (11 October, Appropriation Bill).

The **Hon. HUGH HUDSON**: The increase of \$135 000 will cover interest and principal instalments due in respect of loans taken up by the board in the second half of 1977-78 and the first half of 1978-79. The board will be borrowing a total of \$1 000 000 during the current financial year. This amount will finance the greater part of the board's anticipated expenditure in 1978-79 as follows:

	\$
Anticipated council's work programmes	120 000
Protective works	100 000
Dredging and beach replenishment works	540 000

RADAR MACHINES

In reply to **Mr. BECKER** (10 October, Appropriation Bill).

The **Hon. D. W. SIMMONS**: Locations for the operation of radar units are programmed by the Traffic Intelligence Centre of the Central Traffic Headquarters. Criteria used to determine locations is based on the objective to reduce drivers' speeds in relation to areas of high accident incidence, and deployment must be justified in accordance with current accident patterns and other types of hazard situations, for example, complaints from responsible persons or organisations. With regard to the precise siting of units at a particular location, the following factors are kept in mind:

1. The operators of radar units must be positioned between the fence alignment and curb alignment and not in close proximity to trees, stobie poles, bus shelters, and other obstructions. The actual siting relative to the curb is dependent on the features of the individual locations.
2. Unless the operator of the unit has a clear view of approaching traffic, it is impossible to work the programmed location.
3. The minimum distance between the position of a unit and the interrogation point is 200 metres.

Members of the Police Department are trained in all aspects of the operation of radar units, and regular supervisory checks are made to ensure that the installations are complied with.

STATE EMERGENCY SERVICES

In reply to **Mr. BLACKER** and **Mr. WOTTON** (10 October, Appropriation Bill).

The **Hon. D. W. SIMMONS**: The creation of three positions of regional officers for the State Emergency Service is currently the subject of negotiations with the Public Service Board. If approved, the officers will be located at Adelaide, Murray Bridge, and Port Augusta to service the central, southern and northern areas of the State. The Police Department is still awaiting the outcome of its submission to the board in relation to the creation of these offices. Motor vehicles for the State Emergency Service were already acquired in the previous financial year and are available for allocation when needed.

MURRAY RIVER

In reply to **Mr. GOLDSWORTHY** (9 November).

The **Hon. J. D. CORCORAN**: In replying to the question asked by the honourable member as to whether I was satisfied that the simulated tests undertaken at Boyer in Tasmania are completely satisfactory and justify the establishment of the newsprint mill at Albury-Wodonga, I stated that he had quoted from a document, probably out of context. This is the case. The honourable member has quoted the last paragraph from the discussion section of a

paper "Toxicity of Treated and Untreated *P. Radiata* Thermo-Mechanical Pulp Effluents of a Number of Organisms" by R. J. Buckney, which was an appendix to the "Addendum to Environmental Impact Statement" issued by Australian Newsprint Ltd. The comment quoted refers to both untreated and treated effluents. There is certainly no thought that untreated effluents be discharged into the Murray River. The more significant section of the report is the conclusion, which states:

Operation of a pilot plant at ANM Ltd. Boyer, has shown that the wastewaters arising from the manufacture of thermo-mechanical pulp from *P. Radiata* can be treated by the activated sludge process, to give a high quality effluent.

There is nothing arising from the Boyer tests to suggest that ANM will not be able to meet the effluent standards set by the New South Wales State Pollution Control Commission: namely, the receiving waters in the river will have to conform at least to New South Wales State Pollution Control Commission standards for class C controlled waters after the receipt of the effluent. This standard gives little latitude for offensive discharges and the limit for the parameter "use of waters for human consumption, domestic or industrial purposes, watering of stock or irrigation of land" is "not to be affected".

PRAWN FISHING

In reply to **Mr. BLACKER** (15 August).

The Hon. J. D. CORCORAN: Consultation prior to the announcement of new prawn fishing fees consisted of meetings with delegates of the fishermen's associations in the offices of the Agriculture and Fisheries Department. These meetings were on June 20 and June 27 1978. Prior to discussions on an easier vessel replacement policy the Assistant Director (Fisheries) made it clear to the delegates that they could expect very substantial increases in fees for prawn authorities this year. This has been publicly acknowledged by a spokesman for the Australian Fishing Industry Council. We have no way of knowing what these delegates told their associations, but it is not correct to say that the extent of the increases was never discussed with the industry.

The letter referred to is apparently the one dated 31 July 1978 (which was prior to the Minister's announcement). It set out the proposed scale of fees and stated, "I would also like to discuss how the overall fees might be adjusted in future years." The honourable member also raised the question of increased fees in other licensed fisheries alleging that these will constitute further massive imposts on the industry. Any increase in licence fees for the remaining fisheries will be introduced only to defray the rising costs of the Australian Fishing Industry Council secretariat and will reflect the effects of inflation and increased workload of that office. The matter is still subject to negotiation.

MURRAY RIVER

In reply to **Mr. TONKIN** (9 November).

The Hon. J. D. CORCORAN: It has to be emphasised that the endorsement of the environmental impact statement by the N.S.W. State Pollution Control Commission was subject to a number of conditions and moreover the following was specifically spelled out on the covering note to the "Addendum to e.i.s." issued by ANM Ltd.:

However, in considering the information provided in this addendum, readers should note that approval of the

environmental impact statement by Government is not the final word in approving the project. All discharges from the mill will be subject to the issue of licences under conditions imposed by the State Pollution Control Commission of New South Wales. In issuing such licences, the commission will take into account the design and installation of plant and machinery at the mill.

At this time, the Albury paper mill has not been given the go-ahead to discharge effluent into the Murray River. As indicated previously, the State Pollution Control Commission requires ANM Ltd. to submit detailed engineering drawings of its proposed treatment plant for examination before it will give approval for the plant, and then the company would still have to meet any conditions placed on a licence issued under the N.S.W. Clean Waters Act to discharge effluent into the Murray.

The South Australian Commissioner on the River Murray Commission has advised that the Pollution Control Commission is unlikely to be in a position until next February or March to assess whether the treatment plant would be able to deliver effluent of a quality to meet its quality requirements.

The New South Wales State Pollution Control Commission has reaffirmed that, before a licence is issued for the discharge of effluent into the river, there will be consultations with the Murray River Commission concerning the conditions that would be placed on the licence.

CATTLE

In reply to **Mr. ARNOLD** (28 September).

The Hon. J. D. CORCORAN: It is true that a proportion of cattle sent for slaughter under the brucellosis eradication campaign are valued at more than \$200, and this especially applies to dairy and stud cattle. However, the purpose of compensation is to provide an equitable return to the commercial producer and not to compensate for the high-price animal where alternative insurance can be taken out. In comparison with payments to their counterparts in other States, South Australian producers are favourably compensated. Upper limits of compensation in other States are:

Western Australia	Bulls \$500	Others \$200
Victoria	\$175	
New South Wales	\$150	
Queensland	Flat rate of \$140 for stud and dairy cattle, \$74 for beef cattle.	
Northern Territory	\$100 in Alice Springs area. Less for cattle in more northern localities.	

The following facts are pertinent when considering a lifting of the \$200 limit in South Australia.

1. With the State compensation fund's already heavy commitments to pay out for brucella and T.B. reactors slaughtered, any great increase in payments is likely to make necessary an increase in the stamp duty payable to the fund. Naturally, the higher duty would be levied from producers.
2. The State fund contributes only 25 per cent of compensation costs for brucellosis and 50 per cent for T.B. The balance is derived from Federal consolidated revenue, and it would be necessary to negotiate with the Commonwealth for any increase in the compensation level. In the present economic climate this would undoubtedly draw a negative response from the Federal Government.

3. From past discussions with industry representatives on the Tuberculosis and Brucellosis Industry Liaison Committee, it is clear that the industry in general is satisfied with compensation paid, and that they, the representatives, do not favour any change. Further, industry has expressed a reluctance to subsidise the cost of high-price stock where the majority of revenue is derived from lower price commercial animals.

ASSENT TO BILLS

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

Administration and Probate Act Amendment,
Hairdressers Registration Act Amendment,
Housing Agreement,
Industrial Conciliation and Arbitration Act Amendment,
Libraries and Institutes Act Amendment,
Local Government Act Amendment (No. 3),
Old Angaston Cemetery (Vesting),
Pay-roll Tax Act Amendment,
South Australian Film Corporation Act Amendment,
South Australian Museum Act Amendment,
Statutes Amendment (Executor Companies),
Swine Compensation Act Amendment.

QUESTION TIME

MEAT

Mr. TONKIN: Can the Premier say what likely increase in the price of meat to Adelaide families will result from the Government's proposed changes to legislation limiting the import of meat from other States? The Minister of Agriculture is reported as saying that legislation prohibiting the import of meat from other States, unless processed at abattoirs acceptable to South Australia, will greatly improve the economic viability of Samcor. This statement was made as a comment on the \$4 000 000 loss sustained by Samcor last year. He said that, if the new legislation were passed and meat quotas adopted, this would assure Samcor's share of metropolitan markets by restricting entry to major central suburbs by other abattoirs. Does the Government support the Minister of Agriculture's proposals to overcome Samcor's \$4 000 000 deficit at the expense of increased meat prices to Adelaide consumers?

The Hon. D. A. DUNSTAN: The Leader is making an assumption that is not valid.

Mr. Tonkin: The Minister's boo-boo again!

The Hon. D. A. DUNSTAN: On the contrary. The Minister made no such assumption as was made by the Leader. Samcor has had two difficulties facing it: the first was the high killing charges that were involved in the maintenance of export abattoir standards as required by D.P.I., and a peak killing capacity. The second thing from this was that there is a restriction, which has always been acknowledged by Governments (even of the honourable member's political persuasion) as to the entry of meat into the Adelaide market from country abattoirs, and that was an essential part of our being able to maintain the kind of service abattoirs demanded by country people in South Australia.

Those country abattoirs that have limited access to the Adelaide market and the Samcor works were in difficulties

facing imports of meat from interests which were not subject to that restriction and which were killed in works that were not required to have the standards of hygiene demanded of South Australian works.

Mr. Chapman: But they have much better management.

The Hon. D. A. DUNSTAN: That is also doubtful. Numbers of country works in South Australia had very good management. There has been a considerable reorganisation at Samcor and a considerable lowering of killing charges. As stock becomes available, it will be possible for Samcor to take up the market, and I do not believe that that will mean a marked increase in the price of meat.

CREDIT EDUCATION

Mr. DRURY: Can the Minister of Education say whether it is part of the secondary school curriculum for students to be given general instruction regarding credit transactions? Recently, credit problems in relation to a housing company have raised their ugly heads. During the course of debate yesterday on the Prices Act Amendment Bill, I wondered whether students in high schools should be given general instruction regarding credit transactions and the pitfalls associated with them.

The Hon. D. J. HOPGOOD: I could not guarantee that every student at high school would at some stage of his high school career look at this matter in any great detail. My colleague the Attorney-General has had discussions with me from time to time about the whole business of consumer education in schools, and clearly this is a growth area. For the most part, it would be regarded as not part of the core curriculum, but the ancillary curriculum, the optional subjects that are available from time to time, would include this. Where it was part of the core, it would tend to be as part of social studies rather than being part of a full-length course, which would carry the label of consumer education. I shall bring the honourable member's concern to the attention of my officers. However, I would see the way in which it would work as being that the curriculum directorate of my department would prepare material, but it would then be a school-based decision as to how large such material would loom in the school curriculum. In the final analysis, it is up to the schools as to the extent to which this could be taken on board.

GOVERNMENT BUILDINGS

Mr. GOLDSWORTHY: Will the Minister of Mines and Energy say what action the Government is taking to see that energy is not wasted by lighting systems and air-conditioning in Government buildings? A press report today quotes the Minister as saying, in opening the 24th national convention of the Illuminating Engineering Society, that many city office buildings appeared to be designed with little thought to the provision of economic lighting, and those buildings required air-conditioning. The Government buildings I have been in—the Education Building, the State Administration Centre, some schools, especially the big open-plan schools, and Parliament House—have lights burning throughout the day. The design of modern buildings with low ceilings means that air-conditioning is essential. That is especially so in the case of some of the schools that have been built in recent years: air-conditioning is an integral part of the design. Because of his comments to the builders of office blocks, can the Minister say whether the Government has any

plans to ensure that some economies are effected in relation to fuel consumption in Government buildings which are being planned and erected?

The Hon. HUGH HUDSON: In answer to the well lit and well air-conditioned Deputy Leader of the Opposition, I point out that he is a member of a political Party that was associated with an anti-conservation campaign with respect to energy, I think in 1975, when some garbage was put around about turning on the lights. Apparently, he is now trying to live down his Party's past misdeeds.

The SPEAKER: Order! I hope that the honourable Minister will answer the question.

The Hon. HUGH HUDSON: I am, and I am being very careful about it but, when I do answer the question, the member for Eyre will not understand it, anyway.

The SPEAKER: Order! I hope that the honourable Minister will answer the question.

The Hon. HUGH HUDSON: One of the general problems to be faced is that existing buildings are not meccano sets, and cannot be taken apart and put together in another shape. To a significant extent, the effective conservation of energy in relation to our stock of buildings in the community has to be directed largely toward new buildings, namely, commercial buildings, industrial buildings, and homes to be constructed, so that over a period of years we can get a significant impact on energy use in buildings. The South Australian Energy Council is concerned with this problem, and Mr. Hank den-Ouden, who is a member of the Housing, Urban and Regional Affairs Department and who is a member of the council, has been involved in a number of ways in trying to get adopted design changes with respect both to commercial building construction and home building construction.

Mr. Goldsworthy: Is the Government doing anything?

The SPEAKER: Order! The honourable member has asked his question.

The Hon. HUGH HUDSON: In relation to the latter, the Housing Trust has just let a contract for two homes to be built at Seaton, one designed in consultation with Mr. den-Ouden on energy conservation principles, and, next door, the same house but in a traditional Housing Trust design. These houses will be rented, and monitored with respect to energy use. In addition, there has been considerable consultation between Mr. den-Ouden and people in the Mines and Energy and the Public Buildings Departments with regard to the design of new buildings to be constructed. We hope that some interesting developments will take place in this area. It should be obvious to every member that, regarding existing buildings which are designed in a way that maximises energy use rather than economises, it is difficult to get modifications to the nature of those buildings in order to solve that problem.

I pointed out at the seminar yesterday that it may be the case that a building that is very well lit from natural sources might, in certain circumstances, involve a greater use of energy, particularly if there is an excessive use of glass in order to provide natural light. That, as members would appreciate, is one of the reasons for excessive costs in the air-conditioning of some established buildings. It might be (and this was also discussed at the meeting yesterday) that a building which was dependent entirely on artificial light, but as a consequence was much better insulated, would involve increased expenditure on the use of electricity for lighting, but much reduced expenditure on the use of power for heating and air-conditioning. The latter two effects would more than offset the former.

The matter is not straightforward. The Government is involved in work in this area and people in the design section of the Public Buildings Department are actively considering propositions that are designed to lower energy use for buildings to be constructed in future.

TRADE COURSES

Mr. KENEALLY: Thoroughly enlightened, I would like to ask a question of the Minister of Education. Has consideration been given to extending to suitable high schools the opportunity to participate in intensive trade courses? I was pleased to see the recent statement of the Minister of Education that such a course would be available at the Goodwood Boys High School in 1979. Such courses would be welcomed in industrial centres, particularly Port Augusta, Port Pirie and Whyalla.

The Hon. D. J. HOPGOOD: The stimulus for this action has been the current employment situation and the problems that young people face in finding employment. The initiative came from the school itself, and the department has been very keen to give support to this kind of initiative. I am sure that, if either of the high schools in the two cities which the honourable member represents were to make an appropriate representation, in the first instance to their regional directors, the department would consider the project sympathetically, more so because the honourable member represents areas in which only a few industries provide the bulk of employment. However, the schools themselves would have to make the first approach to the department for resource assistance in getting these programmes off the ground.

MEAT

Mr. RODDA: I wish to ask a question of the Premier subsequent to the question asked by the Leader of the Opposition. Can the Premier say what exact tonnage of meat has come to South Australia from interstate that is unhygienic? Is it expected that, by prohibiting this meat by legislation, Samcor will benefit? It is fair to say that from a producer viewpoint the steps that were taken at Samcor in about the middle of this year to divide the works and use the southern works exclusively for local kill, increasing productivity from the work force and lowering charges must go a long way to setting South Australia in front in this respect. The Opposition gives credit to the works for that positive action. Some further evidence must have been transmitted to the Government that this type of legislation is necessary.

The Hon. D. A. DUNSTAN: I cannot give the honourable member an answer, but I will get him a reply. I did not say that the meat which had come from interstate was unhygienic. I said that the standards required of hygiene in those works were not those required in South Australia. That does not necessarily mean that the meat itself is unhygienic. It simply means that the standards required are not those which must be met in South Australia. I will get a full report from the Minister of Agriculture.

CHRISTMAS BREAK

The Hon. G. R. BROOMHILL: Has the Chief Secretary considered an approach from the Retail Traders Association for a 3½ day break over Christmas? If he has, can he tell me the outcome?

The Hon. D. W. SIMMONS: Representatives of the association telephoned my office on Tuesday and my secretary made an appointment for them to see me on Monday morning, I think, about this matter. There was no reference during that phone call, as I understand, to late-night shopping, which is dealt with in today's *News*. That

matter comes within the jurisdiction of the Minister of Labour and Industry. I think the suggestion in the *News* report was that in lieu of changing the Proclamation Day holiday to the Tuesday the request would be for late night shopping in the suburbs on Wednesday the 27th and in the city on Friday the 29th. If that is so, I am sure my colleague will consider the matter, because Friday the 29th shopping would be on in the normal course of events anyhow, and it is usual for shopping in the suburbs to be available the night before when Thursday is a holiday. That is a matter the Minister will have to look at in due course. So far as changing the Proclamation Day holiday from the 28th to Boxing Day, or some such day, it has been considered several times by Cabinet and the view has been, on each occasion, that we should not interfere with the existing practice of observing Proclamation Day on 28 December.

SOLAR HEATING

Mr. MATHWIN: Will the Minister of Mines and Energy say what is the current policy regarding electricity charges for people who install solar heating systems in their houses or factories? I understand that people are being advised that if they install a solar heating system in their factory or home they will be taken off the J tariff and the J meter will be removed. The Minister would be aware that that is one way to conserve power, and I am sure he will agree that people should be encouraged to conserve energy.

The Hon. HUGH HUDSON: The position is that the tariff that applies in relation to solar heaters is at the concessional rate for off-peak water heating, except that there is a minimum charge which is worked off as a consequence of any electricity that is used. The honourable member would appreciate that every solar water heater requires back-up electricity; it is not a complete replacement for the use of electricity.

Mr. Mathwin interjecting:

The Hon. HUGH HUDSON: If the honourable member would listen for a while he might, on this occasion, learn something, but I doubt it.

The SPEAKER: Order!

The Hon. HUGH HUDSON: The Electricity Trust has to keep spare capacity available to meet the demand for electricity from solar water heaters when days occur on which those solar heaters do not function effectively and a back-up electricity supply is required. Inevitably, those days occur on cold winter days when the demand for power is a peak demand, anyway. Of course, the total generating capacity that is kept by the Electricity Trust is governed by the peak demand for power.

If the solar water heaters do not affect the peak demand for power the introduction of them still requires generating capacity to be kept available. The minimum charge is related to that fact. It is also related to the fact that capital costs have to be met by the Electricity Trust; for the introduction of solar water heaters certain changes have to take place. Many people have asked why this minimum charge is made; I have just explained that. The charge per kilowatt hour is at exactly the same rate for concessional off-peak water heating, so that a solar water heater owner is not penalised in any way for that reason.

While we have energy problems in this country, they are mainly related to the supply of liquid fuel. Largely, we are not in an adverse position throughout Australia with respect to the supply of fuel for the generation of electric power, particularly to the extent that that power is generated by the use of coal. It is not, therefore, a high priority to provide special subsidies or special arrangements to encourage the use of equipment which saves

some fuel in electric power generation but which does not save the provision of electric power generating capacity.

The position would be somewhat different if an effective and economical solar air-conditioning system could be developed because in the future in South Australia it is likely that our peak power demands will occur during the summer months, and an air-conditioning system that used solar power would not only save fuel but would also save fuel on the peak demand days and therefore save the provision of additional generating capacity. With generating capacity now costing at least \$500 a kilowatt, the saving of electric generating capacity is an important matter for the community. For that reason the Government's view is that we should be encouraging developments which will help in future towards not just the saving of fuel in relation to electric power generation, but which will also limit the provision of additional generating capacity.

Members might be aware of a recent C.S.I.R.O. invention that enables an evaporative air-conditioning system to work without raising humidity. The rights for the domestic development of this system are with Malleys in Victoria, and the rights for the industrial and commercial development are with Hydro-Thermal Engineering in South Australia. If this evaporative air-conditioning system can be developed effectively, it will have a significant impact because an evaporative air-conditioning system uses one-eighth of the power, for equivalent results, of a refrigerated air-conditioning system.

Consequently, the South Australian Government, both directly through the Economic Development Department and through the South Australian Energy Council, has provided assistance to Hydro-Thermal Engineering in order to encourage the further development of this proposal. I emphasise that that type of development would not only save fuel but would also save generating capacity. It is also the case that, apart from some areas of the State in which power is expensive and in which the effectiveness of solar water heaters is high, the return from the installation of the solar water heater is not at this stage commensurate with the capital cost of installing it.

AURUKUN DELEGATION

Mr. GROOM: Will the Attorney-General give details of his meeting today with a delegation of four council members and leaders of the Aurukun and Mornington Island people who are in Adelaide as part of a national tour to gain support for their cause in Queensland?

The Hon. PETER DUNCAN: Indeed, as the honourable member said, I met with the four council members, two from Aurukun and two from Mornington Island, and they are presently in the Speakers' Gallery. The meeting was held basically so they could explain to me, on behalf of their people, the problems that confront them in dealing with the approach being taken towards their affairs by the Queensland Government under Mr. Bjelke-Petersen and, in particular, under the notorious regime of the Minister for Local Government in that State (Mr. Russell Hinze).

Members interjecting:

The Hon. PETER DUNCAN: I would be very surprised if members opposite, who are known as the more reasonable wing of their Party, agreed with the policies of Mr. Bjelke-Petersen on this matter. However, I want to get to the nub of the matter and do not want to be digressing into other areas.

The matters raised by the people from Mornington Island and Aurukun to the South Australian Government this morning basically outlined their belief that all people in Australia should encourage the Federal Government, under Mr. Fraser, to take up the responsibility placed on

the Commonwealth Government by the people in the 1967 referendum. The attitude of the people from Aurukun and Mornington Island is strongly in favour of the Federal Government exercising that responsibility by buying the reserves and surrounding land on which their settlements are established, so that these people can start living their lives under some sort of Aboriginal council control. That is a very important aspect, and the Federal Government is falling down in its responsibility in not taking that important step.

The people from Aurukun and Mornington Island expressed to me in the clearest terms their view that the people of those two communities do not want the Queensland Government to have any part in the administration of their community. They want the Federal Government to take over the responsibility to ensure that the best interests of the Aboriginal people are paramount in the considerations for the development and administration of that area. Most regrettably for those people, and most unfortunately for the international standing of Australia, those two communities, and in particular Aurukun, happen to be in an area in which there are large mineral resources. That is the only real interest Mr. Bjelke-Petersen and his cohorts in the Queensland Government have in this matter. Their concern as a Government is the exploitation of the mineral wealth, and to hang with the people. I was able to express to the delegation from those two communities the general support of the South Australian Government for the proposition that the Federal Government should act to exercise its responsibilities in this matter and should not simply sit on the fence as it has been doing in the past.

That indication of support was well received by the people on the delegation, who expressed their appreciation of it to the Government of South Australia. I would hope that all members in this House would join in indicating support for the sort of struggle that the people of Aurukun and Mornington Island are undertaking in an endeavour to remove the yoke of the Bjelke-Petersen Government from the administration of their communities.

RURAL SECTOR

Mr. BLACKER: Will the Premier say what economic importance the Government places on the rural sector of South Australia and whether that industry or associated industries have the ability to absorb a significant number of unemployed people? Should the rural and associated industries be able to assist in this way, does the Government intend to provide incentives for decentralised employment, particularly for small businesses and family operations? In today's *Advertiser*, the Premier has acknowledged that the drought is over and that Horwood Bagshaw, one machinery manufacturer, is beginning to enjoy a resurgence of business. He also indicated that one of the main contributing factors to South Australia's depressed economic condition was the drought.

The Hon. D. A. DUNSTAN: Of course the agricultural area is of great importance to South Australia, providing a significant proportion of our income.

Mr. Goldsworthy: Apart from the export income.

The Hon. D. A. DUNSTAN: It depends on what one means by export. In total, it provides one-quarter of the commodity production of the State. At the moment it employs, from memory, about 35 000 people, which is not a large proportion of our total work force. So far as we are able to assist in the establishment of additional jobs in the primary industry sector, we are happy to do that. Indeed,

in the processing industries from primary production we have given very significant help. In the honourable member's district, we have been responsible for providing meat and fish processing works. In the winegrowing districts we have assisted a great many wineries in the provision of additional establishment. In the Riverland, we have been responsible for assistance to the packing sheds and, directly, the reconstruction of the canning industry. Large sums have been spent in those areas. We are willing to assist in any area of rural production where we can provide significant extra employment. If the honourable member has some particular proposition that he would like us to look at, we will be glad to do so. We have been making investigations into additional rural products which could provide us with some labour-intensive work.

ST. MARY'S HOME

Mr. OLSON: Can the Minister of Community Welfare say whether an advertisement in yesterday's *News* concerning St. Mary's Home for Children was factually correct? The advertisement claimed that the home was not Government funded, but I recollect a recent announcement from the Minister about funding of non-government children's homes.

The Hon. R. G. PAYNE: The honourable member is quite correct. The advertisement in the *News* was in error. St. Mary's Home for Children is funded by the Government, as are nine other children's homes, 13 community-based cottage homes, and seven youth shelters. The total funding for all of those establishments is more than \$750 000. The funding for St. Mary's Home for Children for the current calendar year totals \$75 575.

That is made up of an operating grant of \$45 000, a social worker and specialist resource grant of \$13 000, child subsidies totalling almost \$16 000, and capital subsidies of more than \$1 600. The advertisement, headed "Help us pick up the pieces parents leave behind", had underneath it the words "Unfortunately, we are not Government funded." I do not want to make any critical comment about the advertisement. I respect the intentions of all concerned in relation to the advertisement which was placed in the *News*, with the best of intentions, and an error occurred.

I know that this matter has caused distress to the authorities at the home this morning, and they have taken the trouble to send a letter to the department pointing out the circumstances. Apparently, the advertisement was prepared for a competition by the advertising firm of Paton Wearne Australia Proprietary Limited. Unfortunately, the copy was prepared on the basis of the home's funding situation some years ago, and it was not checked with the home for accuracy. It is my understanding (and I say this in defence of the advertising firm) that the firm did not expect the advertisement to be published, as it had not won a certain competition. I have no doubt that the *News* had the best intentions in mind when it published the advertisement, because it was a means of assisting a worthy cause. Despite the fact that the home is receiving Government funds, it is still a worthy cause for anyone wishing to provide assistance to it by way of donation.

WATER QUALITY

Mr. WOTTON: Can the Premier say how much finance the Government is prepared to allocate to the urgent need to eliminate effectively the potentially hazardous chemi-

cals in Adelaide's water supply, rather than spending hundreds of millions of dollars just on the cosmetic properties of the water? Last week in the House, I expressed my concern about certain chemicals present in Adelaide's water supply, particularly that being piped from the Murray River. There is now significant evidence that there are a number of qualified scientists in this State, in other parts of Australia, and elsewhere in the world who are concerned about what they consider to be high levels of these substances, which are actually much lower than those evident in Adelaide's drinking water. The Minister of Works has obviously avoided facing up to this serious problem in the State and has been prepared to sweep this issue under the carpet by suggesting that there is "No threat whatsoever to the health of the people in South Australia."

In reply to a Question on Notice given in the House last Tuesday by the Minister of Works relating to the capital cost of water filtration plants proposed for the clarification of Adelaide's water supply, he gave the figures of between \$13 420 000 and \$40 000 000 for each filtration plant, and I understand that seven of these are to be built. These are only the capital costs; running costs are another item altogether.

This expenditure, we are told, is simply to improve the appearance and taste and to reduce the "corrosivity of the water" which occurs as a result of high dose rates of chlorine. I am told that the filtration process does not remove salinity, which is slowly increasing at Mannum, whence most of the Adelaide water supply comes, at a rate of from 4 to 5 milligrams per litre every year, according to Mr. J. C. Killick, of the Engineering and Water Supply Department, in a paper he wrote in 1976. High levels of salinity are a known risk to public health, and can cause hypertension and high blood pressure, especially in children. This fact was emphasised in Perth recently by Dr. G. Bower, of the Child Care Department, and Professor Barry Hopkins, Associate Professor of Cardiology in the Department of Medicine at the Western Australian University.

Admittedly, the filtration plants are supposed to maintain accepted health standards, including microbiological characteristics. But, these are only presently accepted health standards. Such plants do nothing to eradicate the very high levels of chloro-organic substances that are causing concern now. I refer to the acknowledged presence of the 208 micrograms per litre of tri-halothanes in the Mannum-Adelaide pipeline.

The SPEAKER: Order! The honourable member is arguing the case. The honourable Premier.

The Hon. D. A. DUNSTAN: The honourable member seems to have gone in now for something of a departure from Liberal Party policy; it was the Liberal Party which first announced that the major expenditure on Adelaide's water supply was to be its filtration. It was proved that that announcement was made by a gentleman whose re-entry to this House has been much speculated upon in the past week.

Mr. Wotton: Just answer the question.

The SPEAKER: Order! The honourable member asked his question, and even argued it.

Mr. Goldsworthy: You didn't like his chances, did you?

The Hon. D. A. DUNSTAN: I would not have thought they were very good actually. I saw certain gestures from the member for Mallee a few moments ago which tended to confirm that.

Mr. Goldsworthy: I'm inclined to think you're not far out.

The Hon. D. A. DUNSTAN: Thank you very much. I am happy to receive these encomiums from the Deputy

Leader. The provision of clean and potable water in Adelaide is important, and I believe it is a system which is widely supported by the South Australian electorate. The honourable member has taken the view, apparently, that the Adelaide water supply now contains various micro-organisms which are harmful to health. A report of technical officers does not support that view but suggests that there is a good level of health in the Adelaide water supply. However, the filtration programme itself is an important health measure, and that was very strongly put to the Federal Government when the water filtration programme was suggested. The problem facing the Government was that the suspended solids in the Adelaide water supply were tending to mask the effects of chlorination. Therefore, for the honourable member to say that the filtration programme is purely cosmetic and is not in any way related to the healthiness of Adelaide's water supply is ill-based. However, I will refer the honourable member's question again to the Deputy Premier.

CONCESSION CARDS

Mr. HEMMINGS: Can the Minister of Community Welfare tell me how many State Transport Authority travel concession passes have been issued, where unemployed persons can obtain these passes, and whether more publicity could be given to these concessions so that all unemployed persons without their own transport can take advantage of the reduced fares? At a meeting held in my district last night organised by the Elizabeth Unemployed Workers Co-operative to assist and advise those people who had been thrown out of work because of the Fraser Government's policies, it was found that few people were aware of travel concessions available to unemployed persons.

The Hon. R. G. PAYNE: About two days ago it was reported to me that some 800 travel concession cards had been issued, which would indicate that publicity has been successful and that people, especially those who are unemployed, are aware of the travel concession. The cards are available from the District Offices of the Community Welfare Department, including the Adelaide office in Waymouth Street. I will examine the proposition regarding further publicity. However, if I remember correctly, the press, acting in a very public-spirited way, gave some publicity to the original announcement regarding travel concessions for the unemployed. I will have another look at the matter and ascertain whether we ought to engage in some more publicity so that everybody who is entitled can take advantage of this concession which the State Government is offering.

UNSWORN STATEMENTS

Mr. RUSSACK: Will the Attorney-General say whether the Government intends implementing the recommendation of the Mitchell Committee that unsworn statements in criminal trials be abolished? If it does, when will this be done? In this morning's *Advertiser* a report of a rape trial appeared. The defendant has been charged with 10 charges of rape and three charges of attempted rape. In an unsworn statement the defendant claimed that he had attended—

The Hon. Hugh Hudson: Is this trial still proceeding?

Mr. RUSSACK: Yes.

The Hon. Hugh Hudson: Then the matter is *sub judice*.

The SPEAKER: Order!

Mr. RUSSACK: I will just ask the question and delete that part.

The SPEAKER: Order! I ask the honourable member to start his question again.

Mr. RUSSACK: Will the Attorney-General say whether the Government intends implementing the recommendation of the Mitchell Committee that unsworn statements in criminal trials be abolished? If it does, when will this be done? I have received a letter from a number of constituents who are concerned about the situation and consider that it should be rectified as a matter of urgency.

The Hon. PETER DUNCAN: I am in somewhat of a dilemma about this question. Since the honourable member asked the question initially in the context of a trial that is proceeding in the court at the moment, it might be better if I answered the honourable member's question, possibly by letter, after the session has finished, because I do not think it would be proper for me to comment on the matter now that the honourable member has identified the question with a case that is presently before the court.

ALDINGA BEACH DRAINAGE

Mr. CHAPMAN: Will the Minister of Local Government say whether he has taken any steps recently to stop the Willunga District Council from proceeding with the Aldinga Beach drainage scheme? Residents of the Aldinga area have written to a number of Ministers and officers of Government departments in recent times expressing concern about the effect on the environment and on the marine life adjacent to Aldinga Beach that will result from the implementation of that drainage scheme, which will discharge its waste into the Aldinga Beach area.

Correspondence has been sent to the Health Department, and on behalf of those residents I have spoken to officers of the Health Department myself about the need for proper drainage for the area. I understand, too, that copies of correspondence from those concerned citizens have gone to the Premier's office, the Minister of Local Government, the Minister for the Environment, the Agriculture and Fisheries Department (that correspondence being directed, I understand, to draw the Minister's attention to the possible effects on marine life in particular), and the South Australian Marine Research Advisory Committee for its comment in relation to effects on marine biology of the discharge from that scheme. I have spoken with district council officers from Willunga, who have said that prior to the commencement of the scheme the necessary steps that the council is obliged to take were taken. Indeed, as a responsible council (which it is) it waited until it had permission from the Coast Protection Board before proceeding with the plan to drain Aldinga Beach and adjacent areas of waste water.

It would appear that all of the required and responsible steps that need to have been taken at the local level have been undertaken by the council, but in the meantime concern is expressed that perhaps the appropriate departments I have mentioned were not aware of the scheme and maybe permission was given before a proper environmental impact study was undertaken on the plan.

The SPEAKER: Order! I think the honourable member has explained his question well.

Mr. CHAPMAN: Thank you, Mr. Speaker. In the light of that I shall leave it to the Minister to answer.

The Hon. G. T. VIRGO: This matter has been referred to me and I have had the opportunity of having personal discussions with the present secretary of the Aldinga Bay Residents Association, as I think the honourable member knows. I have also had discussions with the Minister for

the Environment, because the principal worry is that the emptying of the water into the area where it is occurring might possibly damage some of the sea life in the reefs.

As I recall the position, the Coast Protection Board, which must be the authoritative board in that region, has not supported the expressed fears, and in fact has agreed that the drainage scheme should not be interfered with. However, in the light of the question I will take up the matter further with the Minister for the Environment and his officers to see whether anything further needs to be said, but at this stage I am relatively certain that the department is satisfied that no harm will come from the scheme. Indeed, if the honourable member knows the area reasonably well I think he would be—

Mr. Chapman: You do not doubt that, do you?

The Hon. G. T. VIRGO: I do not know whether or not the honourable member would know the area, but if he does know it he would be the first to acknowledge the necessity for the scheme, because in the winter months much of that area, including much of the rural part, is flooded to such an extent that it is really a health hazard, and the whole area urgently needed a comprehensive drainage scheme. A comprehensive drainage scheme must discharge the water somewhere, and the Coast Protection Board, as I understand it, at this stage has indicated that the point of discharge will not harm the marine life at all.

CLARKE-CASEY REPORT

Mr. WILSON: Does the Minister of Transport still deny that he misled the House when he said that no agreement was reached between the Government and the Adelaide City Council to defer the release to the public of the Clarke-Casey Report? In answer to a question previously asked by the member for Fisher, as I have already mentioned to this House, the Minister categorically denied that allegation. Later, on 25 October, I asked the Minister for the first time whether he had misled the House. In my explanation I mentioned that in the *Advertiser* the Lord Mayor was reported as saying that he had given an undertaking to the Premier (Mr. Dunstan) that discussions between the council and the Government over the matter would remain confidential. He is also quoted as saying:

The Premier left me in no doubt as to his feelings about this report being leaked.

I also mentioned in my explanation that I understood from departmental correspondence—

The Hon. G. T. VIRGO: I rise on a point of order, Mr. Speaker. I draw your attention to Question on Notice No. 860 and ask you whether this question is the same as, or substantially the same as, that question.

Mr. Chapman: No, it is not the same question.

The SPEAKER: Order! I have already spoken to the member for Alexandra about his interfering. The Chair will make these decisions, not the member for Alexandra. I call him to order. I uphold the Minister's point of order. I have looked at this question and I think it is similar to a Question on Notice asked by the member for Torrens. I must add that the same thing happened the other day with the member for Price.

Mr. WILSON: I rise on a further point of order, Mr. Speaker. My question was: Did the Minister mislead the House? The Question on Notice asks whether the Premier or any Minister of his Government have had discussions with the council in relation to deferring the release of the Clarke-Casey Report. I submit that it is not the same question.

The SPEAKER: I do not uphold the point of order, and I rule that the question is almost the same as the one on

notice.

Mr. DEAN BROWN: I rise on a point of order. I believe that the question is different from Question on Notice No. 860. If the Minister is asked today whether he misled the House on a previous occasion, that cannot be interpreted, just because it is on the same subject, as being the same question as one asking whether the Premier reached an agreement—

The Hon. Hugh Hudson: Or any other Minister.

Mr. DEAN BROWN: But that does not matter.

The Hon. Hugh Hudson: Including the Minister of Transport.

The SPEAKER: Order! I call the honourable Minister of Mines and Energy to order.

Mr. DEAN BROWN: The question today is whether or not the Minister misled the House on a previous occasion. The Minister should stand up and answer that and have the guts to do so, and not try to hide behind technicalities.

Mr. SPEAKER: Order! I uphold the point of order of the Minister.

Mr. DEAN BROWN (Davenport) moved:

That the Speaker's ruling be disagreed to.

The SPEAKER: The honourable member must bring up his reasons in writing.

Mr. DEAN BROWN: Very well, Mr. Speaker.

The SPEAKER: The honourable member for Davenport states:

I move disagreement to your ruling on the basis that the question asked by the member for Torrens today is different to Question on Notice 860.

Mr. DEAN BROWN: I move disagreement to your ruling, Mr. Speaker, on the grounds that, if one compares the question asked by the member for Torrens today with Question on Notice 860, those questions are quite separate and different. Question on Notice 860 is as follows:

1. Did the Premier or any other Minister request the Lord Mayor or any member or group of the Adelaide City Council not to release the original Clarke-Casey Report to the public and if not, was an agreement reached jointly between the Government and the council not to release the report?

2. If the answer to either of the questions above is yes, why?

That question is quite different from the question asked by the member for Torrens today, which was, in effect, "Does the Minister still deny that he misled this House when he stated that no agreement was reached between the Government and the Adelaide City Council to defer the release to the public of the Clarke-Casey Report?" You would agree, Mr. Speaker, that it is quite obvious, having heard those two questions again, that one question asked whether the Premier or any other Minister had reached an agreement, while the other question stated that there had been an agreement and asked whether the Minister now agreed that he had misled the House.

Mr. Speaker, I refer you to Standing Order 164, which clearly states the grounds on which any question would be out of order. If you examine Standing Order 164, you will realise that on those grounds these two questions are separate and could not be ruled out of order on that basis. I believe in the freedom of this House, and particularly the freedom of a member to ask a question. It was an embarrassing question to the Minister, because it is clear the Minister previously misled this House. It is obvious that the Minister tried to avoid answering the question by taking a point of order and trying to use Standing Orders to protect himself. It is obvious that the Minister did not want to answer that question today; he was too scared to answer it. It was interesting to see that it was the Minister of Transport—

The Hon. D. A. DUNSTAN: Mr. Speaker, I rise on a

point of order. The honourable member is not debating the motion before the House but is introducing other aspects into it.

The SPEAKER: I uphold the point of order. The honourable member is well aware of what is contained in Standing Orders.

Mr. DEAN BROWN: Mr. Speaker, I return to the motion that I have moved disagreeing to your ruling. It is clear to me and to most members of the House, having heard again the two questions and having been referred to Standing Orders, that your ruling was out of order. It was an unfair and unjust ruling that very unfairly impinged on the freedom of the member for Torrens to ask embarrassing questions of the Minister. Mr. Speaker, your ruling unfairly protected the Minister from having to answer those embarrassing questions.

The Hon. D. A. DUNSTAN (Premier and Treasurer): We have not heard terribly much argument from the honourable member, but a certain amount of poorly based abuse of the Minister, as is usual for the honourable member.

Mr. Chapman: Who's abusing who?

The Hon. D. A. DUNSTAN: Quite clearly the position is that the gravamen and substance of the matter about which the member for Torrens has asked this question on which you have ruled Mr. Speaker is precisely that which is contained in a Question on Notice. The honourable member for Torrens knows that perfectly well, as does the member for Davenport. Both questions relate to the same set of facts entirely. In these circumstances the honourable member has clearly set out to explain his question dealing with precisely the matters contained in the Question on Notice. That being so, the substance being the same, your ruling is correct.

The House divided on the motion:

Ayes (18)—Mrs. Adamson, Messrs. Allison, Becker, Blacker, Dean Brown (teller), Chapman, Eastick, Evans, Goldsworthy, Gunn, Mathwin, Nankivell, Rodda, Russack, Tonkin, Venning, Wilson, and Wotton.

Noes (25)—Messrs. Abbott, Bannon, Broomhill, and Max Brown, Mrs. Byrne, Messrs. Drury, Duncan, Dunstan (teller), Groom, Groth, Harrison, Hemmings, Hopgood, Hudson, Keneally, Klunder, McRae, Olson, Payne, Simmons, Slater, Virgo, Wells, Whitten, and Wright.

Pair—Aye—Mr. Arnold. No—Mr. Corcoran.

Majority of 7 for the Noes.

Motion thus negatived.

PERSONAL EXPLANATION: NEWSPAPER REPORT

Mr. WILSON (Torrens): I seek leave to make a personal explanation.

Leave granted.

Mr. WILSON: In my article in the *News* today, I unwittingly made a mistake and I wish to correct it. In the article, I mentioned the recent pornography Bill that was debated in this House—

The Hon. G. T. VIRGO: I rise on a point of order, Sir. Would you rule that correcting an article that the member has provided to the press, in which he has made a mistake, constitutes a basis for a personal explanation in accordance with Standing Orders?

Members interjecting:

The SPEAKER: Order! The opportunity is there for any

member. If he is misreported or misrepresented, he can make a personal explanation—as long as it is purely personal.

Mr. WILSON: It is personal, Sir. The report states:

The Premier previously had promised legislation based on the British precedent, but the United Kingdom Act, unlike ours, provides penalties for the sale or distribution of child pornography.

I have made a mistake. In fact, when the Bill was debated, amendments were accepted by the Premier, after having been moved by the member for Mount Gambier. Because of that, I wish publicly to correct the mis-statement.

The SPEAKER: Call on the business of the day.

ROAD MAINTENANCE (CONTRIBUTION) ACT AMENDMENT BILL

The Hon. G. T. VIRGO (Minister of Transport) obtained leave and introduced a Bill for an Act to amend the Road Maintenance (Contribution) Act, 1963-1975. Read a first time.

The Hon. G. T. VIRGO: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

Over recent years, several road hauliers have managed to avoid the payment of considerable amount of tax for which they are liable under the Road Maintenance (Contribution) Act. A popular tax-avoidance scheme is to form a company with no real assets, to hire the vehicle in respect of which the tax is to be incurred to the company, and to register it in the name of the company. Frequently even the directors and shareholders of the company have no real part in the operation of the vehicle: they merely provide a convenient front behind which the real principals can operate in inconspicuous anonymity. When judgments for the payment of road tax, or fines for non-observance of the Act, are recovered against the company, it disappears into liquidation, leaving the liabilities unsatisfied.

It has been suggested that these tax-avoidance schemes would be discouraged if the tax eligible under the Act, and fines imposed for non-observance of the Act, could be recovered from the directors of the company personally. In fact, an amendment enacted by the Road Maintenance (Contribution) Act Amendment Act, 1975, was designed to impose personal liability on directors for offences committed by their company. However, decisions of the High Court in cases such as *Welker v. Hewett* and *Cox v. Tomat* make it clear that a State Legislature cannot extend this liability to the case where the company is incorporated, and the directors are resident, outside the State. The hauliers who promote these tax-avoidance schemes are aware of this constitutional limitation of the legislative power of the State, and thus these "straw" companies are usually not incorporated in the State in which the liability for tax is likely to be incurred, nor are their directors ordinarily resident in that State.

This has prompted the formulation of a scheme whereby a judgment recovered in one State against a company can be enforced in another State, in pursuance of the law of that other State, against the directors of the company. The

scheme is substantially reciprocal so that judgments recovered in South Australia can be enforced against directors in other participating States and *vice versa* (Reciprocity is not, however, complete because road tax is not imposed in Tasmania and the Northern Territory.) The present Bill is designed to form a part of the reciprocal legislative scheme. Legislation has already been enacted in Victoria, Western Australia, Queensland and New South Wales.

Clause 1 is formal. Clause 2 enacts a definition of "director" in the principal Act. The definition corresponds with the reciprocal provisions of the legislation of other States. Clause 3 repeals and re-enacts the provision imposing criminal liability upon a director of a company where the company is guilty of an offence against the principal Act. Criminal liability can be evaded by a director where he can show that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the company. Clause 4 deals with the recovery of unpaid contributions. The effect of the amendment is to make it clear that an order can be made against a director convicted of an offence under section 10(3). Clause 5 enacts the provisions necessary for the purposes of the reciprocal scheme that I have outlined above.

Mr. CHAPMAN secured the adjournment of the debate.

LAND AND BUSINESS AGENTS ACT AMENDMENT BILL

The Hon. PETER DUNCAN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Land and Business Agents Act, 1973-1977. Read a first time.

The Hon. PETER DUNCAN: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This short Bill proposes an amendment to the principal Act, the Land and Business Agents Act, 1973-1977, that is designed to ensure the validity of sales by the South Australian Housing Trust of dwellings under contracts that provide for payment of the purchase price by instalments. Section 89 of the principal Act prohibits such sales and the view has been taken by the Crown Solicitor that this prohibition probably extends to such sales made by the Housing Trust. Accordingly, this Bill proposes that it be provided in section 89 that the section does not apply and shall be deemed never to have applied to sales by the Housing Trust. It is also proposed that other bodies prescribed by regulation be exempted, the bodies envisaged being confined to governmental or charitable bodies.

Clause 1 is formal. Clause 2 amends section 89 of the principal Act by providing that the prohibition of the sale of land under an instalment contract does not apply and shall be deemed never to have applied to any sale of land by the Housing Trust and shall not apply to any sale of land made by a body prescribed by regulation.

Mr. MATHWIN secured the adjournment of the debate.

EVIDENCE ACT AMENDMENT BILL

The Hon. PETER DUNCAN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Evidence Act, 1929-1976. Read a first time.

The Hon. PETER DUNCAN: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill amends the Evidence Act on a number of different subjects. Firstly, the Bill facilitates the proof of the contents of the *Gazette*. At present, the whole of the relevant edition of the *Gazette* has to be produced to the court in order to prove the making of an order-in-council which may be contained on just one or two pages of that edition. The Law Society has suggested that an amendment be made to allow proof of the order-in-council simply by production of a copy of the page or pages in which it is contained. A further amendment related to the same general subject facilitates the proof of orders-in-council and public documents issued under the authority of the Government of the United Kingdom where they are relevant to proceedings in this State. Secondly, the Bill enables interstate and foreign courts to take evidence on oath in this State. Courts deal increasingly with proceedings that involve events that take place partly in one State and partly in another. It is therefore sometimes more convenient for a court to come to this State rather than to transfer a large number of witnesses to the State in which the court is constituted. The amendment will facilitate the conduct of proceedings by a court in these circumstances. Thirdly, the Bill authorises the admission of computer evidence in criminal proceedings. At present, Part VIA of the principal Act authorises the admission of such evidence only in civil proceedings. It is felt that, in view of the increasing use of computers for the storage of a wide range of information, computer evidence should now be available for use in criminal proceedings. Finally, the Bill amends section 69 of the principal Act. This section permits a court to suppress from publication evidence given before a court, or the names of any party or witness. The provisions of this section are extended by the Bill to enable a court to suppress from publication the name of any person alluded to in the course of proceedings.

Clause 1 is formal. Clause 2 repeals section 32 of the principal Act. This section deals with evidence to be given in an action for breach of promise to marry. These actions were abolished in South Australia by the Action for Breach of Promise of Marriage (Abolition) Act, 1971. Clause 3 amends section 37 of the principal Act which provides for proof of orders-in-council by production of the *Government Gazette* in which the order is published. The disadvantage of this method is that past copies of the *Gazette* are often difficult to obtain and in any event are unnecessarily bulky. The proposed amendment will enable proof of orders-in-council to be made by production of a copy of the relevant page of the *Gazette*. Clause 4 enacts new section 37c of the principal Act. The purpose of the new section is to facilitate proof of Imperial letters patent and orders-in-council, and also of admiralty maps and charts that may be relevant to proceedings instituted in this State.

Clauses 5 and 6 make minor drafting amendments to sections 45a and 45b of the principal Act. Clause 7

empowers a court to receive computer output in evidence in criminal proceedings. Clause 8 repeals section 61 of the principal Act. This section deals with proof of prior convictions in the absence of the defendant but has now been superseded by section 62d of the Justices Act, 1921-1976. Clause 9 enacts a new section which will allow interstate and foreign courts to visit South Australia and take evidence on oath for the purpose of proceedings conducted in those States or countries. The other States already have provisions similar to the one proposed and they have proved very useful especially in the workmen's compensation jurisdiction. The clause refers to foreign authorities which are defined by subclause (3) to include not only courts outside South Australia but any person or body authorised by the law of a State or country to take evidence. This will, for instance, enable foreign diplomats or consuls to take evidence in this State. It is felt that where the authority desiring to take evidence is not a court or where the proceedings are criminal the consent of the Attorney-General should be obtained. This would preclude a foreign court from having the right to take evidence in South Australia in a political trial.

Clause 10 re-enacts section 69 of the principal Act, which empowers the court to suppress publication of evidence and names of parties and witnesses. At present the court does not have power to suppress the name of a person who is not a party or a witness. If that person is to be charged at a later time the publication of his name and evidence relating to him and the crime with which he is to be charged may prejudice his fair trial. There has been at least one instance where a judge has requested an Adelaide newspaper not to publish such material and the request has been refused. In addition, completely innocent people referred to in proceedings who are neither parties nor witnesses may suffer hardship by publication. The proposed section seeks to remedy these shortcomings. The new provision also provides for the review of an order by the court by which it was made (whether constituted of the same or a different judicial officer). Moreover, specific provisions are included providing for appeals against the exercise of a judicial discretion under the new provision.

Mr. ALLISON secured the adjournment of the debate.

LEGAL PRACTITIONERS ACT AMENDMENT BILL

The Hon. PETER DUNCAN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Legal Practitioners Act, 1936-1977. Read a first time.

The Hon. PETER DUNCAN: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This short Bill makes an amendment to section 69 of the principal Act that is consequential on the introduction of the Companies Act Amendment Bill, 1978. The purpose of section 69 is to allow legal practitioners employed by the Crown to appear on behalf of the Crown in the courts and tribunals of the State. Provisions made by the Companies Act Amendment Bill provide for the appointment of a Commissioner for Corporate Affairs and constitute him as the Corporate Affairs Commission. The Corporate Affairs Commission will replace the present Department for Corporate Affairs. The amendment, in addition to changing the reference to the Department for Corporate

Affairs in section 69, will also enable the Commissioner himself to represent the Crown in court.

Mr. EVANS secured the adjournment of the debate.

DOOR TO DOOR SALES ACT AMENDMENT BILL

The Hon. PETER DUNCAN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Door to Door Sales Act, 1971. Read a first time.

The Hon. PETER DUNCAN: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill provides for a substantial revision of the principal Act, the Door to Door Sales Act, 1971, and for the extension of the application of that Act to the door to door sale of books which is presently regulated by the Book Purchasers Protection Act, 1963-1972. The revision of the principal Act is largely designed to clarify the intended effect of existing provisions of the Act, although a number of amendments propose changes of substance. The Bill provides for amendment to the principal Act to apply it to the sale of certain interests in addition to the sale of goods and the supply of services. The attention of the Government has been drawn to undesirable practices involving, for example, the door to door sale of interests in pine and eucalyptus plantations. The application of the Act to the door to door sale of such interests would enable the purchasers to exercise the option provided by the Act of terminating the contracts during the cooling-off period under the Act.

In the same way, the Bill proposes the extension of the principal Act to the door to door sale of life insurance policies. It has been argued in opposition to this proposal that a person who signs a proposal for life insurance at his place of residence has a cooling-off period, for the reason that it usually takes some days before the insurance company accepts the risk. In the Government's view, however, such a cooling-off period is of little value to the householder unless its existence is drawn to his attention as would be the case if life insurance policies were required to comply with the provisions of the principal Act.

The Bill provides for amendment of the principal Act to apply it to door to door sales that occur after the purchaser has, in response to an advertisement, written away for information or a brochure. The Act, with its present wording, may not apply to such sales even though the visit of the salesman to the doorstep in such cases cannot be said to have been sought by the purchaser. The Bill includes an amendment of the principal Act under which the notice of the cooling-off period is required to be printed on the purchaser's copy of the contract in large type face. The Bill proposes an amendment to the principal Act whereby different monetary limits may be fixed by regulation for the consideration under contracts to which the Act applies. This is intended to provide more flexibility in the administration of the Act and to regulate large scale door to door selling operations that have recently been the subject of numerous complaints, but which involve sales for less than \$20.

With regard to the door to door sale of books, the Bill proposes that the present scheme under the Book Purchasers Protection Act, whereby such sales are of no effect unless confirmed by the purchaser, be retained, but

provided for in the Door to Door Sales Act. The Bill provides for the creation of two new offences. One prohibits the use of force, harassment or coercion in order to achieve a door to door sale. This is in terms similar to the offence created by section 60 of the Trade Practices Act, 1974, of the Commonwealth. The other offence is designed to prevent avoidance of the provisions of the Act by door to door selling businesses that so arrange their affairs that their salesmen are at law the vendors of the goods and not simply servants or agents of the door to door selling businesses. The Bill also increases maximum penalties for offences against the principal Act and makes provision for certain procedural and evidentiary matters.

Clause 1 is formal. Clause 2 provides that the measure shall come into operation on a day to be fixed by proclamation. Clause 3 repeals section 4 of the principal Act which preserves the operation of the Book Purchasers Protection Act. Clause 4 inserts a new definition of "goods" in section 5 of the principal Act that includes rights arising under a policy of life insurance and rights or interests specified by regulation. Clause 5 amends section 6 of the principal Act by empowering different monetary limits for the consideration under contracts to which the principal Act applies to be fixed by regulation in relation to different classes of goods and services. The clause also amends that section by including within the ambit of the Act any contract which is the result of an unsolicited inquiry by a purchaser where the purchaser has not actually agreed to the vendor attending at his place of residence for the purpose of negotiating the sale.

Clause 6 repeals sections 7 and 8 of the principal Act and inserts new provisions dealing with the matters presently dealt with by sections 7 and 8. New section 7 provides for the formal requirements of door to door sale contracts. This section caters for the two types of door to door sale contracts, namely, those that may be terminated during the cooling-off period and those that must be confirmed within a certain period. Paragraph (d) of subsection (1) of the section requires the notice of the cooling-off period to be printed in bold black type of large type face on the contract document immediately above the place for the purchaser's signature. Subsection (2) of the section requires any door to door seller to present to a prospective purchaser a written contract document that has first been signed by the seller.

New section 8 provides that it shall be an offence to receive a deposit or other payment under a door to door sale contract during the cooling-off period. This is presently an offence by virtue of subsection (3) of section 7 of the principal Act. New section 8a provides that a door to door sale contract of a class prescribed by regulation must be confirmed by the purchaser within 14 days but not less than five days after the contract is entered into, otherwise it will be void. This is intended to provide for door to door sales of books, the cooling-off period being the same as that presently provided for under the Book Purchasers Protection Act. Subsection (2) of new section 8a is to the same effect as section 6 of the Book Purchasers Protection Act. Subsection (3) provides that any other door to door sale contract may be terminated by the purchaser within eight days after the contract is entered into. This is the same cooling-off period as is presently provided for under the principal Act. Subsection (4) provides for termination by the purchaser of a door to door sale contract that does not conform with the formal requirements of new section 7. New section 8b provides that where a door to door sale contract is void any contract of guarantee or indemnity or any security relating to the contract shall also be void. New section 8d provides for recovery of the consideration and return of any goods

delivered under a door to door sale contract that becomes void by virtue of non-confirmation or termination by the purchaser.

Clause 7 amends section 9 of the principal Act by increasing the penalty for failure to provide information required by that section from \$200 to \$500. Clause 8 inserts a new offence prohibiting the use of force, harassment or coercion in order to induce a person to enter into a door to door sale contract. Clause 9 makes an amendment that is consequential on the amendment proposed by clause 10. Clause 10 inserts a new section 11a providing that any person who derives direct or indirect financial benefit from a door to door sale that is affected in breach of the Act shall be guilty of an offence. This is intended to apply to door to door selling businesses that presently avoid the operation of the Act by selling their goods to their salesmen. The clause also inserts new section 11b providing that it shall be a defence to any prosecution for an offence against the Act if the defendant proves that he had reasonable grounds for believing that the sale was not a door to door sale or that he could not be reasonably expected to have known that the sale was a door to door sale.

Clause 11 inserts evidentiary provisions relating to documents and bodies corporate incorporated outside the State and provides for service of notices upon vendors under door to door sales. Clause 12 extends the period within which prosecutions under the Act are to be commenced to 12 months. Clause 13 provides for a new schedule to the principal Act setting out the forms of the cooling-off notices required to be printed in door to door sale contracts.

Mrs. ADAMSON secured the adjournment of the debate.

BOOK PURCHASERS PROTECTION ACT REPEAL BILL

The Hon. PETER DUNCAN (Attorney-General) obtained leave and introduced a Bill for an Act to repeal the Book Purchasers Protection Act, 1963-1972. Read a first time.

The Hon. PETER DUNCAN: I move:

That this Bill be now read a second time.

This Bill provides for the repeal of the Book Purchasers Protection Act, 1963-1972, and is consequential on amendments to the Door to Door Sales Act, 1971, proposed by the Door to Door Sales Act Amendment Bill, 1978.

Mrs. ADAMSON secured the adjournment of the debate.

REAL PROPERTY ACT AMENDMENT BILL (No. 2)

The Hon. PETER DUNCAN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Real Property Act, 1886-1975. Read a first time.

The Hon. PETER DUNCAN: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The purpose of this Bill is to widen the provisions in the Real Property Act, 1886-1975, that enable a mortgagor to obtain a discharge of his mortgage in the absence of the mortgagee. Section 146 of the principal Act as it now stands enables a mortgagor, whose mortgagee is absent from the State, to pay moneys due under the mortgage to the Treasurer and section 147 enables him to obtain a discharge of the mortgage. Under section 148 a mortgagor is also able to obtain a discharge where there are no further moneys to be paid under a mortgage and the mortgagee is dead. These sections do not allow for a number of situations a mortgagor might find himself in. For example, the mortgagee may be dead but the mortgagor may not have repaid the mortgage in full. If the mortgagee's estate is unadministered or delayed there is no-one from whom he can obtain a discharge. Furthermore, the mortgagee may not necessarily be absent from the State. His whereabouts may be unknown or he may be mentally incapacitated and unable to give a discharge. The Bill repeals sections 146 to 148 and replaces them with one section that provides for these situations.

Clause 1 is formal. Clause 2 enacts a new section to replace sections 146 to 148 of the principal Act. Under this section a mortgagor will be able to obtain from the Treasurer a discharge of his mortgage where the mortgagee is dead, cannot be found, or is incapable of executing, or refuses to execute, the discharge if the mortgagor has paid all moneys payable under the mortgage or if he pays those moneys to the Treasurer. The procedure is for the Treasurer to execute a discharge which is then registered. The land is thus freed from the security and the mortgagor can deal with it accordingly. However, subsection (4) ensures that the mortgagee does not lose any contractual right he may have against the mortgagor under the terms of the mortgage.

Mr. EVANS secured the adjournment of the debate.

NATIONAL PARKS AND WILDLIFE ACT AMENDMENT BILL

The Hon. J. C. BANNON (Minister of Community Development) obtained leave and introduced a Bill for an Act to amend the National Parks and Wildlife Act, 1972-1978. Read a first time.

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

In a Ministerial statement given to this House on 13 July 1978, the Minister for the Environment foreshadowed these amendments to the National Parks and Wildlife Act to enable a smaller, scientifically based committee to be established in lieu of the large 17-member National Parks and Wildlife Advisory Council which operated until 30 June 1978.

The National Parks and Wildlife Advisory Council provided continuity between the various bodies existing prior to 1972 which were involved in reserve management and wildlife conservation, and were incorporated into the National Parks and Wildlife Service under the 1972 Act. Since 1972 a working relationship between the Minister, the Environment Department, and the National Parks and

Wildlife Service has evolved. More recently the emphasis on policy development in the department and the proposed formation of trusts means that the Minister has other opportunities for advice on parks and wildlife issues, and the role of the National Parks and Wildlife Advisory Council has been re-examined. As the Minister for the Environment stated in July, the term of office of members terminated on 30 June 1978, and the appointments have not been renewed.

The advisory council has at present three principal functions: it advises the Minister on the disbursement of money from the Wildlife Conservation Fund; it tenders advice and recommendations in relation to management plans prepared in relation to reserves constituted under the principal Act; and it investigates and reports upon matters referred to the council for investigation. The Government believes that these matters could be more expeditiously handled by a smaller, scientifically based group. The amendment to the Bill therefore provides for the establishment of a five-member reserves advisory committee.

Clauses 1, 2 and 3 are formal. Clause 4 makes consequential amendments to the definition section of the principal Act. Clause 5 provides that the Minister is to disburse moneys from the Wildlife Conservation Fund on the advice of the new committee, where appropriate, in lieu of the advisory council. Clause 6 repeals and re-enacts Division II of Part II of the principal Act. The new provisions establish the proposed new reserves advisory committee, set out its powers and functions, and deal with the terms and conditions on which its members are to hold office. Clause 7 substitutes references to the committee for references to the advisory council in section 38 of the principal Act, which deals with the preparation of management plans for reserves.

Mr. WOTTON secured the adjournment of the debate.

SOUTH AUSTRALIAN THEATRE COMPANY ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 9 November. Page 1888.)

Mr. ALLISON (Mount Gambier): We support this legislation, although I have a certain personal dislike for the proposed new name, the State Theatre Company of South Australia, to replace the South Australian Theatre Company, the previous title for that company. This is simply a reflection that, although it may be more consistent with the names of national theatres, we can hardly say that South Australia's theatre is a national one, since that seems to have a much more Federal connotation, in line with the State operas of Russia, for instance. In this case, where we have the State Opera of South Australia, I would have preferred the name South Australian State Opera Company, with the emphasis on our State's name, rather than have "State" as the title.

While it may be more convenient for advertising purposes to have "State Opera" emblazoned across advertising billheads, nevertheless, I have been more familiar over the past 25 years with the old name South Australian Theatre Company. I would have preferred to see "State" come first, as a matter of principle. It is a somewhat parochial sentiment, and it probably will not have any weight with the Minister. It does not really matter, I suppose, in the long run, since we already have the State Opera Company of South Australia. The argument the Minister puts forward is that this is

consistent and in conformity. I suppose that, if one is to conform, the name State Theatre Company of South Australia is just one more means to ensure that we conform.

Apart from that, I support the board in its contention that people who are employed with the State Opera Company for contract periods of less than six months might provide a well of responsible, in fact, admirable people, from whom to draw representatives. As they are precluded at present, a number of desirable people are unable to take part in elections, both in electing and, I assume, one might even obtain representation from those short-term contract employees, too. It could be possible that someone like Sir Robert Helpmann might appear for a short term in a South Australian production and be eligible for election and to elect people to the board. I see no reason why people of distinction, on short-term contracts, should not be included among those eligible for election or eligible to vote. Therefore, we support the Bill.

The Hon. J. C. BANNON (Minister of Community Development): I thank the Opposition for its support of the Bill. The name of the theatre company, or of any organisation, is always a matter of personal choice. Some names sound good to others, and not so good to a further section. Of course, the name South Australian Theatre Company, the name by which this company has been known since its inception, was usually abbreviated to the initials "S.A.T.C.", and in the past this caused confusion in some places, particularly interstate. Apart from the reasons I outlined in my second reading explanation, I think that that is a further reason why it was suggested that the name State Theatre of South Australia might be more appropriate. I appreciate the honourable member's sentiments on that matter, which is not something on which anyone could get dogmatic. That is the name which has been recommended by the company and accepted by the Government, and I think that it will gain acceptance and currency in the same way as has the South Australian Theatre Company in the past.

Bill read a second time.

In Committee.

Clauses 1 to 8 passed.

Clause 9—"Objects, powers, etc., of Company."

Mr. BECKER: Is it envisaged that the theatre company will now form a museum type of arrangement in the future and that the State Theatre Company will have its own collection to be used for display and to be transported throughout the State, or housed in the Festival Theatre complex?

The Hon. J. C. BANNON (Minister of Community Development): This provision would empower the theatre company itself to establish a museum, located either in the Festival Centre somewhere or as a mobile museum that could be used, for instance, when the company travels in different parts of the State. However, no final decision or determination has been made on that question. The Government had a working party examining the matter of a collection for the performing arts, how it should be housed, and what it should comprise. This is the first stage of that consideration, and it was considered that the theatre company would be the appropriate body at this stage to collect such objects. There are a number of them around. Existing institutions are not really geared to such specialised collections. They may well be in the future, but at present the theatre company seems to be the body most able to take advantage of offers it has received of old theatre programmes and other items of great historical interest in the performing arts in South Australia.

At the moment, all that is envisaged is that a fairly

systematic attempt be made to collect as many of these articles together as possible. While that exercise is going on, we will have further thoughts about and investigations into where those items could be housed and who should be the controlling body.

Mr. BECKER: That reply answers some of my questions and I accept the principles; this should be done. Has the theatre company been able to obtain any items and, if so, where are they housed and how, in future, will purchases be funded, bearing in mind that a considerable sum in Government grants is needed to fund the theatre company? The Auditor-General has not left this authority alone in his remarks over the years regarding the cost to the State and the losses on ticket sales. I do not think one should approach the matter from that angle; one should consider the benefit to the arts, particularly the theatre. I would like to see the theatre obtain and preserve anything of a historical nature. I would like to know what items have been obtained, where they are housed, and the funding involved.

The Hon. J. C. BANNON: I can get a more comprehensive report about this for the honourable member but briefly, to answer the question, a number of items have been identified. Some are held at the theatre company's rooms, but not as a collection; however, they are being looked after. A number of objects have been identified, the owners of which are willing to donate, sell or lend for display purposes when storage space becomes available. That process is already in hand, but there is no major collection at present. The basis is there but it will be added to.

In terms of funding, a sum has been set aside in the Estimates for this initial exercise, so that somebody may be employed to begin the collection systematically, start cataloguing and looking for some storage premises, but it will be a fairly low-key operation at present.

Clause passed.

Remaining clauses (10 and 11) and title passed.

Bill read a third time and passed.

PETROLEUM ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 November. Page 1940.)

Mr. DEAN BROWN (Davenport): The Opposition supports the amendments to the Petroleum Act, or, as it was originally called, the Mining Petroleum Act of South Australia. The amendments are numerous, and most of them are rather technical and trivial in detail. Many adjust penalties or convert measurements from British units of square miles to metric units.

The principal effect of the Bill, or the most important amendment, is the requirement that the amount of expenditure per area must be increased, but that does not apply to the Cooper Basin. Any increase of expenditure over a given period in the Cooper Basin depends on an agreement between the Minister and the exploration companies involved, or the holders of licences.

There is no reason why the Bill should not be passed by this House. There is no point in going through the amendments and discussing them in detail; the Minister has already done that in his second reading speech. I understand that one of the partners of the Cooper Basin undertaking discussed the matter with the Government and that it is likely that private agreement will be reached between the Government and the Cooper Basin partners on what basis they would be required to expend money for exploration in the future. I assume that the Minister is

aware of discussions that took place this morning, and hopefully on that basis an agreement will be reached between the private companies and the Government. I support the Bill and hope that it goes through all stages quickly.

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

HUNDRED OF KATARAPKO

Adjourned debate on motion of the Hon. R. G. Payne:

That this House resolves to recommend to His Excellency the Governor that, pursuant to section 16 (1) of the Aboriginal Lands Trust Act, 1966-1973, section 80, Weigall Division, Cobdogla Irrigation Area, hundred of Katarapko, be vested in the Aboriginal Lands Trust; and that a message be sent to the Legislative Council transmitting the foregoing resolution and requesting its concurrence thereto.

(Continued from 17 October. Page 1454.)

Mr. ARNOLD (Chaffey): I support the motion. In the explanation of the motion the Minister stated that the Gerard Reserve Council had requested that section 80 be vested in the Aboriginal Lands Trust. That is as stated in the motion before the House. However, the Gerard Reserve Council went on to say that it should be subject to the trust's leasing the land back to the council for 99 years, with the right of renewal on expiry of the lease. There is no reference in the motion before the House to the Gerard council's having that right of a 99-year lease and the right of renewal.

If I am to support the motion, I would want an assurance from the Minister that there is some guarantee that the Gerard Reserve Council would receive a 99-year lease back from the Aboriginal Lands Trust, with the right of renewal on the expiry of that lease. I believe the provision should have been written into the motion. However, if the Minister can give an unconditional guarantee that the Gerard Reserve Council will have these rights, I will be prepared to accept his assurance. I can recall that in 1975 the then Attorney-General and Minister of Aboriginal Affairs, now the Hon. Mr. Justice King, handed over this irrigation perpetual lease No. 2315 to the Gerard council. A ceremony was held on that occasion, and the land was accepted by the Gerard council. If the Minister will give an assurance that the Gerard council will receive a guarantee that it will get a 99-year lease with a right of renewal, I shall be happy to support the motion.

The Hon. R. G. PAYNE (Minister of Community Welfare): The matter raised by the honourable member is a reasonable one. The view he took was that there was some inconsistency in the motion. The motion is in a standard form. I think what is being observed is that, essentially, this House has no power to give directions about leasing and that is why the statement appeared in the second reading speech, because the Aboriginal Lands Trust, the body vested with the land, has that right, subject to approval of the Minister. I cannot give the honourable member an assurance in the concrete form he wants.

Mr. Arnold: At the moment the Gerard council is giving up something without any concrete guarantee that it will have the—

The Hon. R. G. PAYNE: I can only say that the function of the Aboriginal Lands Trust is to be the land holding body in respect of all lands that have been transferred over a period of time from the Crown to the trust. The trust in every case, to my knowledge, has always responded by making available to the relevant community, on

application, by way of lease, the enjoyment and holding of that land. There is no intention with respect to this land that it will be any different once this motion has passed through both Houses, should that be its fate.

I think it would be presumptuous of me and this House to attempt, in effect, fully to dictate about this matter by putting in a motion about how the Aboriginal Lands Trust should function. I am sure the honourable member would agree that the members of the Aboriginal Lands Trust are, except for Mr. John Miller, the Secretary, all Aborigines and that the question of the leasing of the land ought properly to be settled between the community and the Aboriginal Lands Trust. The reserve community that has been mentioned, so far as I can recall, has a representative who is a member of the Aboriginal Lands Trust.

Mr. Arnold: This is obviously of concern to the Gerard council, otherwise it wouldn't have been mentioned in your second reading explanation.

The Hon. R. G. PAYNE: What appears in the second reading explanation is by way of advice to the Houses when they are considering the motion. I am trying to indicate to the honourable member that what will follow is virtually automatic, since the lease will be granted, but I am asking him to consider that we ought not, in our position in this House, to be endeavouring to alter the motion or to add some stricture to it, a matter that lies more competently with the Aboriginal Lands Trust. I trust I have been able to give the honourable member sufficient assurance about this matter.

Motion carried.

HUNDRED OF BONYTHON

Adjourned debate on motion of the Hon. R. G. Payne:

That this House resolves to recommend to His Excellency the Governor that, pursuant to section 16 (1) of the Aboriginal Lands Trust Act, 1966-1973, section 250, hundred of Bonython, County of Way, be vested in the Aboriginal Lands Trust; and that a message be sent to the Legislative Council transmitting the foregoing resolution and requesting it concurrence thereto.

(Continued from 17 October. Page 1455.)

Mr. DEAN BROWN (Davenport): On behalf of the member for Eyre, I support this motion.

Mr. GOLDSWORTHY (Kavel): I support the motion, which seems to me to be eminently sensible. The Aboriginal Lands Trust was set up to administer real property on behalf of the Aboriginal community. From my knowledge it has done a remarkably good job. This piece of land is situated in section 250, hundred of Bonython, County of Way. A number of Aborigines inhabit that part of the State. The Government has the matter in hand to give the Aborigines land in the north-west corner of the State. The Government plans to give the Aborigines inalienable freehold rights to that land, so this motion is not as far-reaching as what is contemplated by the Government in other areas.

The Hon. R. G. PAYNE (Minister of Community Welfare): I draw the attention of members to an error which appeared in my second reading explanation. I referred to the fencing area and residence being retained for the use of the Community Welfare Department for a school of agricultural science. Members may have found it strange that the Community Welfare Department was going in for agricultural science. I should have said that it was for the Education Department to be used for a school

of agricultural science.

Motion carried.

CONTRACTS REVIEW BILL

Adjourned debate on second reading.

(Continued from 9 November. Page 1882.)

Dr. EASTICK (Light): The Opposition will support this Bill to the second reading stage. It recognises that there is an advantage in the general principle of the Bill before us, but we seriously question the scope that it is intended to include in this Bill. I will outline the history of this matter. This was originally Bill No. 5, which was read in this House on 1 November 1977. On that occasion it was a simple eight-clause Bill. After some debate it was agreed that the matter, even though it was explained that it was a foolproof piece of legislation, should be referred to a Select Committee.

In fact, the Select Committee looked at this matter for a long time, and subsequently it reported to the House, and the Bill was amended and passed from this House as Bill No. 57 on 21 February 1978. It had been enlarged from the original eight-clause Bill to a 12-clause Bill. When the matter was before the Legislative Council, because of the complexities of the issues raised, particularly by the Hon. Mr. Laidlaw in respect of international contracts, it was decided that it should be put aside and considered further by the South Australian Law Reform Committee. The Bill was referred to the Law Reform Committee as a result of the following resolution of the Legislative Council:

That the Bill be withdrawn with a view to the Government referring it to the South Australian Law Reform Committee for its report and recommendations regarding the implementation of the objects of the Bill and that the Bill be redrafted to allow for its inter-relationship with other Acts and to take into account its effect on international and currency contracts.

After looking at this matter the Law Reform Committee subsequently reported:

Certainly the committee takes the view that the law should be altered to enable the courts to reform contracts which are unjust and to modify the application to particular situations of unjust contractual terms so as to avoid the injustice which would otherwise ensue.

The committee then made a pertinent point, one which I laud it for having made, because it indicates the difficulties that the Bench has had for some time in matters such as this. It said:

Judges in the past have done their best to avoid or at any rate mitigate the harsh consequences of unjust contracts and have resorted to interpretations and distinctions which, we fear, at times have been little better than subterfuges in order to avert injustice.

It is serious that members of the Judiciary should have found it necessary to indicate that some of the actions they have taken in the past have been a matter of subterfuge. I do not criticise them for saying that; I am lauding the honesty they have shown in so reporting, but it highlights the grave difficulty which has existed in this grey area for a long time. Certainly their acknowledgment of this point indicates that they have been subjected in the past to exercising jurisdiction forcing people to fulfil a contract which they knew to be morally unjust but which within the terms of the law they have had no opportunity of changing. The report also states:

All too often, in spite of all efforts, courts have been compelled by existing law to enforce contracts in the knowledge that the result was manifest injustice.

That is an indictment on the Parliament that it did not accept the responsibility a long time ago to remove the Judiciary from this area of difficulty or subterfuge (to use their own word), and to give a clear indication to the courts of what it intended. The Law Reform Committee Report also highlighted another feature that I think should be pointed out. The report states:

The passing of the Bill by the House of Assembly following the report of a Select Committee of the House and the terms of the resolution of the Legislative Council indicate, we suppose, that the objects of the Bill were acceptable to both Houses of Parliament.

I question that statement, which is an assumption from the fact that members speaking on both sides of the House and in both Houses have acknowledged the difficulties to which I have recently adverted. I suspect from reading that statement that the Law Reform Committee accepted rather too literally the attitude of the Opposition, or it failed to recognise that any person, be he in Opposition or in Government, has a right, having regard to new evidence, to perhaps change his previous attitude.

This goes back to the point I made at the beginning of my speech that the Opposition is willing to accept the second reading because aspects of the matter need urgent consideration. However, we believe some aspects of the Bill, as presented in line with the suggestions of the Law Reform Committee, are going too far and there needs to be a truncation of the provisions now in the Bill. The report of the Law Reform Committee was not unanimous; there was a minority report by Mr. David Wicks that appears on pages 13 to 15.

The Opposition believes it is disgraceful of the Attorney-General to bring a Bill of this magnitude into this place and to introduce it in such a perfunctory manner with no specific explanation of the 14 clauses of the Bill. It is quite correct of the Attorney-General to say that the Bill is in accordance with the majority report of the Law Reform Committee. When introducing the Bill on 9 November, the Attorney-General said:

The detailed analysis of the Law Reform Committee makes it unnecessary for me to give a detailed explanation of the provisions of the Bill. That has already been done by the Law Reform Committee and I commend the committee's report to the House. I would like, however, to take the opportunity to emphasise a number of salient features of the report and the Bill.

However, nowhere did the Attorney refer to the specific purpose of the clauses. It is all right to say that one can obtain a copy of the report, but the distribution is extremely limited. The report is headed "The Forty-third Report of the Law Reform Committee of South Australia Relating to Proposed Contracts Review Legislation". The purport behind the various clauses, which one would normally expect to see chronicled in the pages of *Hansard*, where every person in the community with access to *Hansard* could have some indication of the purpose of the Bill, has thus been denied. I intend to read in full the portions of the report of the Law Reform Committee that relate to the clauses of the Bill. I stress very clearly to the House, and to whoever may take heed of this subject in the community, that the report differs in some important respects from the original Bill. The report states:

We have prepared a new draft Bill which differs in some important respects from the existing Bill, and we now proceed to discuss those clauses of our recommended Bill which differ from the provisions of the existing Bill, and certain other clauses which call for comment.

Clause 3. The committee has deleted from its recommended Bill the definition of contract which appears in the

existing Bill. Contract is a fundamental legal concept and needs no definition. In our view the definition in the existing Bill serves no purpose and could cause confusion. A collateral contract or agreement is a contract and does not require specific mention. The power conferred on the court by the recommended Bill to avoid a contract or vary its terms enables it to deal with any part or provision of the contract. An arrangement consisting of an inter-related combination or series of contracts or agreements is either a binding legal contract or it is not.

If it is legally binding, this Bill applies to it without express mention. If it is not legally binding, the remedial provisions of this Bill can serve no purpose in relation to it. We point out, however, that the provisions of clauses 6 (1) (b) and 8 (1) (b) (ii) of the recommended Bill enable the courts to take account of the existence of any contracts other than those immediately before them in determining whether and in what ways to exercise their powers. Reference to an instrument transferring or creating an interest in land is undesirable. If the instrument is itself a contract, the Bill applies to it without specific inclusion in a definition. If it is not a contract, there is no point in defining it as a contract. Where a contract is avoided or varied, there is power in clause 6 (3) of the recommended Bill for the court to order the reconveyance of land or to make any other consequential order. This power would enable the court to cancel or vary an instrument transferring or creating an interest in land.

There is no comment on clause 4, indicating that there has been no change. The report continues:

Clause 5. The committee has deleted clause 5 of the existing Bill. We were uncertain as to the precise effect of the clause and we considered that its presumed purpose could be achieved by other means. Clause 6 (3) of the recommended Bill empowers the court to make consequential orders to give effect to an avoidance or variation of a contract including orders for the reconveyance of land. We recommend amendments to the Real Property Act to provide machinery for the implementation of such orders and to authorise the lodging of a caveat to protect the position of a person seeking to have a contract avoided or varied under this Bill. A proposed Bill to make these amendments to the Real Property Act is appended to this report.

Subclauses (1) and (6) of clause 5 of the recommended Bill are in substitution for clause 9 (1) of the existing Bill [the 21 February House of Assembly Bill]. We have considered the criticisms of this provision, but we are of opinion that it is essential, if the legislation is to be effective, that its remedial provisions cannot be defeated by the insertion of a contractual provision making the law of some other place the proper law of the contract or excluding the jurisdiction of the South Australian courts. We have varied the language of the provision in the existing Bill in an effort to strengthen and clarify the expression of the intention. Subclauses (2) and (3) are identical with clause 6 of the existing Bill. Subclause (5) protects genuine compromises of claims under this proposed legislation from themselves being attacked as being unjust, and also protects agreement already approved by the court.

Subclause (4) of clause 5 deals with the question of foreign contracts. The resolution of the Legislative Council specifically provided that the Bill be redrafted "to take into account its effect on international and currency contracts". It seems to the committee that there is no sufficient reason for any special provision in relation to what might be regarded as currency contracts. The committee gave careful consideration, however, to the fears which have been expressed that legislation of this kind might be a deterrent to overseas commercial interests doing business with South Australian interests. It is difficult to know why this should be so. Some uncertainty always attends the enforceability of contracts by reason of the rules of law which are referred to earlier in this

report. Courts which follow the English tradition have always endeavoured to construe contracts in a way which will avoid injustice and this must be well known to all who are concerned with the likely legal effect of commercial contracts. This proposed legislation merely takes the process of avoiding injustice a stage further. Moreover, the widespread adoption of similar legislation in the United States of America and of more or less analogous legislation in other important trading countries makes it unlikely that those interests which are engaged in international trade would be deterred by the proposed legislation in this State. The committee takes the view, however, that such risk as there might be should be avoided if it can be avoided without undue detriment to the purposes of the Bill. The committee feels that special provisions are justified in the area of international sale of goods. The parties to contracts for the international sale of goods are normally commercial interests possessing sufficient strength and capacity to protect their own interests. The risk of injustice is therefore slight. For these reasons the committee takes the view that in such contracts the parties should be permitted to contract out of the provisions of the proposed legislation. In this respect the committee has followed substantially the corresponding provisions of the Unfair Contract Terms Act, 1977, of the United Kingdom.

Clause 6. The committee has made a distinction between proceedings specifically instituted under this proposed legislation (whether by claim or counterclaim) in a court of competent jurisdiction to avoid or vary a contract on the ground of injustice, and the power of a court in other proceedings to decline to give effect to or to limit the application of a contract in order to avoid an unjust result in those particular proceedings. Clause 6 is concerned only with the former situation. Subclause (4) is new and is inserted to assist a court to shape its order so as to produce a just result. Subclause (5) (a) is also new. In order to ensure fair dealing in certain types of transaction, the law implies terms in a contract and provides that those terms cannot be excluded or varied by agreement of the parties.

The new subclause is designed to ensure that there is no conflict between such laws and the operation of the provisions of this Bill. Subclause (5) (c) strengthens the position of a third party who has acquired title to property in good faith and for valuable consideration. Under the existing Bill, such a person would have to rely for protection on the right to appear and be heard. The committee considers that a third party who acquires title should be secure in that title notwithstanding that the party from whom he has acquired title has acquired the property pursuant to an unjust contract. In our view the party suffering the injustice must in those circumstances be left to the remedy of compensation or some other remedy which does not disturb the title of the innocent third party.

I believe that that is a very correct assessment of the situation and one aspect of the changes which are effected and to which we should give due accord. The report continues:

Subclause (6) confers jurisdiction on the various courts to entertain proceedings under the clause. The only change from the corresponding clause of the existing Bill is that jurisdiction is conferred on the Credit Tribunal where the proceedings relate to the terms on which credit has been, or is to be, provided. The Credit Tribunal now exercises a similar jurisdiction under Part VI of the Consumer Credit Act, 1972, as amended, and is thought to be the appropriate tribunal to adjudicate upon the question of the justice or injustice of terms relating to the provision of credit. It is recommended that Part VI of the Consumer Credit Act be repealed, and a draft Bill for that purpose is appended to this report.

As you know, Sir, that is a Bill which will be before the House consequential on the passage of the Bill we are debating, as also is a consequential Bill to amend the Real Property Act, which will be debated later. The report continues:

Clause 7. This clause deals with proceedings other than those instituted specifically for relief under the proposed legislation. It confers powers on courts in any proceedings in which a contract is found to be unjust to decline to give effect to or to limit the application of the contract so as to avoid an unjust result of those proceedings. The committee is conscious of the possibility that an issue as to the application of an unjust contract may arise in proceedings relating to a small sum of money or some other matter of limited importance. The contract itself may have a much wider operation than the subject matter of the proceedings and may relate to property or rights of great value. It would be inappropriate for an adjudication in a court of restricted jurisdiction that a contract is unjust, made for the purpose of avoiding an unjust result in proceedings of minor importance, to bind the parties in relation to the operation of the contract generally and in subsequent litigation, perhaps litigation of great importance in the Supreme Court. Where the issue arises in proceedings not instituted under this Bill, the court would be concerned only with the effect of the contract on the outcome of those proceedings, and its finding that the contract is unjust should affect only the outcome of those proceedings. If a determination that the contract is unjust is to affect the operation of the contract generally, an investigation of a different kind, on a different scale and in a different court might be necessary in order to produce a fair result. The clause therefore provides that a finding in proceedings other than proceedings specifically instituted under the proposed legislation, that a contract is unjust, does not preclude the parties from re-litigating that issue in other proceedings. Where the court in which the issue arises considers that the issue should be determined in a way which will bind the parties for all purposes and will affect the operation of the contract generally, there is power for the court to stay the proceedings to enable the issue to be determined in the appropriate court. The powers are not limited to proceedings founded upon a contract or breach of contract as in the existing Bill, but extend as well to all proceedings in which the unjust contractual terms are pleaded in answer to a claim defence or allegation. This change from the existing Bill recognises that unjust contracts may affect the outcome of proceedings not founded on a contract or a breach thereof, for example, an action in tort where a provision in a contract excluding or limiting liability is raised by way of defence.

Clause 8. This clause deals with the matters to which a court shall have regard—
and I stress that—

in determining whether a contract is unjust and whether to exercise its powers. It enables the court to have regard to any relevant factor but directs attention to certain specific matters. Certain of these matters are more pertinent to the question whether the contract is unjust and others are more pertinent to the decision whether to exercise the powers. There is, however, a considerable degree of overlap, and it was considered impracticable to separate the considerations which are relevant to the one issue from the considerations which are relevant to the other. The specific matters mentioned in the existing Bill are extraneous to the contract itself and most relate either to the circumstances of the formation or the performance of the contract. These factors are of great importance, but the committee feels that attention should also be directed to the terms of the contract as a potential source of injustice. The injustice may, for example, arise from a gross and unjustifiable disproportion

between the consideration which a party is required to provide and the benefit which that party is to receive. We have therefore included the terms of the contract among the specific matters to which attention is directed. There has been some redrafting to clarify the matters to which the court should have regard.

Clause 9 corresponds to clause 8 of the existing Bill. This is a desirable preventive measure which will enable the court on the application of the Attorney-General to prohibit the formation of unjust contracts. It is envisaged, for example, that if it becomes known to the Attorney-General that an organisation is using a form of contract which contains unjust provisions, the Attorney-General may use this procedure to test the matter in court and have, in a proper case, the practice prohibited by injunction. This provision is based on North American experience and, in the opinion of the committee, is a valuable weapon against commercial oppression and unfairness.

In due course, I shall come back to some comment on the North American experience referred to here, which is in a rather more limited field than are the other provisions of the Bill we are considering. The report continues:

Clause 10 nullifies any attempt to evade the provisions of this Bill by inserting waiver or similar provisions in the contract. It is important that such attempts should be punishable offences. The mere presence of such clauses in contracts may, although they are of no legal effect, deceive the unwary into the belief that they have no legal remedy.

With that particular provision, the Opposition can have no argument. Regrettably, too often constituents visit district offices, identifying practices which have been sold to them—"practices" in the sense of written documentation, and "sold" in the sense of not a monetary selling, but sold by the persuasion of argument by a well-versed and hard-selling salesman, to the point where the constituent believes that he has no rights, even though some legal authority may have told him or advertisements by the Minister's department in the newspapers may suggest that in fact he has a right. We do not support in any way an attempt by any seller of services or goods to hoodwink or to in any other way rip off a consumer. That is completely taboo. The report continues:

Clause 11 retains the onus of proof provision in the existing Bill. Clause 12 has been redrafted to make the meaning clearer. Clause 13 provides for the transfer of proceedings instituted under the proposed legislation for the avoidance or variation of a contract, from one court to the other. Proceedings will not fail because they have been brought in the wrong court. However, a court which considers that the question of the justice or injustice of a particular contract would be better determined in another court will have power to transfer the proceedings to that other court. This flexibility should avoid any problems which might otherwise arise because of the concurrent jurisdiction conferred on the various courts by clause 6 (6).

It is important that the courts, so far as possible, should adopt a uniform approach to the exercise of the powers conferred in the recommended Bill. The committee is therefore strongly of opinion that the Supreme Court should be empowered to supervise, by way of appeal, the exercise of the powers in all jurisdictions. This creates a difficulty in relation to the Industrial Court from which there is at present no appeal to the Supreme Court.

We have therefore provided in clause 14 a right of appeal from the Industrial Court to the Supreme Court restricted to matters pertinent to the exercise of powers conferred by this Act and consequential or related matters.

The committee gave consideration to the topic, referred to in the resolution of the Legislative Council, of the inter-relationship of this Bill with other Acts of Parliament. There

are many statutory provisions in this State which deal with particular types of injustice in contracts or with injustice in contracts relating to particular types of transactions. In particular the body of consumer protection legislation seeks to protect consumers against unjust practices or unjust contractual terms. There is no inconsistency between the proposed Bill and such measures. The general law giving power to courts to avoid or vary unjust contracts should not be regarded as a substitute for specific provisions dealing with specific identifiable problems and in our view should not be regarded as a reason for omitting to legislate to deal with specific abuses as they are identified. The only statutory provision which we would regard as redundant in consequence of the passing of the recommended Bill is Part VI of the Consumer Credit Act and we therefore recommend its repeal.

As I have indicated previously, it is one of a group of Bills relating to this overall matter which is currently before the House for consideration. The commentary, relative to the clauses which I have just read and which the Opposition says again should have been inserted by the Attorney-General in his second reading explanation, by leave and without having to read it, was signed by all but one of the members of the Law Reform Committee, under the Chairmanship of His Honour Mr. Justice Zelling, including also the signature of Mr. Justice White and Mr., as he then was, Justice King, now Chief Justice King. The footnote to this report includes the following, under the date-line of 29 September 1978:

One member of the committee, Mr. D. F. Wicks, dissents from the views held by the majority of the committee on certain aspects of this report, and a brief report setting out his views is attached.

I believe it is only right that the minority report of Mr. Wicks in this matter become a matter of record in this vital issue. In his minority report, Mr. Wicks says:

The Contracts Review Bill seeks to enable a court to reform any contract which it conceives to be unjust or to modify its application to particular situations so as to avoid injustice.

With that concept, the Opposition has no argument. We do not go along with unjust contracts. We are in full accord with that. The minority report continues:

The Bill does not attempt to define or confine the term "unjust" but leaves the court to have regard to any matter which may be relevant. Specific criteria are set out for guidance.

These criteria are somewhat like the criteria currently existing in the Electoral Act and can turn up a result different from that, which is totally just. I will refer specifically to those criteria in due course. The minority report continues:

These are not expressed to be exclusive but are intended merely as examples of relevant considerations.

One could also say that the definition of "unjust" contained in clause 3 is by no means completely definitive. Clause 3 provides:

unjust, in relation to a contract, means—

(a) harsh or unconscionable;

(b) oppressive—

(with those two criteria, no-one could argue)—

or

(c) otherwise unjust.

That is the nub of the matter— it is an open-ended cheque in relation to paragraph (c).

Mr. Mathwin: How would you define "otherwise unjust"?

Dr. EASTICK: It will be a lawyer's paradise and it will be a matter argued consistently in the courts because of the breadth of application which may be applied to it and

which various people may seek to attribute to it. The minority report continues:

I consider that the issue of whether a particular contractual provision is so one-sided as to be unjust is one which will nearly always depend on the particular facts of the case and will often involve a subjective element on the part of the judge who will find it difficult to divorce the issue in hand from his own social values and his personal background and experience. In this regard, I see the purpose of law as setting standards and guidelines within which to limit judicial discretion. A judge's personal experience and prejudices can thus be restrained from obtruding into the case in hand.

It may be said that the judges will in time develop a set of general principles within which to explain and confine the doctrine which the Bill seeks to establish. Many doctrines which are very broad in terms are developed in this way. But the extent to which a general principle laid down by Parliament should be left to the courts to develop is a matter of degree. It is a most far-reaching development for Parliament to simply give a mandate to the courts to alleviate injustice and one which I believe goes too far.

Opposition members have in one way and another referred to that situation on many occasions recently. We have said (and I repeat it again) that it is the responsibility of Parliament to indicate clearly to the courts what was the true intent of the legislation Parliament had before it. It is the responsibility of members of Parliament, on behalf of the people they represent, to give clear guidelines to the courts so that the courts do not constantly have to ask themselves and determine what it was that members of Parliament wanted the public to believe was the total ambit of the piece of legislation that had been passed. I believe that Mr. Wicks has come close to the point, when he makes the statement in the final sentence which I have just read and which I repeat for the record, because I believe it is important. He said:

It is a most far-reaching development for Parliament to simply give a mandate to the courts to alleviate injustice and one which I believe goes too far.

On an earlier occasion in debate in this session in relation to the Mines and Works Inspection Act, I indicated at some length to the House the problems which exist by constantly handing over to Executive Government the right to rule the community as the Executive Government shall determine, rather than under the guidelines set by Parliament. On that occasion, I had much to say about the relative merits of proclamations and regulations. Mr. Wicks, in his minority report, has fortified the argument I put forward at that time and has again brought to the attention of members the real importance of their accepting the responsibility of their position as legislators and defining for the courts the parameters within which certain actions are to be taken. Mr. Wicks proceeds in the following terms:

Moreover, if South Australia pursues this reform alone, it is difficult to see that sufficient cases will reach appellate courts in the foreseeable future in order to establish a useful body of case law. If I am right in this respect, a very wide diversity of legal opinion on the subject will readily develop devoid of the essential guidance which is needed from courts of high authority. It is this measure of uncertainty which I think should mitigate strongly against the proposal. If the proposed reform were to follow a similar reform in the United Kingdom or even in the more populous Australian States, as has often happened in the past, then at least we would have a suitable base from which a reasonable volume of case law could be expected to develop.

He is saying that he is concerned that South Australia should be an Aunt Sally, sitting out in front of every other Western community with a piece of legislation which it is

thought will do certain things, but which will become a Pandora's box in the courts, with plenty of opportunity for litigation, and be of no real benefit to anyone in the community because of the cost involved. The report continues:

We already have a number of troublesome examples of ill-defined concepts. Lawyers have argued over the meaning of the simple phrases which make up section 92 of the Australian Constitution for most of this century. Section 260 of the Income Tax Assessment Act is perhaps an example of a very general provision which, despite a large volume of case law, is still uncertain and unpredictable in its application. The uncertainty in litigation where the provisions of this Bill are involved will be similar in many respects to that which we now experience in the assessment of general damages; the essential difference being that there will be nowhere near the volume of precedent to assist the litigant and his advisers in predicting the result.

I recognise that there is a need for reform in many aspects of the law of contract. Contracts of adhesion have been taken to inordinate lengths. Exemption clauses, insurance contracts, leases, building contracts and contracts involving the provision of credit or sale or hire of goods all require specific attention. Contracts with consumers are another identifiable class which have already been the subject of substantial and worthwhile reforms. I recommend that attention be given to the specific rules of law in areas where abuses and unfair practices are known to exist. I have no doubt that in particular areas it will be proper for judges to be given a measure of discretion to do justice to the case.

Note the comment that he makes: "I have no doubt that in particular areas"—not in all areas, but in particular areas, they will have that opportunity for discretion. The report continues:

In my view the paramount consideration is to strike a reasonable balance between the need for justice and the need for certainty. I do not believe that this proposed law will achieve that balance.

I ask the House, while not seeking to defeat the purpose of the Bill in the consumer area, to consider carefully the advice which has been given by Mr. Wicks in this minority report. To his credit, Mr. Wicks further states:

If, however, as a matter of principle, the Parliament should decide to proceed with a Bill of this kind, then I support the specific recommendations for change to the Bill which have been proposed by the majority of the committee.

He was not seeking to deny the opportunity of the measure coming before the House; he was criticising in a very practical way the likely effect that this might have on the whole issue. An earlier part of the report states:

Certainly, the committee takes the view that the law should be altered to enable the courts to reform contracts which are unjust and to modify the application to particular situations of unjust contractual terms so as to avoid the injustice which would otherwise ensue.

The Opposition accepts that as being a practical problem to which this House must address itself. The report further states:

All rules which protect contracting parties against injustice may produce some uncertainty and may be used unscrupulously for purposes of delay.

This is a regrettable part of legislation not only in this State but also in the Commonwealth and elsewhere, and the Opposition does not want to see any provision or lack of provision in the Bill which would allow unscrupulous persons to bring about unnecessary delays. It continues:

We are moreover impressed by the trend in continental Europe—

and regrettably, they give no indication of the breadth of the continental Europe experience to which they refer—

the United Kingdom and North America towards legislation restricting the enforceability of unfair contractual terms. We are particularly impressed by the experience of the United States of America. The Uniform Commercial Code of the United States contains an analogous provision. It is to be found in article 2.302 of the Code as it governs sale of goods and the basic provision is in the following terms:

If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

That is a perfectly correct statement and one the Opposition hopes to achieve here. I refer to the preamble to the comment which I have just quoted and which refers to article 2.302 of the Code, which govern sales of goods. That means it is a consumer protection measure and does not have the ambit of the Bill which is currently before this House and which we suggest is much too wide.

The Hon. PETER DUNCAN (Attorney-General) moved:

That the time for moving the adjournment of the House be extended beyond 5 p.m.

Motion carried.

Dr. EASTICK: The report continues:

So far as we can gather from the literature, the loss of confidence of businessmen and others in the binding force of contracts, which is predicted by some to be the consequence of such legislation, has not occurred and there is nothing in the literature to suggest that the abuse of the legislation in order to delay enforcement of obligations is greater than the abuse of other rules of law for that dishonest purpose.

The report refers to the existing legislation in South Australia, and states:

South Australia has had the experience, for decades, of a provision in the Moneylenders Act empowering courts to interfere with harsh and unconscionable contracts and, since 1972, of the operation of section 46 of the Consumer Credit Act. To our minds, the paramount considerations are that parties should not be able to use the law as the means of imposing injustice on others and that courts of justice should not be made instruments of injustice.

I said in another context that the Opposition was in full accord with that statement. I will refer briefly to some aspects of the Bill before it is considered in Committee, because I would like to hear specific comments on these matters from the Attorney-General in closing the debate.

The Bill, by clause 4, does bind the Crown. That was intended in the previous Bill and is completely proper. It does introduce, under the definition clause, "industrial matter", which it defines as follows:

"industrial matter" means industrial matter as defined in the Industrial Conciliation and Arbitration Act, 1972-1975: In due course the member for Davenport will make specific reference to that matter because there is grave concern in the minds of the Opposition, and others who have commented upon the issue, that this may mean that all contracts which are registered in the Industrial Court will come under the scrutiny of the Contracts Review Act, 1978. That could have serious connotations. It could also be quite serious if we found that Federal unions tried to work, or were called into question, under the Conciliation and Arbitration Act of South Australia. We might even find ourselves with a Moore-Doyle situation, or an escalation of the Moore-Doyle situation. I will not comment further about that, but it is a matter that needs close consideration. I have already indicated the seemingly endless breadth of definition in relation to the term "unjust", and I will not refer to that again. Clause 5 (5)

provides:

This Act does not apply to—

(a) a contract under which a person agrees to withdraw, or not to prosecute, a claim for relief under this Act if—

(i) the contract is a genuine compromise of the claim;

We find that the court can still determine whether a compromise is genuine. It may well be that there will be arguments in the courts organised under the umbrella of this Act as to what is the true definition of the word "genuine". Clause 6 (1) provides:

Where, in any proceedings founded upon a claim for relief under this section, a court is satisfied—

(a) that a contract is unjust; and

(b) that it is possible by the exercise of powers conferred by the section to remedy the injustice in a manner that is reasonable and fair to the contracting parties and any other person who may have become interested in the subject matter of the contract,

the court may, by order . . .

Have we, in effect, introduced yet a further problem associated with this measure where, in one way or another, we have suddenly organised ourselves a series of class actions, as was proposed in yet another piece of legislation introduced by the Attorney-General on another occasion? Clause 8 provides:

(1) In determining whether a contract is unjust, and whether to exercise its powers under this Act, a court shall have regard to—

(a) the terms of the contract; and

(b) the following matters (so far as they may be relevant):

(i) the public interest;

(ii) any material inequality of bargaining power between the parties to the contract arising from—

(A) infancy or infirmity of mind;—

there can be no argument about that—

(B) differences in intelligence or mental capacity between the parties to the contract;

What is really meant by that criteria? One cannot but be amazed at the likely arguments that will develop as to the relative intelligence and mental capacities of two parties to a contract, yet the court has to use that as one of the criteria that it may use to upset the contract. The subclause continues:

(C) differences in the cultural or educational background of the parties to the contract;

What difference does it make if people happen to have gone to a university, high school, college or whatever? We find these aspects quite difficult to conceive, and they are matters which we believe should be discussed in greater detail. Clause 8 (1) (vi), which we believe is quite irrelevant, states:

The conduct of either party in relation to other similar contracts or transactions (if any) to which he has been a party;

It is strange to me to think that the Labor Party, which has publicly on many occasions claimed that a man should serve sentence only once for a transgression, should suddenly want to introduce this provision into a matter of this nature which is likely to be used against a person who has transgressed as a minor in circumstances which bear no relationship to a current situation. That provision immediately conjures up in my mind the fact that the Labor Party would have a person serve two sentences, not in the sense of actually going to gaol, but would have to accept a second penalty for a matter for which a penalty

has already been paid to society. I will make other comments about this matter in the Committee stage. I am aware that the member for Davenport would like to draw to the attention of the House the difficulties we see in respect of industrial matters and the possibility of contracts entered into in that area being considered under this new Act.

Mr. DEAN BROWN (Davenport): I would like to draw two points to the attention of the House. As a member of the Select Committee that considered the original Contracts Review Bill that came before the House during the previous sitting of Parliament, I am disturbed to see that the definition of "unjust" in the Bill before us is the same as that in the previous Bill. It becomes apparent that the concern of most people who gave evidence to the Select Committee was that the definition of "unjust" was too broad and went well beyond what the Government desired to achieve. I think all members of the Select Committee agreed that any contract that was truly unjust, if that word "unjust" could be defined, was a contract that was harsh, unconscionable, or oppressive and was in fact a contract that should be ruled unfit and therefore be open to either complete rejection or amendment by a court.

The definition of "unjust" contained in the Bill, as in the earlier Bill, is that, in relation to a contract, it means "(a) harsh or unconscionable; (b) oppressive; or (c) otherwise unjust". It is the "otherwise unjust" provision that could open up the umbrella to almost any type of contract whatsoever and any type of behaviour whatsoever. I believe that in legal terms the words harsh, unconscionable or oppressive are clearly defined, but certainly the words "otherwise unjust" are not defined. I believe it would be possible for someone to take action under this Bill on almost any ground.

If the definition of "unjust" were amended we would certainly overcome most of the fears of people concerned that this Bill would interfere with what could only be regarded as normal commercial practice. It would be unfortunate if this Bill led to a large number of appeals because of contested contractual agreements. I am sure the Attorney-General would not for a moment wish to impose such a burden, where almost any contract could be disputed, because I am sure he genuinely wishes to cover only those contracts which we would all agree are so unfair and unjust that they should not be allowed to continue. To achieve that, I believe the words "otherwise unjust" should be deleted from that definition.

An important issue regarding this Bill was raised with me yesterday. I believe that any industrial agreement, at least under a State award, or any industrial award as adopted by a State industrial commission or court would in fact be a contract. If it is a contract, this Bill would allow any person a party to that contract also to use its provisions if it becomes an Act. If that is the case, you are basically saying that any employee under a State award or industrial agreement in South Australia could not only use the provisions of the Industrial Conciliation and Arbitration Act but they could also use the provisions of this Bill. They could therefore take the matter (perhaps having already lost the case under the normal provisions of the Industrial Conciliation and Arbitration Act) to court, using these provisions. I think that would be dangerous. This could almost double the amount of litigation and action in the industrial area. It could introduce into the Industrial Court the unique circumstance where it had made a ruling on a matter where a person had already appealed perhaps under the provisions of the Industrial Conciliation and Arbitration Act and, having had their appeal rejected, they could take further action, again

before the Industrial Court under this Contracts Review Bill.

When this matter was referred to the Select Committee, this matter did not arise. The Select Committee looked at the problems that might arise through certain contracts which had a labour component and which would normally be dealt with in the Supreme Court being referred to the Industrial Court. I think I referred to that during the second reading debate when the Bill was last before Parliament. Our fear was that any contract generally has some labour component and, because of the broad definition of "industrial matter" in the Industrial Conciliation and Arbitration Act (and that same definition is included in this Bill), we could easily find almost any contract could be considered in the Industrial Court rather than in the Supreme or Local Courts.

The point I am now making is not only that but the reverse of that, where we could find that matters that the Select Committee had not considered could come under the Bill may come under the Bill, because an industrial award or agreement is a contractual agreement and therefore it could be dealt with under this Bill. If that is the case, I believe the Bill should be rejected or severely amended. I certainly could not support this Bill in its present form, if that is the case. Perhaps the Attorney-General could give me an assurance during the summing up of the second reading debate whether he believes an industrial award or agreement could also be adopted under this Bill.

Many industrial agreements between a manager of a supermarket chain and his principal employer are contractual agreements and could be brought under this Bill. I have no objection to that if some action is taken under that agreement for its being unfair or unjust, but again I believe it still leaves two avenues open, even though in those cases where there is no specific industrial award, many provisions of the State Industrial Conciliation and Arbitration Act would apply to that person. This Bill could equally apply. There could be confusion about whether action should be taken under this Bill or under the Industrial Conciliation and Arbitration Act.

I support the Bill through to the Committee stage, where I intend to propose an amendment. I hope that the Attorney-General is prepared to answer my questions, otherwise most certainly, if my amendment is not accepted, I will be forced to vote against the Bill at the third reading stage.

The Hon. PETER DUNCAN (Attorney-General): I have noted the points made by Opposition members, and in particular I have noted the point raised by the member for Davenport. I do not believe there is the difficulty that he foresees in the issue of industrial matters. The Industrial Court would be dealing with these matters, and I am quite sure it would be the case that, if industrial agreements were to be covered by this Bill, anyone going to the Industrial Court seeking relief from an industrial agreement because of the terms of this legislation would get short shrift, if they had already gone to the court seeking some other remedy.

I will undertake, before the matter goes to another place, to investigate the matter thoroughly, because I appreciate the reasoned concern the honourable member has expressed. I accept the fact that the honourable member is concerned about it, and it is an important matter.

I will have a full investigation made as to the effect and impact of this legislation on State industrial awards and agreements. I have already given him my opinion that this legislation could not apply to Federal awards, and I am

certain that that is the situation, but I will certainly investigate the matter of the State awards and agreements and advise him of my answer early next week.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—"Interpretation".

Dr. EASTICK: I move:

Page 1—

After line 5 insert definition as follows:

"contract" means a contract—

(a) under which a person (not being a body corporate or a person acting in the course of carrying on a trade or business)—

(i) purchases any goods, or services;

(ii) takes goods on hire; or

(iii) acquires by any other means the use or benefit of goods or services; and

(b) under which the consideration to be paid or provided by that person does not exceed in amount or value fifteen thousand dollars:

The amendment is in line with the statement I made on behalf of the Opposition during the second reading debate. It narrows the field of operation of the Bill. Speaking to the last part of the amendment first, we believe a person entering into any contract of any nature, or any dealing, above \$15 000 would have only themselves to blame if they failed to think the matter through and take advice relative to the matter. We also believe that the purport of this legislation should be directed to consumer goods and should not be as all embracing as provided by the Minister. On that basis, we can see no purpose for the involvement with real estate, for example. We believe that the recommendations in the Bills related to the Real Property Act and the Consumer Credit Act should not be passed if the true impact of the Contracts Review Bill is contained as provided in this amendment.

I seek the support of members of the Committee, because I believe this amendment will fulfil the general requirements of the legislation. It will certainly come close to the statements made by the Law Reform Committee when it reported and specifically referred to the actions which had been taken in the United States of America under the Uniform Commercial Code. This was a sale of good provisions, and the report states:

If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

That is specifically what the Attorney is seeking to achieve and the amendment does, in line with the considerations of the Law Reform Committee, bring it down into an area for which there is some overseas precedent. To our knowledge, there is no evidence of the totality of the measure that the Attorney seeks to introduce without this amendment being inserted into the Bill. So that we can fulfil the overall requirements adverted to by Mr. Wicks in the minority report, I seek support for the amendment.

The Hon. PETER DUNCAN (Attorney-General): I am sure the honourable member realises that the Government is not prepared to accept this amendment. There are many small businessmen in the community who feel they are in a weakened position when entering contracts, and I am sure they would be appalled if this measure, which they have looked forward to seeing passed for a long time, were limited in this way so they could not obtain any benefit

from it. For example, the petrol resellers section of the Automotive Chamber of Commerce is anxious for this legislation to pass, because its bargaining strength with oil companies is quite impossible and it urgently needs the protection of this legislation. In the interests of people such as this the Government believes there is a need for this measure to apply across the board. The Law Reform Committee majority report, which consisted of all members except the Leader of the Opposition's nominee, believed that the measure could be quite reasonably applied across the board. With that sort of support I believe that the Government is in a very strong position in opposing the amendment.

Dr. EASTICK: I found the way in which the Attorney referred to Mr. Wicks objectionable. Whether Mr. Wicks is the nominee of the Leader of the Opposition, of the Liberal Party or whatever is completely immaterial. Over a period of time the Law Reform Committee has been well served by all its members, regardless of who appointed them to their positions. The Hon. Mr. Griffin in another place, who was a nominee on that Law Reform Committee prior to Mr. Wicks—

The CHAIRMAN: Order! I will certainly allow the honourable member for Light to comment on a comment of the Attorney-General, but I will not allow debate on this clause to deteriorate into a debate about the Law Reform Committee or the nominees to it.

Dr. EASTICK: I was not going to extend the debate other than to indicate that, if the Attorney is adopting the attitude to the amendment that he has so far expressed, the Government and the Opposition will part company in the further passage of this Bill. The Opposition believes it is necessary to truncate the activities of the Bill in the way provided for by this amendment. I will not attempt to define the position of the retail petrol sellers in relation to this matter. The Attorney is drawing a red herring across the trail, because the position of the retail petrol sellers would not be adversely affected by the passage of this amendment. As an Opposition, we believe that without this amendment the Bill has no right of passage in this place.

Mr. MILLHOUSE: I hope there is a better defence against the amendment proposed by the member for Light than the one advanced by the Attorney. It is a very dangerous thing to say, "One group in the community desperately wants this for its own ends, and therefore we will enact something across the board." I have a lot of sympathy for petrol resellers and it may be that they are in a difficult position. To say that because petrol resellers are in a difficult position we must fundamentally alter the law of contract in this State is basing the defence against the amendment far too narrowly, and I would not be prepared to accept that.

This Bill has now gone to the Law Reform Committee. About 10 years ago I had some part in setting up that committee. The Law Reform Committee was set up to recommend changes in the law. I do not know whether we have ever referred a Bill to it before. I have not checked this Bill word for word, but I understand it now reflects the views of the majority of the Law Reform Committee. I do not think that anybody denies that on either side of the House. If members want this Bill passed (and we do, because it has passed the second reading without a division), it would be churlish for us now to go about changing it.

Mr. Wicks is a person for whom I have a good deal of respect. He was once my articled clerk, and he has done well since those days. He is a good lawyer, experienced now, but very conservative in his political views, as he would be the first to admit, and I cannot see any reason

why we should prefer his view, as one member of the committee, to the majority view. After all, there are some fairly solid lawyers in the majority as well—Supreme Court judges who are deservedly so, and so on. For those reasons, I am unable to support the amendment, because I am content to accept the recommendations of the Law Reform Committee. After all, it was implicit in the resolution passed by the Liberal majority in another place that we should do so.

Mr. TONKIN (Leader of the Opposition): I find the explanation of the member for Mitcham rather curious. I thought at the outset that he was supporting the amendment, and he explained very adequately the position of the petrol resellers. If they are in a difficult position, there is no reason why that position cannot be clarified. More particularly, it is absolutely essential that we look at the overall effect that this legislation, if passed in its present form, will have on interstate and international trade and investment in this State. That matter has been well ventilated by the member for Light. The situation which would arise where any contract made in this State could be subject to review, whereas contracts made in other States are not subject to the same stringent provisions, is such that we cannot possibly afford not to pass the amendment to limit the legislation to transactions which will be limited by the amount paid and by the nature of the contract, the matters covered by the contract.

It is simply a matter of not going overboard, and I believe that in its present form the Bill goes overboard. I think the amendment serves to achieve a rational and reasonable balance. It will bring about the proper protection for consumers that I believe the Attorney-General really intended. I hope that he will not be so unable to bend and to accept a reasonable and rational point of view that he will reject it.

Mr. MILLHOUSE: I wonder whether the Leader of the Opposition realises that, if we were to pass this amendment, it would add a new dimension to the legal controversies which could go on. At present, the word "contract" is not defined in the Bill. It is a wellknown term, it is subject to legal interpretations and has been, and it is accepted. If we put in this amendment that attempts to restrict the meaning of the word, that of itself will lead to uncertainty and to litigation. The dispute as to whether a contract is or is not within the terms of this Bill could greatly multiply litigation. I am pretty certain that that is an aspect of the matter which members of the Liberal Party, with their lack of legal training and experience (it is not their fault, poor people, that they have not got it) would not have appreciated. Normally the Labor Party brings in legislation that is a harvest for lawyers, but I think this amendment would be a fruitful source of income for the legal profession, simply because it imports into an area which is now fairly settled an element of considerable uncertainty.

Mr. TONKIN: I can assure the member for Mitcham that the Liberal Party has taken very deep advice on this. We recognise the problems involved, and they have been pointed out by a number of members of the legal profession who nevertheless believe that the legislation could well be improved by this amendment. I do not see that we have cause to modify our views simply because, in the opinion of the member for Mitcham, this would be a harvest for the legal profession. I believe that it is a question of passing the best legislation that we can devise for the protection of consumers. There will never be any area of the law over which there is not some controversy and difficulty of interpretation. If, indeed, the law was so perfect that that situation did not arise we would need no lawyers.

I do not find this is an impediment to the passage of this amendment. If it will do justice to the consumer and serve to protect the consumer from unreasonable or oppressive contracts, it will have done what it set out to do. I do not believe that it should apply to international trade, or to contracts between large businesses, and I do not think that we as a State can go out on a limb. We are not in a financial or economic position to do that, and I do not think we should take such a chance.

Dr. EASTICK: The Opposition fully appreciated that the course of action it was taking was to reduce the Pandora's box which is open to the legal profession by the Bill proceeding in the manner in which it currently exists. It limits quite considerably the scope and therefore the number of transactions which will come under scrutiny. Part VI of the Consumer Credit Act already empowers the Credit Tribunal to modify or to avoid any provision of a credit contract that is harsh or unconscionable. Indeed, there is another Bill before the House which seeks to remove that factor from the Consumer Credit Act.

We are saying that the course of action we are taking brings the whole of the consumer purchase area under the one umbrella, and it will not open litigation to the extent that the member for Mitcham would suggest. Having taken good advice from a wide area of the profession to which the member for Mitcham belongs, we are quite prepared to accept the advice given to us that the course of action we are taking is reasonable for the community of South Australia and in the best interests of the legislation.

The Committee divided on the amendment:

Ayes (15)—Mrs. Adamson, Messrs. Becker, Blacker, Dean Brown, Chapman, Eastick (teller), Evans, Goldsworthy, Gunn, Mathwin, Russack, Tonkin, Venning, Wilson, and Wotton.

Noes (26)—Messrs. Abbott, Bannon, Broomhill, and Max Brown, Mrs. Byrne, Messrs. Drury, Duncan (teller), Dunstan, Groom, Groth, Harrison, Hemmings, Hopgood, Hudson, Klunder, Langley, McRae, Millhouse, Olson, Payne, Simmons, Slater, Virgo, Wells, Whitten, and Wright.

Pair—Aye—Mr. Allison. No—Mr. Corcoran.

Majority of 11 for the Noes.

Amendment thus negated.

Mr. DEAN BROWN: I move:

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Line 11—After the word "unconscionable" insert the word "or".

Lines 12 and 13—Leave out all words in these lines.

The effect of my amendments is to alter the definition of "unjust". I have already spoken on the reasons for this. If my amendments are carried, "unjust" would mean harsh or unconscionable or oppressive, and the words "otherwise unjust" would be deleted. The amendments would tighten up the definition and bring it back to what is a carefully defined legal meaning. It would overcome many of the doubts that people have had outside about whether the Bill, if passed, would become just a nightmare around the neck of contractual agreements signed by businesses.

The Committee divided on the amendments:

Ayes (16)—Mrs. Adamson, Messrs. Becker, Blacker, Dean Brown (teller), Chapman, Eastick, Evans, Goldsworthy, Gunn, Mathwin, Rodda, Russack, Tonkin, Venning, Wilson, and Wotton.

Noes (25)—Messrs. Abbott, Bannon, Broomhill, and Max Brown, Mrs. Byrne, Messrs. Drury, Duncan (teller), Dunstan, Groom, Groth, Harrison, Hemmings, Hopgood, Hudson, Klunder, Langley, McRae, Olson, Payne, Simmons, Slater, Virgo, Wells, Whitten, and Wright.

Pair—Aye—Mr. Allison. No—Mr. Corcoran.

Majority of 9 for the Noes.

Amendments thus negated; clause passed.

Clause 4 passed.

Clause 5—"Application of this Act".

Dr. EASTICK: Part and parcel of contracts in many instances is the provision of a guarantee. As provided in the Bill, extending credit may be quite seriously prejudiced by a variation of a guarantee which has existed in the past. To the Attorney's knowledge, has this particular aspect been given due consideration, has it caused any concern in bringing forward this measure, and can the Attorney comment about the guarantee being disturbed by virtue of any subsequent action under this Bill?

The Hon. PETER DUNCAN: The view of the Law Reform Committee was that a contract of guarantee for these purposes was a separate contract and would stand on its own merits and not on the merits of the substantive contract.

Dr. EASTICK: One guarantee was granted because of a series of circumstances which allowed the guarantee to be accepted. If one is disturbed, automatically the other will be disturbed. The credit given on a guarantee, therefore, is credit on a set of circumstances no longer applying. I do not want to debate the issue further, but I question seriously whether one guarantee can be totally free standing of the other in all circumstances; if one is disturbed, automatically the other must be disturbed.

Clause passed.

Clauses 6 and 7 passed.

Clause 8—"Criteria for determining whether contract is unjust."

Dr. EASTICK: During the second reading stage I referred to clause 8 (1) (b) (vi) and pointed out that the conduct of either party in relation to other similar contracts or transactions, if any, to which he has been a party is irrelevant to the matters currently being considered in the Bill. Conceivably, a person will be penalised for a previous transgression for which he or she has already paid the penalty. There has been a constant cry from society and members of the Government that a person, having once fulfilled a debt to society, whether by a gaol term, a fine, or some other form of restriction, should not have enjoyment of life jeopardised in the future. Whilst I do not seek at this time to withdraw this provision from the Bill, I point out to the Attorney that there is a conflict of interest in this clause compared to the Labor Party's normal comment in this area.

Clause passed.

Remaining clauses (9 to 14) and title passed.

Bill read a third time and passed.

ADJOURNMENT

At 5.46 p.m. the House adjourned until Tuesday 21 November at 2 p.m.