LEGISLATIVE COUNCIL

Wednesday, March 8, 1978

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

PETITIONS: MINORS BILL

The Hon. R. C. DeGARIS presented a petition signed by 148 residents of South Australia, praying that the Legislative Council would reject any legislation that deprived parents of their rights and responsibilities in respect of the total health and welfare of their children.

Petition received and read.

The Hon. C. M. HILL presented a similar petition signed by 165 residents of South Australia.

The Hon. T. M. CASEY presented a similar petition signed by 73 residents of South Australia.

The Hon. J. C. BURDETT presented a similar petition signed by 76 residents of South Australia.

The Hon. J. E. DUNFORD presented a similar petition signed by 166 residents of South Australia.

The Hon. M. B. DAWKINS presented a similar petition signed by 104 residents of South Australia.

The Hon. C. J. SUMNER presented a similar petition signed by 166 residents of South Australia.

The Hon. JESSIE COOPER presented a similar petition signed by 116 residents of South Australia.

The Hon. J. R. CORNWALL presented a similar petition signed by 198 residents of South Australia.

The Hon. F. T. BLEVINS presented a similar petition signed by 49 residents of South Australia.

The Hon. R. A. GEDDES presented a similar petition signed by 216 residents of South Australia.

The Hon. C. W. CREEDON presented a similar petition signed by 180 residents of South Australia.

Petitions received.

QUESTIONS

REPLIES TO QUESTIONS

The Hon. R. C. DeGARIS: I seek leave to make a brief statement before asking the Minister of Health, representing the Attorney-General, a question regarding replies to questions asked in the Council.

Leave granted.

The Hon. R. C. DeGARIS: On February 23, the Hon. Mr. Cornwall directed a series of questions to the Minister of Health, representing the Attorney-General, concerning the activities of a certain Mr. Abe Saffron. Although those questions have not yet been answered by the Minister in the Council, I noted in this morning's *Advertiser* a statement reportedly made in another place that would appear to be the reply to the questions asked by the Hon. Mr. Cornwall in this place. Will the Minister say whether the Hon. Mr. Cornwall's questions will be answered in the Council?

The Hon. D. H. L. BANFIELD: It always has been the practice for questions asked in this Council to be replied to here, and I do not know of any suggestion that this practice will be varied in any way.

QUESTION PROCEDURE

The PRESIDENT: In response to a request by the Hon. Mr. Foster and the Minister of Health regarding a ruling I gave yesterday on leave being granted to a member wishing to ask a question and then leave being cancelled, I have researched the matter of granting and terminating leave to make statements prior to asking questions. I will quote a ruling given on October 16, 1945, by the then President, Sir Walter Duncan.

The Hon. N. K. Foster: Is he still alive?

The PRESIDENT: Many of the matters on which he has given a ruling have been such that the ruling has been upheld in many places. I quote as follows:

> I have looked into the matter, since the practice of getting leave to make a statement before asking a question is growing. I draw attention to Standing Order No. 109, which reads:
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> > In putting any question, no argument, opinion, or hypothetical case shall be offered, nor inference or imputation made, nor, except so far as may be necessary to explain such question, shall any facts be stated or quotations made.
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> Enlarging on that point, Blackmore says:
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> > As the object of questions is simply to elicit information, they are surrounded, by the law of Parliament, with strict limitations, which extend also to replies . . . In the matter of questions, the rule is most strict against anything approaching debate of the introduction of debatable matter in either question or answer.
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> On the point raised by Mr. Cudmore, the Council can give any member the right to make a statement, but permission must be unanimous. If during the statement any member of the Chamber objects to it he has only to draw attention to the fact and the statement must immediately cease and the question be asked. It is therefore in the hands of members, if they give a member permission to make a statement, to cause it at any time to cease, but they having given permission, I am at present of the opinion, although not definitely so, that members themselves are responsible for stopping statements if and when any of them should wish to do so.

The matter of granting leave and terminating it is thus in the hands of the members, and I point out to the Hon. Mr. Foster and the Minister of Health that the Hon. Mr. Foster was allowed about 70 words of explanation before "Question" was called, whereas "Question" was called before the Hon. Mr. Hill had made any explanation at all. In defence of what I did, I say that I upheld the point that the Hon. Mr. Hill had not had a fair go when "Question" was called.

I felt that it was wrong on the one hand to grant leave and then to cancel it without giving the member any opportunity. In my opinion, technically the Minister of Health was correct and when "Question" was called I should have demanded that the Hon. Mr. Hill put his question: morally, I believe, I was quite justified in saying that I did not believe that it was a fair go. I hope that in future members will pay attention to the simple rule of giving people a fair go.

The Hon. D. H. L. BANFIELD: I thank you very much for the ruling you have given today, Mr. President. I put the matter to you yesterday to find out how this Council could cancel leave when it saw fit so to do.

I take it, Mr. President, that you intend to carry out the ruling, whether it be on moral grounds or any other grounds: that, when "Question" is called, that is what the position will be—leave of the Council will be withdrawn at that stage. Is that correct, irrespective of whether an honourable member has uttered 70 words, 100 words, or no words?

The PRESIDENT: The Minister has made a valid point: that I should demand that the question be put when it is demanded. If that is what the Council desires, we will try it under that system. I hope it is not applied, because it makes a farce of the whole point of granting leave.

The Hon. D. H. L. Banfield: Yesterday, it was the Opposition side that countermanded it.

The PRESIDENT: The Minister asked me a question, and I will explain what I intend to do. If you rule against my decision, that is up to you and the Council. In the meantime, I say, "Yes, technically you are right: if someone demands 'Question', I will ask the honourable member to ask his question." However, I appeal to honourable members not to make a farce of what has been a workable practice.

MUTUAL HOSPITAL ASSOCIATION

The Hon. N. K. FOSTER: I seek leave to make a short statement before asking a question of the Minister of Health.

Leave granted.

The Hon. N. K. FOSTER: In using the leave that has been granted, I state that what I said yesterday ought to be agreed to. If you grant leave, you should not abort it. Can the Minister inform the Council whether or not Mr. Ian McLachlan is still Chairman of Mutual Hospital Association, and is he also still associated with stock-owning firms?

The Hon. R. C. DeGARIS: I rise on a point of order, Mr. President. I refer to the Standing Order that provides that questions must be directed to Ministers on certain matters. This is not a question of public interest, nor is it a question within the knowledge of the Minister.

The Hon. N. K. Foster: You ought to be in the psychiatric ward at Northfield.

The PRESIDENT: I do not believe that the Leader has a point of order. The Hon. Mr. Foster.

The Hon. N. K. FOSTER: A previous Minister of Health raises a point of order when an honourable member asks a question of the present Minister of Health! Mutual Hospital Association has been robbing people blind since its inception, and it has been investing the people's money without telling them the details.

The PRESIDENT: Order! I remind the honourable member that, if he is going to put a question, he should give his explanation in such a way that the question can follow. I do not want the honourable member to hold a separate debate outside his question. I have given him a fair go, and I hope he will relate his remarks to the question.

The Hon. N. K. FOSTER: Is Mr. Ian McLachlan Chairman of Mutual Hospital Association and is he associated with stock-owning firms in this State and with wide pastoral and business interests and insurance companies in this State? Is he the same person who is a one-time President of the Liberal Party in South Australia?

The Hon. R. C. DeGARIS: I rise again on a point of order, Mr. President.

The Hon. N. K. Foster: That is the end of the question.

The Hon. R. C. DeGARIS: Standing Order 107 states:

> At the time of giving notices, questions may be put to a Minister of the Crown relating to public affairs; and to other members relating to any Bill, motion, or other public matter connected with the business of the Council in which such members may be specially concerned.

I draw your attention, Mr. President, to that Standing Order. This question has nothing to do with a matter before the Council.

The Hon. D. H. L. BANFIELD: As this is a matter of public concern I shall endeavour to seek the information for the honourable member.

MICROWAVE OVENS

The Hon. C. J. SUMNER: I seek leave to make a short statement before directing a question to the Minister of Health on the safety of microwave ovens.

Leave granted.

The Hon. C. J. SUMNER: In recent weeks there has been much publicity in the press about the benefit of microwave ovens. The *Sunday Mail* carried a series of articles extolling the virtues of these appliances, and I have seen similar articles in other sections of the media. Miracles certainly can be performed with microwave ovens, says Mrs. Kirkwood, the *Sunday Mail's* cook of the month, on January 8, 1978. However, nowhere in the reports have I seen any warnings about the possible dangers of microwave ovens, nor any instructions regarding their safe use.

I understand the current state of scientific and medical knowledge on the effects on the human body of electro-magnetic radiation is uncertain but that doubts have been expressed about the increasing incidence of such radiation which is used in radio and television transmission, telecommunications, radar, in industry and in electronic listening devices. Doubts have been expressed recently about the ill-effects of high-powered listening devices using ultra high frequency waves. Now such high frequency waves are finding increasing use in the kitchen. In a report in the *Advertiser* of May 18, 1976, a spokesman for the Commonwealth Scientific and Industrial Research Organisation warned of the possible dangers of microwave ovens when he stated:

> But exposure to microwaves at close range can cause permanent tissue damage, particularly to the eyes, so microwave oven users should follow basic safety rules as they would with other kitchen appliances.

A *Choice* magazine survey of November 19, 1977, found that one product had excessive microwave leakage, and warned that people must be extremely careful in using a microwave oven and that any possible leakage should be checked regularly.

When I asked a physicist friend on his views on this controversy, although he could not see any problems if the microwave oven was functioning properly, he said he would not have one in his house because of the doubts that exist in relation to the matters I have mentioned. My concern is that recent promotion of microwave ovens in the press has not referred to any of these dangers, particularly given the uncertain state of the evidence of the effects of electo-magnetic radiation on the body. My questions are as follows: first, is there evidence to suggest that prolonged exposure to electro-magnetic radiation is deleterious to health; secondly, are there any dangers in the use of microwave ovens and is their use recommended; thirdly, what precautions should be taken in their use; fourthly, does the Government lay down safety standards for the manufacture and operation of microwave ovens; and, fifthly, should the publicity in favour of microwave ovens give prominence to the potential hazards and safety precautions required in their use?

The Hon. D. H. L. BANFIELD: My attention has been drawn to the fact that microwave ovens can be detrimental to health if incorrectly used or if leakage occurs over a long period. The issues raised by the honourable member are worth taking up, and I shall seek inquiries and bring down a report.

PRESIDENT'S RULING

The PRESIDENT: Yesterday, I ruled that a question asked by the Hon. Mr. DeGaris requesting the withdrawal of the Contracts Review Bill by the Attorney-General was out of order. I confirm that ruling. A Bill received in due form from the House of Assembly and read a first time is deemed to be in the possession of the Council, and it can be withdrawn only by resolution of the Council on the motion of the Minister or member in charge of that Bill in the Council.

ALFALFA APHID

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

Leave granted.

The Hon. R. C. DeGARIS: On March 1 the Minister of Agriculture answered a question in the Council concerning possible Government subsidies for insecticides to combat aphid in infested areas of the State. In his reply, he also gave some information of Cabinet discussions on this matter. Has Cabinet discussed any other forms of assistance in areas where aphid infestation has made a tremendous impact upon existing lucerne stands, particularly in rehabilitating or replanting those areas?

The Hon. B. A. CHATTERTON: Cabinet certainly has discussed this matter and is providing considerable assistance. I made a statement yesterday pointing out the total assistance provided for the rural industry to combat the aphid infestation in the State: it has amounted to over $500 000 so far, which contrasts greatly with the lack of support we have had from the Commonwealth Government, which promised us $185 000 last August; so far, it has not made good that promise, and recently the Federal Minister for Primary Industry wrote to me and said that the matter was being deferred indefinitely while the Federal Government considered a number of financial matters at Commonwealth level. So I assure the honourable member that the State Government has provided considerable assistance.

The question whether the lucerne stands will in fact have to be replaced is something we shall be looking at in the light of what occurs in that area, and we hope that, with the distribution of the parasite wasp and its spread through the aphid population, the existing lucerne stands will survive. The Government has put much effort into the parasite programme and we have done more than any other State in building up the parasite numbers; it is in anticipation of the fact that this parasite programme would control the aphid population sufficiently to allow the lucerne stands to survive that we hope to do this. Over a long period of years it would probably pay farmers to replace the stands with aphid-resistant varieties but we hope that that will not be absolutely essential. Aphid-resistant varieties would give greater protection because there would still be damage to hundreds of plants; however, we believe that, with a good parasite population, that damage will not be so great as to kill the lucerne outright.

TOURISM

The Hon. C. M. HILL: I seek leave to make a statement before directing a question to the Minister of Tourism, Recreation and Sport, about high wages and penalty rates and their effect on the tourist industry in South Australia.

Leave granted.

The Hon. C. M. HILL: In the *Australian* of November 19, 1977, there was a long article on this matter from which I will quote three paragraphs. The feature was headed "Bold talk on tourism, but weekends are penalised". The article states:

> There is bold talk these days of boosting tourism in Australia. But it is so much codswallop, because a weird system of penalty wages is crippling the industry, closing dining-rooms and restaurants and lowering still further our basement standards of service. Captain R. J. Ritchie, who did so much to build Qantas and is now Chairman of the Australian Tourist Commission, got it right when he told a seminar in Canberra recently that penalty rates "are a great restraint to growth."

Then, only two weeks ago in the Adelaide *News* the same subject was taken up by Captain Ritchie. An article in that newspaper of February 23 states:

> Our wages rates "keep out the tourists". Penalty rate wage costs are forcing Australia out of the international tourist industry, according to travel chief Captain R. J. Ritchie. He said penalty rates were a "stumbling block" in the campaign to lure more overseas visitors. Until something was done to reduce wage costs it would be increasingly difficult to attract overseas tourists.

First, does the Minister agree with the sentiments expressed in those two articles? Secondly, is he or his Government contemplating action to improve the situation in the interests of the South Australian tourist industry?

The Hon. T. M. CASEY: Let me assure the honourable member that the tourist industry is not the only industry that has been hit by increased costs. It has been discussed at the Tourist Ministers' council meetings over the last two years, and a subcommittee has been set up under that council to look at this problem, as we realise it has some effect on the tourist industry throughout Australia. Unfortunately, some of the other countries are not in the same position as we are with penalty rates at the weekend. Nevertheless, I do not think they are as great a deterrent as the honourable member has suggested. However, the matter is under constant review by Ministers' council and is being pursued strongly.

PECUNIARY INTEREST

The PRESIDENT: Whilst the Hon. Mr. Hill was speaking in the second reading debate on the Residential Tenancies Bill, my attention was drawn by the Hon. Mr. Cornwall to Standing Order No. 225 relating to pecuniary interest. This Standing Order is in line with the practice in the House of Commons where it is "a rule that no member who has a direct pecuniary interest in a question shall be allowed to vote upon it: but, in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a general or remote character." On July 17, 1811, the rule was thus explained by Mr. Speaker Abbot: "This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of His Majesty's subjects, or on a matter of State policy." The Residential Tenancies Bill is a public Bill introduced by the Government and giving expression to State policy. The Hon. Mr. Hill is in no different position to any other landlord or tenant within the State, if indeed he is a landlord or tenant. I affirm my statement yesterday that Standing Order 225 will not be breached by any honourable member speaking to or voting on the Residential Tenancies Bill.

SCHOOL ENROLMENTS

The Hon. ANNE LEVY: I seek leave to make a statement before asking the Minister of Agriculture, representing the Minister of Education, a question regarding pupils in Government and non-government schools.

Leave granted.

The Hon. ANNE LEVY: A small report in Monday's *Advertiser* gave figures issued by the Australian Bureau of Statistics that suggested that the growth in enrolments at non-government schools was greater for the past five years than that which had occurred in Government schools in South Australia. While in no way doubting the validity of the figures published by the Australian Bureau of Statistics, I was surprised to see this information, as it conflicts with a study conducted in 1975 for the South Australian Council for Educational Planning and Research and, I understand, with studies conducted by the Australian Council of Educational Research, most of which research has shown a fall in the proportion of pupils attending non-government schools compared to Government schools throughout the State and the nation.

I realise that the A.C.E.R. and the S.A.C.E.P.R. data were compiled up to 1975 and that changes may have occurred since then. However, I wondered whether, in view of this press report, the Minister could let the Council have information on projections made for the future in relation to the proportion of pupils attending Government and non-government schools in this State. This matter has such obvious ramifications in terms of employment, funding and the provision of facilities that it is obviously important that projections and studies should be made on the matter.

Will the Minister ascertain whether the Education Department has information that suggests that there has been a reversal, in the past couple of years, of the trend that has been evident since 1954; if it has those details, what are the future projections regarding this matter?

The Hon. B. A. CHATTERTON: I will obtain a report from the Minister of Education for the honourable member as soon as possible.

SPORTS ADMINISTRATION CENTRE

The Hon. C. M. HILL: I seek leave to make a short statement before asking the Minister of Tourism, Recreation and Sport a question regarding the proposed sports administration centre in Adelaide.

Leave granted.

The Hon. C. M. HILL: I am told that the Minister intends to establish a sports administration centre on Greenhill Road and that the centre will include accommodation facilities for secretaries of various sporting bodies. I have also been told that plans are well advanced in relation to this proposal. Will the Minister confirm that position, give an approximate estimate of what his department believes might be the cost of such a development, and make a general statement to the Council on what he believes will be the advantages for sport in South Australia?

The Hon. T. M. CASEY: I am delighted to tell the honourable member about the progress being made at the administration centre. Although that progress has not been as good as I had hoped, the Public Buildings Department is working on the building. I know that furniture and fittings have been ordered, and I hope that the centre will be operating within the next six to eight weeks. The centre will benefit greatly sporting bodies throughout the metropolitan area, as secretaries of various associations and clubs will be able to go to the centre and have their minutes or other correspondence typed there. Most people to whom I have spoken, particularly those connected with sporting bodies, are looking forward to the opening of the centre so that they will be able to take advantage of the available facilities.

HEALTH COMMISSION

The Hon. C. M. HILL: Although the matter to which I now refer was dealt with to a certain extent in debate in the Council yesterday, I ask the Minister of Health a further question regarding it so that the position is perfectly clear. Has the Health Commission given any instructions to country hospital boards to the effect that those boards must, as a worker participation measure, include a staff member before they will be granted incorporation under Health Commission planning?

The Hon. D. H. L. BANFIELD: The Health Commission is in no position to instruct country hospital boards how they should or should not act in this regard. True, various matters have been raised in discussions with country hospital boards, and the matter of representation on boards has been one of those matters.

The Hon. C. M. HILL: Will the Minister assure the Council that incorporation of country boards will in no way be impeded if those existing boards prefer not to include a staff member on them?

The Hon. D. H. L. BANFIELD: I do not know how an impediment is involved. It is entirely up to country hospitals to seek incorporation.

MINORS (CONSENT TO MEDICAL AND DENTAL TREATMENT) BILL

The Hon. ANNE LEVY: I move:

> That the time for bringing up the report of the Select Committee be extended until Wednesday, March 22, 1978, to enable the committee to consider the fourth report of the Criminal Law and Penal Methods Reform Committee of South Australia on penal law.

We understand that this penal law report will be tabled soon and will be relevant to the matter being considered by the Select Committee.

Motion carried.

GIFT AND SUCCESSION DUTIES

Adjourned debate on motion of the Hon. R. C. DeGaris:

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

(Continued from March 1. Page 1857.)

The Hon. M. B. DAWKINS: I support the motion. Whilst I do not wish to ignore the first part of it, I want to give weight to the second part, which states:

> and give consideration to reducing the incidence of capital taxation in other areas of State taxes.

Some members have been at pains to concentrate on the first part of the motion and I think they have tried (maybe with some success) to show that many people have cause to leave South Australia. Some people are leaving South

Australia even now, before the benefits of the remission of these duties are effective in the neighbouring States, Queensland not being necessarily a neighbouring State. We have been challenged to name people who are leaving South Australia, but I consider that that is an empty challenge, because Government members know that people are leaving the State.

I certainly will not name them, but I assure the Government that I could do so. If the Opposition brought before this Council lists of people and named them (which course I do not approve of), that would delay proceedings here unduly and would enable the Government to accuse us of wasting the time of the Council. There is no doubt that people are leaving, particularly for Queensland and Western Australia. I know of specific cases, and I believe that they will continue to do so increasingly if something is not done along the lines suggested by the Hon. Mr. DeGaris.

I ask why Mr. Wran is not doing something about the matter. Is it not a fact that about 44 000 people have left New South Wales, and that many other people are preparing to leave, for the progressive State of Queensland? I was told of that situation a few months ago when I went to New South Wales and Queensland. I believe that the number is continuing to increase, and people are leaving this State also. I ask this Government to consider whether the Queensland Government will, in due course, obtain far more revenue from the continuing activities of people who move to that State than it would have obtained if it had death duties. What of Western Australia, where these duties also are being removed? For many years, I have been visiting Western Australia regularly.

The Hon. N. K. Foster: To see your nephew, a member of Parliament.

The Hon. M. B. DAWKINS: He is not my nephew. When the Hon. Mr. Foster shuts up, I will continue. In Western Australia, I have been accustomed to listening to the bragging of the people there. To some extent, that State was isolated for many years until air travel became more popular, and quite naturally the people there thought that there was no place like Western Australia.

Members interjecting:

The PRESIDENT: Order! If the Hon. Mr. Foster is going to conduct a conversation in the Chamber, I should like him to do it with less volume. If he is going to ask questions of the member speaking, he should do it from his place.

The Hon. M. B. DAWKINS: I have become accustomed to the people of Western Australia bragging about what they term "their wonderful State". Potentially, it certainly is a wonderful State. In the past, I have been able to take those people back a peg or two by saying, "But do you know that, for all your commendable support for your own State, you still have a population equal to only four-fifths of the population of South Australia, in industrial activity you have far less than four-fifths of what South Australia has, and in Government activity, in the size of Loan works and in the Budget, each is four-fifths of the activity in South Australia, at the best?" They have had no answer to that previously. However, what can I say now? Because of the progressive policies, first of the Brand-Nalder Government over 12 years of development in Western Australia and more latterly the progressive policies of the Court Government, they have almost caught up in population and in other activity. In fact, in some matters they have more than caught up, despite their disadvantageous geographical position, particularly in regard to industry, in relation to the rest of Australia. Is this only because of the progressive policies pursued there, or is it because of the static stop-go policies of this Dunstan Government and the high charges that it imposes, as referred to by the Hon. Mr. DeGaris in the important second part of this motion?

The progressive State of Western Australia was never able to make any headway over its having a population equal to only four-fifths of the population of South Australia while Sir Thomas Playford was Premier. What is the position now? As I have said, Western Australia has caught up, largely because it is growing at a reasonable rate and because we are static as a result of the policies of our present Government. The leading article in the *News* of March 6, headed "Dunstan's dreamtime", states:

> Two men have dominated South Australian politics in the past 40 years. For three-quarters of that time it was Sir Thomas Playford with his vision of a State bustling with secondary industry. Despite formidable obstacles, he succeeded brilliantly. But, ironically, in doing so he paved the way for Mr. Dunstan with his vision of his State setting the pace in social change.
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> But with the legacy of Playford as a continuing factor in political and economic life, Mr. Dunstan also has been zealous in asserting his desire for industrial development. He has, however, been markedly less successful. Indeed, during his period in office South Australia has lost most of the competitive low-cost advantage that was the key ingredient in the Playford formula.

The report goes on to say, of Mr. Dunstan:

> He talks of attracting "tertiary industry" with Adelaide becoming the headquarters of major corporations whose factories are elsewhere. He also talks vaguely of "democratising" schools and social institutions as well as industry. Vision is what politics are all about. There are too many pusillanimous placeseekers in our Parliaments. But, for all that, Mr. Dunstan's latest burst of crystal ball-gazing seems more like a dreamtime than a practical programme. In a word, it's unreal.

That is the situation that we have and that is why some people are talking about South Australia being a Cinderella State. If it is, that is due largely to the policies of this Government. I refer to the special investigation by Mr. Tony Baker, which I think has been mentioned previously, He would not be regarded as being in the pocket of the Liberal Party: the Labor Party would have to regard him at least as being objective, because he is in its corner as much as he is in any other. On February 22, in the same newspaper, Mr. Tony Baker asked:

> Are an increasing number of elderly South Australians going to move interstate to die?

The answer is "Yes". He then asked:

> Will capital-hungry companies become shy of setting up in Adelaide?

The answer is already a firm "Yes. He also asked:

> Will the Dunstan Government change its position and abolish death duties?

That is the $64 question. Within three years the Government may have to consider this matter more seriously than it has apparently done up to the present. The article continues:

> Other State Governments also are having a new look at death duties, with the result that South Australia is currently the most expensive place to die in the nation. The best places, since you can't take it with you but want to leave it to your family, are Queensland, Victoria or a Commonwealth Territory.

New South Wales and Western Australia will shortly be added to those States. No matter how many figures the Government quotes, they will not alter the situation. People are leaving South Australia, perhaps not yet in large numbers but, more important, people are not

coming to South Australia. Those who are leaving are doing so because of the situation to which Mr. Baker and I have referred. Further, industry will not come here.

The present Premier used to denigrate Sir Thomas Playford by saying that Sir Thomas had only a secretary and two typists. If I remember correctly the secretary said that sometimes he was forgotten, and Sir Thomas Playford finished up as a man with two typists. Yet he, with that small staff, was, according to the *News,* brilliantly successful in advancing the industrial and general development of this State. Now, the present Premier does not merely have a secretary and two typists: he has a veritable army of public servants and a public relations system which has built up a charisma for the Premier. This has cost South Australia a large sum, but the Premier has been singularly unsuccessful.

One reason why the motion should be carried is succinctly summed up in a leading article in the *News* to which I have referred. The Premier, with all his so-called charisma, which in the last couple of months has been shot to pieces and which was previously built up by his expensive public relations system, has been singularly unsuccessful in attracting industry here. It is not just a matter of those leaving South Australia: it is a matter of those who will not come here. The Premier has been singularly unsuccessful, compared to Sir Thomas Playford, the man he liked to denigrate.

We need someone in South Australia today with the dynamic drive that Sir Thomas Playford had. We need the low-cost situation which the present Premier has destroyed by increasing charges, such as workmen's compensation fees, pay-roll tax, stamp duties, and registration fees. Now, we no longer have a cost advantage in South Australia. Therefore, the blame for the static situation here and for the fact that we are likely to become the Cinderella State lies fairly and squarely with the Premier. If South Australia is not to become permanently the Cinderella State, we need to pass this motion and to ensure that something is done about it. I support the motion.

The Hon. R. C. DeGARIS (Leader of the Opposition): I thank those honourable members who have spoken to the motion. I do not want to reply to very much of the debate, because there is really not much to reply to; most speakers supported the motion. I was genuinely disappointed with the Hon. Mr. Cornwall's effort to grasp the real point I was trying to make. I do not believe that his speech was a worthy one in the circumstances. He talked about death duties being a progressive tax. I asked him whether I could quote him on that, and he agreed that I could. He criticised my speech because I said that 96 per cent of estates in South Australia were below $100 000, and he asked why I did not quote the rest. My point was that estates below $100 000 are those where the impact is much greater than it is in the others. For example, in an estate below $100 000 it is very difficult to avoid the heavy impost of death duties. The big impact falls on the ordinary person with a house, a car, and an insurance policy.

The Hon. J. R. Cornwall: About 80 per cent of the people have estates of less than $30 000.

The Hon. R. C. DeGARIS: That is exactly the point I am making. The impact of death duties on an estate of $30 000 is far more burdensome than it is on a very large estate. My major point, which has not been answered by any Government speaker, is that every other State, except Tasmania, has announced that it will move out of death duties within the term of its existing Parliament. If this State is left as the only mainland State imposing a tax on the lottery of death, there will be a tremendous impact on the ability of this State to hold its population, to attract new industry, and to have a viable economy. That point has not been tackled by any Government member. Regarding the second part of the motion, I made the point, which has not been refuted, that, of all the States, South Australia has the largest proportion of tax coming from a purely capital source, assuming we consider the matter right across the board, including local government taxes and State taxes. This reasonable motion raises a question that the Government must face. It must not leave this State with the highest percentage of capital taxation and it must not leave this State as the only mainland State collecting taxation from the lottery of death. I thank honourable members for their attention to the motion.

The Council divided on the motion:

Ayes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, Jessie Cooper, M. B. Dawkins, R. C. DeGaris (teller), R. A. Geddes, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

Noes (10)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and C. J. Sumner.

The PRESIDENT: There are 10 Ayes and 10 Noes. There being an equality of votes, and because I believe that the impact of taxation in this area falls harshly and inequitably upon many people in this State, I give my casting vote to the Ayes.

Motion thus carried.

MINING ACT REGULATIONS: PRECIOUS STONES

Order of the Day, Private Business, No. 10:

The Hon. R. A. Geddes to move that the regulations made on November 10, 1977, under the Mining Act, 1971-1976, relating to the mining of precious stones, and laid on the Table of this Council on November 15, 1977, be disallowed.

The Hon. R. A. GEDDES moved:

That this Order of the Day be discharged.

Order of the Day discharged.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from March 2. Page 1895.)

The Hon. ANNE LEVY: I support the principle of this Bill although my support is reluctant and I should like to give some reasons for it. The general principle of the situation in which the termination of a pregnancy is to be permitted is not in question in this Bill, otherwise it would be more controversial. I make clear that I have always supported the general principle of abortion on request, and it is interesting that an increasing proportion of Australians agree with me, according to Gallup polls. The proportion of people supporting abortion on request (or on demand, as it is popularly called in the press) has risen from 19 per cent in 1972 to 29 per cent in 1975. In the intervening time since 1975, it may have risen further. However, that is not the matter at issue in this Bill, which is apparently introduced to put into effect the recommendations of the Mallen committee's report. Part of my reluctance to support this Bill is that the author has taken only one of the recommendations of that committee. It has made other recommendations regarding the administration of the law on abortion, and the author of this Bill has

taken only one of them. The latest Mallen committee report, under the heading "Recommendations", states:

> The committee feels that the residency clause is no longer of any importance, in view of the ready availability of abortions in other States. The removal of this clause would simplify the procedure for those patients being close to State borders who normally seek medical attention from across the border (for example, Mount Gambier). The original reason for the insertion of this clause would appear to have lapsed.

That is contained in the Mallen committee's report for 1976, the latest one available. I think it a little incongruous that the author of this Bill purports to be putting into effect the recommendations of the Mallen report but has taken only one of its recommendations and not this other recommendation appearing under the heading "Recommendations". Why has one recommendation been chosen and not the other?

It occurred to me to attempt to amend the Bill to give effect to both of these recommendations of the Mallen committee, but I realised that, if I did this, it would delay the passage of the Bill. It is a private member's Bill, and private members' time in the other place has ceased for this session. Consequently, if the Bill is amended here, it is likely that it will lapse at the end of the session and not be put into effect. Therefore, I have the dilemma of wishing to improve the Bill in accordance with the recommendations of the Mallen committee and, in doing so, perhaps defeating the object of putting into effect any of the Mallen committee's recommendations. The alternative is to support the Bill as it is while stating quite clearly that I believe that, if one wishes to put into effect the recommendations of the Mallen committee, both recommendations should have been followed.

The Hon. R. A. Geddes: Would you do that by adding to the Bill?

The Hon. ANNE LEVY: It would mean adding to the Bill in order to give effect to the third recommendation contained in the Mallen committee report. However, this is a private member's Bill and, if we in this place added to it and the Bill was returned to another place, it would mean, as private members' business has ceased in that place, that the Bill would die and none of the recommendations would be implemented. In the circumstances, therefore, I do not intend to move amendments to the Bill, although I make clear that this is the major reason for my reluctance in supporting it.

Another point that needs careful consideration is that of the complications that can occur after the termination of pregnancy. There was much discussion on this matter in another place and, indeed, in the speech delivered by the Hon. Mr. Burdett. One point made by that honourable member was that, if this Bill passed, hospitals would have to report complications, and the requirement that doctors must do so could be rescinded. This idea has been greeted with horror by members of the Mallen committee. When the committee recommended that hospitals should have to report terminations of pregnancies, it certainly did not see it as an alternative to doctors having to report terminations of pregnancy. It was a matter of adding to the reporting as a check on whether doctors were reporting adequately. Any suggestion that one should replace the other is abhorrent to members of the Mallen committee.

The suggestion that hospitals should have to report complications and details thereof associated with termination of pregnancies is really not workable. Some complications do not require hospitalisation, and such things cannot be reported by the medical superintendent of the hospital because the woman concerned has not been hospitalised. The Mallen committee also suggested that only medical practitioners can give an accurate diagnosis and statistically valid information on complications, because many managers or superintendents of hospitals are often not medically qualified. The business of reporting complications can be carried too far. I again refer to the latest Mallen committee report. This quotation was not given by the Hon. Mr. Burdett in his second reading speech. The Mallen committee, in its seventh annual report, for the year 1976, stated:

> With respect to data concerning complications, the position is more difficult. It is not thought that this aspect is capable of an entirely satisfactory solution. However, certain steps, if introduced by regulation, would lead to a great improvement in this very unsatisfactory and misleading area. These steps are:
>
> *(a)* Reporting of immediate complications within 14 days as at present enacted.
>
> *(b)* Reporting on a confidential document, to the Director-General of Medical Services, all cases of irregular bleeding or pelvic inflammatory disease occurring within a period of three calendar months following an abortion . . .
>
> *(c)* Reporting of cases of certain complications of pregnancy or labour where there is a history of previous abortion. These complications would include such conditions as premature rupture of the membranes, cervical incompetence and the like.
>
> *(d)* Reporting of long-term problems of fertility or subfertility where there is a history of previous abortion.
>
> *(e)* Reporting of emotional or psychiatric problems following abortion.

It is clear that many of these complications would not be treated in a hospital and that it would not be within the competence of a manager or superintendent of the hospital to provide data on them. While such information is no doubt interesting and important, I really doubt whether it is the Government's business to legislate for what is more properly a research programme of a gynaecologist or psychiatrist.

We do not have legislation requiring the reporting of complications that occur following childbirth, which affects far more women than do abortions. Medical research projects are usually undertaken by private practitioners, university researchers or by the staffs of our major teaching hospitals. They collect their own data with the permission of their patients. The confidentiality of the matter is assured, and the results are published in learned journals. It is strange that we should have research by legislation in this matter and this matter only.

The point that I have just made brings me to another aspect, that is, the question of confidentiality in reporting the termination of pregnancies. By the end of 1976, 18 341 women in South Australia had had abortions since January, 1970. I imagine that by now something like 20 000 names of women who have had abortions would be on file in Government departments. I maintain that it is no business of the Government to keep files giving the names of people who have had abortions.

Abortion is not an infectious or contagious disease, where public health considerations necessitate a lack of anonymity. I personally regard the form that doctors must complete following the termination of a pregnancy as an intrusion on the privacy of an individual. Honourable members may not be aware that the form requires, among other things, the name and address of the patient, her date of birth, her marital status, her maiden name if she is married, her occupation and, if she is married, her husband's occupation, her parity, the history of all her previous pregnancies, as well as the method of termination and any post-operative complications that may have

occurred.

I strongly maintain that most of that information is not the Government's business. The regulations and forms mean that giving this information is mandatory for one's obtaining an abortion. I will certainly grant that this is interesting information, and some of the results of the compilation have never been published. However, many other questions that would also have been interesting could have been put on the form. I refer, for instance, to the religion or political affiliation of the patient. Questions relating to those matters have not been asked. Furthermore, the fact that this form is a mandatory one means that this information must be given before any termination of pregnancy can be obtained. There is no voluntary participation in a research project such as would occur in a project carried out by doctors in hospitals or by private practitioners. To me, this is a gross infringement of people's rights and privacy.

I am particularly concerned about names having to be on the form and held in a Government department, however good the security may be in that department. Why on earth should files be held on women who have had abortions? It is not a criminal offence, and the maintaining of the names of such women strikes me as being well on a par with the irrelevant material held by Special Branch, as reported on by Mr. Acting Justice White.

It would seem best to me not to conduct the research by legislation in this manner. However, if we are to have research by legislation, why not extend it to other matters such as sterilisation (both male and female), which can be far more important demographically than abortion information?

The Hon. R. C. DeGaris: Will you move an amendment?

The Hon. ANNE LEVY: I have already indicated why I will not move an amendment to the Bill. Certainly, I would like to see the existing form abolished or modified to make it voluntary on the part of the patient regarding some of the personal information that is requested. Further, I believe that the form should be drawn up without the patient's name on it. No-one has been able to give me a reason that I consider valid for the patient's name having to be on the form. At the very least, the information should be voluntary and not required compulsorily. If a good reason can be found to include the patient's name on the form, let it be on a tear-off strip that can be removed and destroyed after several weeks, thereby maintaining the confidentiality and privacy of patients if it is believed that such information should be retained.

If this amendment is accepted by Parliament, I hope that the forms prescribed will not require non-medical people to give medical information about patients. Medical information should be confidential between a doctor and a patient. The form providing confirmation of abortion, which this amendment seeks, can be designed to not depart from the principle of non-medical people having to provide medical information.

I have already indicated that members of the Mallen committee were horrified about the idea of hospital managers replacing doctors in providing information about abortion instead of being in addition to information supplied by doctors. That was certainly the intention of the Mallen committee in making the recommendation seeking notification of termination by managers or superintendents of hospitals.

I understand that Sir Leonard Mallen was not consulted about this Bill before it was introduced in December, and the first he knew of it was in the middle of February, 1978. True, doctors can change their opinions between the time when they are first consulted and a subsequent date when a matter becomes more public, but surely it would have been courteous of the Bill's original mover to have done that. The mover may then have decided to include other recommendations of the committee as detailed in its report.

Finally, I support the Bill's second reading because, as recommended by the committee, it will provide more accurate information about termination of pregnancy in South Australia. If such information is to be collected, it might as well be as accurate and as complete as possible. However, I urge designers of forms prescribed in regulations to consider carefully the matters of confidentiality and privacy. I refer especially to the maintenance of files without names on them in Government departments, and I hope that in the future such forms can be abolished and abortion details can be treated as private matters between doctor and patient, being regarded as none of the Government's business.

The Hon. J. C. BURDETT: I thank the Hon. Anne Levy for her contribution to this debate. She claims that the Bill's mover in another place did not think to implement all the recommendations of the Mallen committee. I point out that the Government did not seek to implement any of the recommendations, although it had the first opportunity to implement this particular recommendation or any of the other recommendations, as did every other private member in this Parliament, including the Hon. Anne Levy.

Obviously, although the Bill's mover did refer extensively to the report, he introduced the Bill on its merits. Perhaps the most cogent part of what he said in his second reading explanation was as follows:

> It is not intended to canvass in this second reading explanation the wider debate which obviously still continues in the community in relation to South Australia's abortion law, but the Bill is designed to ensure that the public debate will be better informed.

Let us not be worried about whether the Bill's mover included all of the recommendations of the committee. He did not introduce the Bill merely because that was one of the committee's recommendations: he introduced it because he was concerned to see that there were proper statistics about the number of abortions being performed in this State. He considered it was a matter about which the public should know, no matter what views the public held.

The Mallen committee in its reports over several years indicated that the figures were far from complete, that there were many more abortions performed in public hospitals and otherwise legally than were reported.

The Hon. Anne Levy: What about sterilisations—

The Hon. J. C. BURDETT: This member was concerned about what was stated in the reports (and what has been stated all along by the original mover of the Bill seeking to make abortions legal in certain circumstances), that there should be adequate information. It has been agreed by all parties consistently that there should be information. The Mallen committee indicated that the information was not accurate, and this Bill's purpose it to provide accurate information. The Hon. Miss Levy objects to the questions on the form, and she may be right. I do not disagree with her, but the form is prescribed by the Government and can be changed by the Government.

The Hon. R. C. DeGaris: By regulation.

The Hon. J. C. BURDETT: Yes, and this problem is not pertinent to the Bill. True, I said in my second reading explanation that I suggested (and this was suggested by the mover in another place) that the doctors should be

replaced in relation to information by hospitals. The Hon. Miss Levy objected to that and indicated that the Mallen committee was horrified by that suggestion. She suggested that the information, if this Bill passes, should be supplied by doctors and hospitals as well. That aspect, too, is open to the Government.

The Hon. D. H. L. Banfield: What did the committee suggest?

The Hon. J. C. BURDETT: All the Bill does is give the Government power to make regulations, which the Government is able to do. If it passes, the Government can make regulations to give effect to the original Mallen committee report, or whatever its intentions are considered to be. I thank honourable members for the consideration they have given to the Bill.

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

APPRENTICES ACT AMENDMENT BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

The Legislative Council agreed to a conference to be held in the Legislative Council committee room at 9.30 a.m. on March 9, at which it would be represented by the Hons. D. H. L. Banfield, F. T. Blevins, M. B. Cameron, C. M. Hill, and D. H. Laidlaw.

SOUTH AUSTRALIAN HEALTH COMMISSION ACT AMENDMENT BILL

The Hon. D. H. L. BANFIELD (Minister of Health) obtained leave and introduced a Bill for an Act to amend the South Australian Health Commission Act, 1975-1977. Read a first time.

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

That this Bill be now read a second time.

It proposes several amendments to the principal Act that have arisen from the work currently being undertaken by the commission in moving towards the incorporation of hospitals and health centres under the Act. It is proposed that the provisions of the principal Act dealing with incorporation will be brought into operation in July this year, and for this reason it is important that the proposed amendments are made before that date.

First, it is proposed that fees charged by incorporated health centres for services provided by the centre may be fixed by regulation, upon the recommendation of the commission. This provision is provided in the principal Act as it now stands only in relation to fees charged by incorporated hospitals, and the commission now believes that similar controls should be available in relation to health centres.

Secondly, the Bill makes quite clear that employees of the commission, an incorporated hospital, or an incorporated health centre who are not already contributors to the South Australian Superannuation Fund may become contributors subject to any arrangements made by the board under section 11 of the Superannuation Act. This has always been the intention, and the Bill merely clarifies the situation.

Thirdly, the commission feels that conflicts of interests may well arise in relation to members of the boards and committees of management of incorporated hospitals and health centres, as of course such members will mostly be drawn from the local community. The Bill therefore provides a similar conflict of interest provision in relation to hospitals and health centres as the principal Act now provides in relation to the commission itself.

Finally, the Bill provides that certain employees of the Institute of Medical and Veterinary Science who work in the Queen Elizabeth Hospital or the Flinders Medical Centre shall become employees of those hospitals upon their incorporation under the Act. Both these hospitals have large, self-supporting pathology laboratories, and it has been agreed by all parties concerned that the hospitals will provide their own staff. I ask leave to have the explanation of the clauses of the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 effects a consequential amendment to the arrangement of the Act. Clause 3 provides that the admission of commission employees as contributors to the South Australian Superannuation Fund (where those employees are not already contributors) is subject to the provisions of the Superannuation Act. Clause 4 requires that a member of the board of an incorporated hospital must disclose any contracts of the hospital that he has any financial interest in, and must not take part in any board decisions in relation to such contracts.

Clause 5 provides that certain employees of the Institute of Medical and Veterinary Science who are designated by the council of the institute will become employees of the Queen Elizabeth Hospital and the Flinders Medical Centre upon the incorporation of those hospitals. This provision is in the same terms as the steer provisions of the Act that deal with the transfer of public servants and Ministerial appointees to the staff of the incorporated hospitals in which they work.

Clause 6 provides a similar amendment in relation to the staff of incorporated hospitals as clause 3 of the Bill provides in relation to the staff of the Commission. Clause 7 provides that the members of an incorporated health centre committee of management must also disclose any financial interests they may have in contracts entered into by the health centre. Clause 8 provides a similar amendment in relation to the superannuation arrangements for staff of incorporated health centres.

Clause 9 provides that regulations may be made upon the recommendation of the commission for the fixing of fees to be charged by any incorporated health centre. Fees charged by an incorporated health centre are recoverable not only from the person for whom the service was provided but also from any spouse, or, in the case of a child, from the parents. A person who pays any such fees may recover a contribution from any other person liable under this section.

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

INSTITUTE OF MEDICAL AND VETERINARY SCIENCE ACT AMENDMENT BILL

The Hon. D. H. L. BANFIELD (Minister of Health) obtained leave and introduced a Bill for an Act to amend the Institute of Medical and Veterinary Science Act, 1937-1974. Read a first time.

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

That this Bill be now read a second time.

It amends the Institute of Medical and Veterinary Science Act by deleting that provision which requires the institute

to undertake work for the Royal Adelaide Hospital without cost. Under a new agreement between the Commonwealth and the State in relation to pathology services, the only way that the Commonwealth will accept the sharing of costs of pathology services undertaken by the Institute for recognised hospitals is if the Institute raises charges for those services. In particular, this means raising charges for work performed for the Royal Adelaide Hospital which is at present directly contrary to section 17 of the principal Act.

Therefore, this measure, *inter alia*, amends section 17 of the Act, and the amendment is expressed to be deemed to have come into operation on the first of November, 1977, the date from which the institute was instructed to raise charges for performing services under section 17. There are also some minor amendments to the Act which involve only change in style. I ask leave to have the explanation of the clauses of the Bill inserted in *Hansard* without any reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 states that this amendment shall be deemed to have come into operation on the first day of November, 1977. Clause 3 amends section 3 of the principal Act, the interpretation section, to strike out the definition of "Minister". This is in line with current practice. Clauses 4 and 6 amend sections 5 and 19 of the principal Act to change references to the "Adelaide Hospital" to the "Royal Adelaide Hospital" which is the correct title. Clause 5 amends section 17 of the principal Act to allow the institute to charge the Royal Adelaide Hospital for services performed for it.

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

STATE TRANSPORT AUTHORITY ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

This is a simple measure designed to overcome an apparent deficiency in the State Transport Authority Act. At present, the authority has not, unlike many other statutory bodies, a power to borrow money under a Treasury guarantee. The only borrowing power which the State Transport Authority can use is a specific power contained in section 43 of the Bus and Tramways Act which is restricted to the purposes of that Act and does not provide for a Treasury guarantee. It seems appropriate therefore to include in the State Transport Authority Act a power similar to that provided for many other statutory authorities to borrow money for the purposes of the authority under Treasury guarantee.

Clause 1 is formal. Clause 2 provides that the Act shall come into operation on a day to be fixed by proclamation. Clause 3 enacts a new section (section 14a) to the State Transport Authority Act to give the authority a general power to borrow under Treasury guarantee for the purposes of the State Transport Authority Act or any other Act.

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

PUBLIC SERVICE ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

This short Bill makes two amendments to the Public Service Act. The first corrects an inconsistency which has occurred between the principal Act and the Racial Discrimination Act, 1976. Briefly, the Racial Discrimination Act provides that a person shall not be discriminated against on the ground of his race in the field of employment. The Public Service Act, which forbids the employment of persons as officers unless they are British subjects, is clearly inconsistent, and this Bill will resolve the inconsistency by removing that condition from the Public Service Act. In fact, the Government's legal advisers are of the opinion that as a matter of law the "discrimination" provision of the Public Service Act has been ineffective since the commencement of the Racial Discrimination Act.

The second amendment is the correction of an error in the Public Service Act Amendment Act, 1977. In amending section 91 of the principal Act, a provision was inserted dealing with the long service leave payment which was to apply where a person resigned after five years service for the purpose of caring for an adopted child. The amendment incorrectly referred to a child of or over the age of two years, whereas it was intended that that section should apply to a child of or under the age of two years. This Bill has been expressed to come into operation on the first of January, 1978, to be in line with the "long service leave" amendment to the principal Act which commenced on that date. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the Act shall be deemed to have come into operation on the first day of January, 1978. Clause 3 amends section 39 of the principal Act to remove the requirement that a person must be a British subject to be appointed to the Public Service. Clause 4 amends section 91 of the principal Act to refer to a child of or under the age of two years.

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

UNIVERSITY OF ADELAIDE ACT AMENDMENT BILL

In Committee.

(Continued from March 1. Page 1859.)

Clause 14—"The Adelaide University Union."

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

Page 5, line 4—Leave out "subsection" and insert "subsections". After line 20—Insert—

(3) Notwithstanding anything in subsection (2) of this section, on and after the 1st day of January, 1979, the union shall not have power to make a grant of money to a body, whether corporate or unincorporate, other than the Mackinnon Parade Child Care Centre Inc. and the University of Adelaide Student Health Centre, unless the union is satisfied that the constitution or rules of that body provide that no payment by that body to any other body, whether corporate or unincorporate, of a sum greater than the prescribed amount shall be made unless—

(a) a notice or notices are prominently exhibited

within the university so as to come to the attention of members of the body throughout a continuous period of five academic days indicating the amount and purpose of the proposed payment;

(b) when within the period of fourteen days next following the publication of that notice more than one-twentieth of the number of members of that body or forty members, whichever is the lesser number of members, so requires it is provided that a referendum shall be held; and

(c) upon such a referendum being held the majority of persons voting therein concur in the making of that payment.

(4) In this section—

"academic day" means a Monday, Tuesday, Wednesday, Thursday or Friday that occurs during an academic term of the university fixed by the Council;

"prescribed amount" means—

(a) the sum of two thousand dollars or such other amount as is from time to time prescribed by rule made by the Council; or

(b) any amount being an amount, when aggregated with all amounts paid to the same body during the twelve months next preceding the day on which it is proposed that that amount shall be paid, exceeds five thousand dollars.

Several viewpoints have been put before honourable members by people associated with the university, and it has been very difficult to find a solution to all the submissions put in relation to this clause and other clauses. I have tried to come down where I believe there is relatively little argument on both sides. My amendment provides that, before the union can make a grant of money to any organisation, it must be satisfied that that organisation's constitution has provisions of the type outlined in new subsections (3) and (4). It may be argued that the amendment does very little and that it places some inconvenience on organisations at the university; that is a valid criticism, although I do not believe that it should influence the voting of honourable members very much.

The union gathers its money by a compulsory levy, to which we have agreed. There is no indication, in anything before honourable members so far, that we want to change the idea of the union's having the right, by compulsion, to collect the levy. However, the union must make sure that any organisation that is granted money has in its constitution the provisions outlined in the amendment. A notice must be displayed for five academic days at the university in a prominent position pointing out the amount and purpose of the payment. Within the following 14 days, the stipulated number of members can ask for a referendum. So, instead of a protest being made after the money has been paid, this provision allows the protest to be made before the money is paid. It is pushing back to the students as a whole the right to express their viewpoint when a payment is to be made of the size specified.

At present, students can take action if they are dissatisfied, but it is a long, difficult, and costly procedure, involving the courts. This amendment takes us back one step to where the students themselves are entitled to make a decision on any expenditure of over $2 000 or, in the aggregate, $5 000.

The Hon. C. J. Sumner: Can't they do it now?

The Hon. R. C. DeGARIS: No, not prior to the money being paid.

The Hon. C. J. Sumner: But they can change the constitution of the union to prohibit payments of this kind or set out these regulations here, and they can do it under their current constitution.

The Hon. R. C. DeGARIS: That is exactly what the amendment does.

The Hon. C. J. Sumner: Why not leave it to the students?

The Hon. R. C. DeGARIS: The amendment leaves the matter to the students and places the power democratically where it should be—in the hands of the members of that organisation.

The Hon. C. J. Sumner: But they already have that power.

The Hon. R. C. DeGARIS: I am informed they do not. If they had had it, there would not have been the court cases on it that we have had.

The Hon. ANNE LEVY: I oppose the amendment on many grounds. As has been pointed out by the Hon. Mr. Sumner, currently the students have the power, if they object to payments being made by the students association, to move a motion for a referendum to prevent such payments occurring. They also have the power to change their constitution if they so wish. The Hon. Mr. DeGaris speaks of putting the power where it democratically lies. Currently, it lies there, with the students, who have the power to change the constitution of the union or of the students association, if they so wish, at any time. The drafters of the amendment have had great difficulty in achieving what they wanted without causing problems.

At the university there are more than 50 sporting clubs and more than 50 clubs and societies that will be affected by this amendment, if it is carried. This means that more than 100 student bodies would have to amend their constitutions before they could receive a cent from the union. Many of these bodies never make a payment to any third body and would have no intention of ever doing so, but they would still have to go through the procedure of changing their constitution before they could receive any money from the union. The union cannot give any money to any of its constituent clubs or societies, be it only $2, unless a club or society has these provisions written into its own constitution. Changing constitutions means calling special general meetings and getting quorums; there would be much paper work, causing inconvenience to the 100 student bodies within the university, many of whom would never give any money to any outside or third body, as referred to in the amendment.

A serious flaw in this amendment is that exceptions are made in the case of the University of Adelaide Student Health Centre and the Mackinnon Parade Child Care Centre, presumably on the ground that these are welfare bodies, and the Hon. Mr. DeGaris does not seem to mind money being used for welfare purposes. This could cause many problems. First, the Mackinnon Parade Child Care Centre is to be named specifically in this legislation; what happens if it changes its address, and becomes the Finniss Street Child Care Centre? If the exemption did not apply because that body had changed its address, and perhaps its name, it would also have to have such procedures in its constitution, which could affect the payment of salaries to people employed by that centre. Those people would be unable to receive their lawfully due salaries unless such a procedure had been gone through. One-twentieth of the members of the child care centre would be a small number, but perhaps they could have an argument with the director of the centre. They could start this whole procedure going and thus prohibit the payment of salaries to the employees of the centre solely because the centre

had changed its name or address.

The University of Adelaide Student Health Centre is operated by the university, and its employees are employees of the university. However, the union provides some money towards amenities and facilities in that student health centre, including, in some cases, money for salaries. There is also a proposal that the centre should employ a woman doctor specifically to look after the health of female students in the university. In its current financial situation, the university cannot afford to pay for this extra person. The union has said that it will provide the money to do so. However, it does not do so by paying money to the health centre: salaries are paid by the university, so the union will grant money to the university for the university to pay the salary of the employee in the health centre.

If this amendment is carried it will mean that the union will be unable to make this payment to the university for the purpose of paying the salaries of people in the health centre unless the university itself has within its Statutes the whole referendum procedure as set out in the amendment. The Statutes would have to be amended to provide for this procedure before the union could make payment of money to the university to enable the university to employ a particular person in the student health centre. The whole thing is ludicrous; it would cause tremendous inconvenience to many people and the entire university community without achieving what it is aimed to achieve and can be achieved perfectly well by the students themselves if they use the already existing democratic procedures. I oppose the amendment.

The Hon. J. C. BURDETT: I support the amendment. The university has found it necessary to come to Parliament to have enabling legislation passed. If the university was a completely independent and voluntary body that had no need to come to Parliament for any specific powers, it would be another matter. The Bill makes clear that the students' fee is to be compulsorily collected and that students should therefore have a real power to control payments and particularly to say what payments they do not wish to make. The only difference between this and the present practice is the requirement that notice must be given on the notice board for five academic days.

There is power to seek a referendum; that can be done already. It is intended to ensure that students know what the matter is all about, and surely that is in accordance with democratic principles. Amendments to the constitution can be made easily. They can be put on a form prepared for them, and no bodies should experience any hardship in amending their constitution. The amendment makes clear that payments to the Adelaide University student health centre are exempt and, if the payment is made direct to the centre, no problem should be experienced.

The Hon. Anne Levy: That cannot be done. People employed in the health centre are not employees of the centre. Rather, they are employees of the university, which pays their salaries.

The Hon. J. C. BURDETT: It would be fairly easy to make them employees of the health centre.

The Hon. Anne Levy: The A.M.A. won't hear of it.

The Hon. J. C. BURDETT: I do not know about that. If these people are engaged in the health centre, I do not see any reason why they should not be employed by it. The only difference between this amendment and the present practice is the requirement that students be told what the matter is all about and that a notice be placed on the notice board. I can see nothing unreasonable about that, and I do not think the students will, either. I therefore support the amendment.

The Hon. C. J. SUMNER: I oppose the amendment. The Hon. Mr. Burdett tried to make some point about the university coming to Parliament to seek an enabling provision (it considers that the matter of its power to collect the fee should be clarified) and that Parliament should have its say on the matter. I totally agree with the Hon. Mr. Burdett that Parliament should have the final say on it. However, I said in my second reading speech that, when a recommendation is made by a body such as the university, and the matter has been discussed by all sections thereof and recommended by the University Council, it should be given considerable weight.

The university has recommended the Bill in the form in which it was introduced by the Government, although that does not mean that Parliament should not have its say and the ultimate authority on the matter. However, I believe that we ought to give considerable weight to the proposals of and recommendation made by the University Council. That recommendation is that this Bill be passed in the form in which the Government introduced it, giving the university power compulsorily to collect the union fee. I repeat my second reading comment that it does not say anything about the distribution of that fee after it has been compulsorily collected. Its distribution is left to the union, which is an organisation of graduate staff and students, as well as to the student association or the sports association. That distinction needs to be emphasised.

Honourable members opposite seem to be concerned that the students do not have adequate opportunity for democratic participation in some of the decisions that are taken, particularly by the students association, in relation to the so-called political payments, or payments to bodies outside the university for purposes with which they may disagree. It is possible for the university's students to hold a referendum on the withdrawal by the Adelaide campus of participation in A.U.S. Their general concern about the lack of a democratic participation or the opportunity for it in the affairs of the students association and the union seems to be totally misplaced, and this amendment does not take the situation any further than the rights that the students already have. At present, if the students disagreed with these payments being made by the students association, they could take certain action.

They could direct, by a public meeting of the students, the students association not to make payments of that kind this year; they could move for an amendment to the students association constitution to make it beyond the power of the association to make payments of this kind, or they could move an amendment to the constitution of the Adelaide University Union to make it beyond its power to make payments to the students association or to any other body for such purposes. Those rights already exist, and students could, if they so desired, prohibit these payments being made. There is no argument about that. However, members opposite want to introduce some other procedure. That is totally unnecessary. Why do not members opposite take their case to the students on campus?

The Hon. C. M. Hill: I could ask you, for the very same reason, why you don't accept the amendment.

The Hon. C. J. SUMNER: I do not accept it because there is no need for it. The democratic procedures to which I have referred already exist, and there is no need for a clause such as this to regulate these types of payment.

The Hon. D. H. LAIDLAW: I support the amendment. I said in the second reading debate that I believed that we should retain the mandatory collection of fees. Although this Chamber has the right to amend the legislation, it should do so with care. Some people forget that the

taxpayers provide a percentage of the funds needed to run the universities and, as long as that continues, we have some right to a say on the matter. We are dealing with a group of people who are not a static voting population: it is not like other electorates, as many new students come in each year. I also think the amendment is reasonable because it gives the opportunity to stop, in any one year, the proposed donation, whereas now—

The Hon. C. J. Sumner: They can amend the constitution.

The Hon. D. H. LAIDLAW: In some cases they do, and I am not advocating the voluntary system. I think it is easy to use standard provisions to incorporate in the constitution of each of the bodies.

The Hon. N. K. FOSTER: The amendment is cynical and there is something sinister about it. Liberals have a false concern about funds handled by unions, student union groups, and other bodies over which they have no direct control. Carrick, the present Minister for Education, has been answereing questions for three years on these matters, but not on education matters in the various areas.

Once legislation is passed in two or more States, Carrick will offer that as a reason for having complementary Federal legislation. He can prevail on his colleague, under certain sections of the Conciliation and Arbitration Act, to move against organisations of this kind. During the early 1950's and extending until the mid 1960's in the Hersey case, there was a public controversy in industrial law and in court challenges about the right of bodies such as trade unions and unions of people to do with their money what a majority determined could be done.

The Hersey case was fought by the Waterside Workers Federation over a long period. This amendment is a denial of the rights of a properly elected body of an organisation to disburse funds as it thinks fit. Why should there be any limitation placed on it? Does it not have the right, provided it is in accordance with the will of the majority, to disburse its funds in the matter in which it thinks fit? As members of Parliament, we have no right to carry an amendment that carries with it the dangers to which I have referred. The High Court ruled in favour of the trade union movement to disburse its funds in the way it thought fit. Honourable members opposite should re-examine the amendment. I ask the Hon. Mr. Burdett: why do the courts frequently have before them matters of interpretation of legislation? Can members convince the people that what is said here is the letter of the law? The views of honourable members opposite are unrelated to the real situation in the outside world. I therefore oppose the amendment.

The Hon. J. C. BURDETT: What is said in the Bill is literally the letter of the law. What is said in this Chamber by the Hon. Mr. Foster, by me, and by others is not the letter of the law. This simple amendment means that, before certain payments are made by the bodies referred to in the amendment, notice must be given, so that the students know what the payments are, so that they have the right to put in motion a certain procedure to prohibit the payments if they think fit.

It has been said that they can already prohibit payments, but one cannot effectively exercise that right unless one knows in advance what the payments are. Certainly, one cannot effectively prohibit payments after they have been made. The only thing we can do is to let the students know what the procedures are so that they can exercise their rights.

The Hon. F. T. BLEVINS: I oppose this amendment. The students in the Liberal Club of the University of Adelaide have not been able to achieve their aim of smashing A.U.S. and the students association so those students are therefore using their stooges in this place, through this amendment, to achieve their aim. It is surprising that members opposite, who always claim that there should be a maximum freedom of choice, are now making something compulsory which is already provided for within the constitutions of the clubs and associations in the university. This amendment makes something compulsory that is already there if required voluntarily. That is against even the very few principles that the Liberal Party has.

Members opposite, having been approached by the more sane and reasonable people at the university than the Liberal Club clique that got to them earlier, are in a dilemma; they want to do something against the A.U.S. and the students association, and they now realise that the problem is not so great after all and not difficult to deal with. All this amendment does is to cause an enormous amount of trouble for about 100 organisations within the university, in achieving little or nothing. The Opposition should withdraw this amendment and appreciate that its initial aim, to smash the A.U.S. and the students association, is not achievable. In its petulance and spite, it should not insist on this amendment and put many people on the university campus to much trouble, to no avail when they already have the right anyway, to do what this amendment seeks to do.

The Hon. C. M. HILL: The first speaker from the Government side opposing this amendment put forward some logic and, I thought, reasonable submissions in the Committee stage, and indeed both the Hon. Mr. Sumner and the Hon. Miss Levy were logical and put forward some reasons to substantiate their argument. However, the latter contributions that we have heard from the Government side have been completely off-beam. All that this amendment does is simply to formalise a procedure by which students on the campus in their various clubs at the university—

The Hon. F. T. Blevins: It does not formalise it; it makes it compulsory.

The Hon. C. M. HILL: It formalises the existing procedure, in some instances; with the students association, it simply formalises it because the power is there now.

The Hon. F. T. Blevins: No; it makes it compulsory.

The Hon. C. M. HILL: All it does is that it simply states that, if some students want a referendum to be held (not a ballot by certain students putting up their hands) on whether they approve of payments over a certain amount, a referendum will be held. That is entirely democratic and, if the majority in that referendum want that payment to be made, it shall be made.

The Hon. F. T. Blevins: But they have that power now.

The Hon. C. M. HILL: No, not in their constitution. This formalises that procedure.

The Hon. F. T. Blevins: It makes it compulsory.

The Hon. C. M. HILL: All the objections by the Hon. Mr. Blevins and the Hon. Mr. Foster do not influence me at all; they do not appreciate that this is a democratic procedure on which the Committee is insisting for the future. It is in some respects regrettable that some groups in the university will have to amend their constitutions; I think they will be amended without any fuss or bother and in future the working in this area on the campus will be much more satisfactory than it has been in the past.

The Hon. B. A. CHATTERTON (Minister of Agriculture): The Government opposes the amendment. I do not intend to go through all the arguments again. The debate has thrashed these things out fully but, briefly, the ground on which the Government opposes the amendment is that

the purpose is not clear. The Government thinks it is open already to the members of those bodies to control their own affairs. Also, if the Government agreed to this amendment, it would entail every body or association in the university amending its constitution to accord with the requirements of the amendment, and that is both unnecessary and a considerable difficulty that all those associations would have to face. For these reasons, I strongly oppose the amendment.

The Committee divided on the amendment:

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

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

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

The CHAIRMAN: There are 9 Ayes and 9 Noes. There being an equality of votes, I give my casting vote for the Ayes.

Amendment thus carried; clause as amended passed.

Remaining clauses (15 to 18) and title passed.

Bill read a third time and passed.

MOTOR FUEL RATIONING BILL

In Committee.

(Continued from March 7. Page 1946.)

Clause 14—"False statements"—reconsidered.

The Hon. M. B. DAWKINS: My amendment means that subclause (2) is no longer necessary and, therefore, that it can be deleted. It may be thought that subclause (2) covers the situation, and perhaps it does. However, it does so by a reversal of the onus of proof, a matter about which I am concerned and which, indeed, is contrary to British practice. Honourable members are dealing today with two Bills that involve a reversal of the onus of proof, a practice that is to be deplored. Certainly, we do not want to see this practice becoming common. My amendment will cover the situation of a person making in good faith a declaration that turns out inadvertently to be incorrect, and it does away with the reversal of the onus of proof. I hope that the Minister will accept the amendment.

The Hon. J. R. CORNWALL: This is a fairly extraordinary performance by the Hon. Mr. Dawkins. It is obvious that this matter came into his head at the eleventh hour and that he had not read clause 14 (2), which clearly affords the protection that the honourable member is trying to write into clause 14 (1). In the circumstances, I am amazed that the honourable member sees fit to press on with his amendment. The onus of proof has not been reversed, and adequate protection has been written into clause 14 (2). I cannot therefore support the amendment.

The Hon. J. C. BURDETT: I support the amendment, and take issue with the Hon. Mr. Cornwall's statement that this does not involve a reversal of the onus of proof. It does.

The Hon. R. A. GEDDES: I support the amendment, but there may be a drafting irregularity when subclause (1) is read in conjuction with the amendment. The irregularity seems to be in regard to the word "his".

The Hon. M. B. DAWKINS: The subclause, with the amendment, would read:

> A person shall not make any statement or representation whether express or implied that is to his knowledge false or inaccurate . . .

I have the advice of Parliamentary Counsel that that is the correct way to move the amendment. I completely refute the Hon. Mr. Cornwall's remarks. The Bill does provide for a reversal of the onus of proof as it stands.

The Hon. D. H. L. BANFIELD (Minister of Health): The Government does not accept the amendment. Last evening members opposite emphasised that an emergency power was involved and that that power should be held over everyone. Now they are saying that someone has to prove whether a person made a false or inaccurate statement, and it is practically impossible to prove that. The Government is giving the person the opportunity to use as a defence the fact that he did not know and could not know by the exercise of all reasonable diligence. It is much easier for a person to prove that than for the prosecution to say, "Why could you not know?"

The Hon. J. C. Burdett: Ignorance of the law is no excuse: ignorance of fact is.

The Hon. D. H. L. BANFIELD: We give the person a defence, but the amendment puts the onus of proof on the person prosecuting.

The Hon. J. C. BURDETT: In prosecutions for perjury, it must be proved that a person knowingly and falsely swore, and people are prosecuted successfully for perjury. Guilty knowledge, *mens rea,* normally is an element of every offence, so the whole offence must be proved beyond reasonable doubt, including that the person knowingly did the thing. Sometimes it is regarded as necessary to take away the requirement of *mens rea,* but all that the Hon. Mr. Dawkins is doing is making it possible for the prosecution to prove that the person knowingly did something.

The Hon. D. H. L. BANFIELD: That is not all that the Hon. Mr. Dawkins is doing. He is trying to give people who make inaccurate and false statements the opportunity to get out of prosecution. He is trying to make it more difficult for the prosecutor and much easier for the offender. He is making it as hard as possible to prosecute the crook. That is the kind of person he is defending when there is a state of emergency.

The Hon. M. B. DAWKINS: What the Minister has said is complete and utter nonsense. I have tried to apply the normal practice of British justice, that a person is innocent until proved guilty, as against a reversal of the onus of proof in this Bill and another that will come before us later. I do not want a person who is in a difficult position to have the onus of proof in his court.

The Hon. R. C. DeGARIS: In one of his early speeches here, the Hon. Mr. Blevins took exception to the reversal of the onus of proof, and I am sorry that that honourable member is not in the Chamber now. The Minister is saying that anyone charged under subclause (1) is an offender, but we are saying that a person is not an offender until that has been proved.

That is the difference between the two. Clause 14 (2) involves a defendant proving that he did not know on the balance of probability; a defendant to be proved guilty under the normal terms means that he must be proved guilty beyond any reasonable doubt. That is the position that this Bill should create, not the reverse where a person is guilty and then has to prove, on the balance of probabilities, that he is innocent. That is the crux of the situation, and I support the amendment.

The Hon. D. H. L. BANFIELD: The Hon. Mr. Dawkins referred to the term "normal practice" and stated yesterday that normal times would not be involved when a state of emergency exists, and all honourable members know that. In an emergency situation, such a provision should apply so that the Government can meet the emergency. In normal times I would agree with what

honourable members have said, but this is to do with extraordinary times. This provision deals with an emergency, yet clearly members opposite want the crooks to operate in our community by supporting the amendment.

The Committee divided on the amendment:

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

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

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

The CHAIRMAN: There are 9 Ayes and 9 Noes. There being an equality of votes, I give my casting vote to the Ayes.

Amendment thus carried.

The Hon. M. B. DAWKINS moved:

To strike out subclause (2).

Amendment carried; clause as amended passed.

Bill read a third time and passed.

[Sitting suspended from 5.30 to 7.45 p.m.]

CONSTITUTIONAL MUSEUM BILL

Adjourned debate on second reading.

(Continued from March 7. Page 1947.)

The Hon. C. M. HILL: I support this rather exciting concept of a constitutional museum being established in the Old Legislative Council building adjacent to Parliament House. I note that the Government did not provide any proposed costs of the whole project when it introduced the Bill into this Council. When measures of this kind are to be debated and developments of this kind are to be established, Parliament should be given an estimate of the proposed costs.

The Government must have some idea of how much money will be involved in the whole project. In these times, when economic recession is upon us and the Government is facing its heaviest deficit in history, I like to think that any prudent Government would at least explain the proposed outlay and give Parliament some idea whence that money was to come, but that information is not provided. I hope the Minister later in the debate may be able to provide the Council with some figures of what the Government expects this cost to be and also over what period such money will be outlayed.

In reviewing the Bill I wondered whether it would not have been better to use the present Museum Board rather than establish a separate and new trust to administer the museum. After all, the Museum Board is professional in its duty and I think the expert advice of the personnel on that board, and of the board itself, would be a great help in establishing a constitutional museum of this kind, but apparently the Government preferred to set up an entirely separate five-man board, which it will call a trust, and it will be completely separate from the present Museum Board.

The Hon. M. B. Cameron: Five new jobs.

The Hon. C. M. HILL: Yes, it will be a body to which five people will be appointed, and what remuneration is allowed for in the legislation we do not know; we do not know what their fees will be.

The Hon. C. J. Sumner: They will not be full-time jobs.

The Hon. C. M. HILL: No.

The Hon. C. J. Sumner: Then why are you giving a distorted view of the situation?

The Hon. C. M. HILL: I am not trying to do that at all; I was about to say that the cost of permanent staff would be much higher than the amount of fees paid to trust members. There is no mention of cost in the Minister's explanation, in which the proposal put to us was an opportunity for the public to observe a whole series of exhibits that would outline the development of democracy in this State. He said that subjects to be covered in the museum included major political figures, enfranchisement, electoral boundaries, and other political features. He said there would be a section called "Your Government Today", and in that section districts and sitting members would be shown, together with an explanation of the operation of the two Houses, their traditions, offices and procedures, and the role of the Government and Opposition.

I point out that the word "Government" means "Cabinet". The Government of this State is the Cabinet: it is supported by the members of the Labor Party in this Parliament and is opposed by Her Majesty's Opposition in both Houses. I wonder whether in this section that will be called "Your Government Today" there will be emphasis on members of the Cabinet rather than on the members of Parliament.

The Hon. M. B. Cameron: There will be a lovely photograph of the Premier under a spotlight.

The Hon. C. M. HILL: The proposal relates to Parliament as a whole; it is a constitutional museum closely related to the history of the South Australian Parliament, and not of one Party as against another and not of one specific Government that may follow another Government. That is a most important point. Following from that, I think that Parliament should be involved in the establishment of the museum.

The Hon. C. J. Sumner: How do you do that?

The Hon. C. M. HILL: I will come to that in a moment. I think a fair-minded Government and members of Parliament would agree that this is not to be in any way a Party matter: it is to display and record, for the benefit of the public, the history of the South Australian Parliament.

The Hon. R. A. GEDDES: Mr. President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. C. M. HILL: I was stressing the point that this Bill relates to a proposal that deals with Parliament as a whole: it does not deal with any specific Party within Parliament or with any specific Government in the history of this State, and there should be an overall approach to the establishment of this museum.

Therefore, Parliament, constituted as it is today, ought to be involved in some way in the establishment of this museum, and thereafter Parliament should be involved in the future administration of the museum. The museum should not be under the sole control of the Government of the day, and by that I mean either this Government or any future Government. I am not specifically pointing the bone, in making these remarks, at the present Government. At any point in our history, a constitutional museum of this kind, if the goals and targets contemplated in the second reading explanation are achieved, should come under Parliament's control.

Honourable members can see in the Bill that the trust, which will be the controlling authority, shall comprise five members, all of whom the Government wants to appoint. At some time in the future, with the Government of the day having power to appoint members to the trust, that

Government will have control over the trust and, therefore, will be able to exert some pressure on the trust in relation to its policies. To enable us to achieve a proper balance, and to bring extreme fairness into the matter, the Opposition ought to be given an opportunity to nominate some members to the trust. I will therefore propose that the Opposition be given a chance to nominate two of the trust's five members, which will bring a proper balance and fairness into the matter.

I am not saying that the Government should not have the final choice regarding who the trust's members should be. However, the Opposition could be given the right to submit a panel of three names, and from that panel two names could be taken by the Government and appointments of that kind made. That would be a check against any future Governments controlling the trust and influencing it to exhibit material that might be construed as giving the Government of the day some political advantage.

Surely, all honourable members would agree that the sort of situation ought never to occur when a Government could influence the museum trust and all the exhibits placed on display therein, in order to give that Government some sort of advantage. That is a situation that Parliament ought to avoid.

The Hon. T. M. Casey: Oh, come on!

The Hon. C. M. HILL: The Minister ought to agree that there would be no fairer approach than that. Not only would this trust be unbiased in the broad approach that it was implementing but also it would be seen by the public to be politically unbiased. The Minister must agree that many of this State's citizens will pass through this imaginative museum and enjoy what it has to offer.

The Minister said yesterday that the State's constitutional history would be told by pictures, illustrations, exhibits, sound and light displays, and audio-visual presentations. According to the Government, it will be one of the most exciting and revolutionary display complexes in the world.

I saw an historical, not a constitutional, museum in Victoria, British Columbia, about a year ago. It was extremely exciting, and I have little doubt that, when this proposed museum is completed, it will be as attractive as the one that I saw in that Canadian capital city. Indeed, it is an exciting experience for one to move through a museum that is established in this way.

The Hon. C. J. Sumner: Do you think it's a good site: the Old Legislative Council building?

The Hon. C. M. HILL: I have no objections to that at all. I wanted to see that building retained, and the use proposed for it is imaginative. However, I do not want to see any future Government influencing the museum trust so that all the political character of the exhibits tends to give the public the impression that the Government of the day is using some political influence in setting up what the public will see in the museum.

I would not expect this Government to be guilty of such a thing. However, it is the duty of Parliament to put in its legislation checks and balances so that the sort of thing to which I have referred cannot occur. I am not proposing that all power in relation to the trust be taken from the Government. It will be a five-member trust and, if the Opposition Parties in the Parliament at least had some say regarding two of the five trust members, it could be said that the trust's administration was truly a matter for the whole Parliament and not just for the Government of the day.

I hope that the Government will agree to a proposal of that kind, that the museum venture will be successful, that all the dreams and aspirations of the scheme's architects will come to fruition, and that ultimately the South Australian public will be proud of this constitutional museum when it is established. In Committee, I will refer to the one point that I raised earlier. At this stage, however, I support the second reading.

The Hon. N. K. FOSTER: I support the Bill. I have examined quickly the Minister's second reading explanation, and read briefly what Opposition members have said regarding the Bill. I regard Parliaments and politicians as being somewhat lax as keepers of records of historical importance. Although I have noted what the Premier said and do not wish to repeat it, I should like to refer to some observations that I have made over the years in relation to historical documents and the great loss to the nation of such documents in the rural community. I refer, for instance, to the old mechanics halls scattered throughout Victoria through which one can wander. If one could get open some of those buildings that have remained closed for years and browse through the libraries, one would be astounded at the wealth of material in them.

One can also refer to the great tragedy that occurred within the trade union movement, historical records having been wantonly destroyed. I refer to the whole history of the uprising in Port Adelaide concerning volunteer labour in 1928, and minutes and records of the council of action that used to meet in the back streets of Portland when I was a child, the records of all of which have been destroyed. The only records that are available now are the warped, one-sided newspaper reports of the day. No real historical background has been recorded.

Recently, I was horrified when I received a letter from people in the Flinders Range pointing out that a publication by the Port Adelaide Historical Society was a biased and warped record of the industrial disputes in the Port Adelaide area. Historical documents may be hidden in this building.

The Hon. B. A. Chatterton: They may have been burned.

The Hon. N. K. FOSTER: I know that. Soon after I was elected as a member of this place, I was shocked when I found, strewn along the passageways of this building, tea chests full of maps, flags, documents, and so on.

In the underground politician area below this Chamber, which I share with Chris Sumner, Frank Blevins, and John Cornwall, I picked up a book that recorded information about the first electoral disputed returns in this State. Further, there was a handwritten communication from Captain Charles Sturt thanking members of this Chamber at that time for bestowing on him the high honour of having discovered the Murray River. I thought the Aboriginals would have discovered it earlier than that! Truckloads of material have been taken away. There was a photograph of the horses and drays used to cut the drains for the first canals at Port Adelaide, a record of the first contract for Trinity House at Port Adelaide, and a record of the contract for the railway at Port Adelaide.

The Hon. Mr. Hill must realise that he was most insincere when making his speech. How can anyone blame the Government for what happened to the documents? There has been gross neglect by generations. The Premier is to be congratulated on the action he is taking. Liberal Governments, for 30 years, did not give a damn. However, when the Premier does something proper and constructive, the Hon. Mr. Hill talks about who will be on the trust. He does not take any responsibility for the years that Liberal Government members sat here taking money, almost under false pretences.

Politicians are incapable of understanding and evaluating the documents that may be in this place, and an archivist could be brought here to classify them so as to

ensure that they can be taken to the museum. The document to which I have referred should go into the museum. If I am criticising anyone, I am criticising myself for not having asked what the vaults of this building contain. Every council in the State has historical documents.

The dungeons below the Port Adelaide Town Hall contain tonnes of such matter, but it is gathering dust and is rotting. A measure ought to be introduced to ensure the preservation of historical documents and material, and this Bill should go further than it does.

There is a need for someone to accept the responsibility of maintaining our heritage. I refer to gaol records such as those carved in stone on Norfolk Island and Port Arthur. Apart from books written on these gaols, that is all that is left for future generations showing what a fierce, severe, and brutal country this has been. I refer to Darlinghurst Gaol. Its history should be preserved, whether it be good, bad or indifferent. Honourable members realise that we are only scratching the surface of what should be done to maintain our heritage for future generations. There is a wealth of information that could be studied by students and other interested people, not just for the benefit of Parliament but for the whole State. There is a story to be told, and we should all support its telling, especially as today's generation is more cognisant and values more the past than do members of our generation.

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

WATERWORKS ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

Its sole purpose is to amend those sections of the Waterworks Act, 1932-1975, which contain monetary penalties. In most cases, these penalties are absurdly low, not having been amended since the 1932 consolidation of the principal Act, and it is appropriate to increase the amounts to reflect more accurately present money values. The increases, with some exceptions, are about 500 per cent. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 amends section 18 of the principal Act, which provides for compensation in the nature of a penalty to be paid by the Minister for delay in reinstating roads and streets. The amount is increased from $10 to $50 a day. Clause 3 amends section 38 of the principal Act which prohibits the laying of gas pipes and tramlines that interfere with water mains. The penalty is increased to $50. Clause 4 increases the penalty in section 43 of the principal Act which deals with interfering with a water meter. The penalty is increased from £20 to $200. Clause 5 amends section 45 of the principal Act which prohibits the unauthorised alteration of pipes or fittings. The penalty is increased from £5 to $50.

Clause 6 amends section 46 of the principal Act, dealing with the improper use of fittings. The penalty is raised from £5 to $50. Clause 7 increases the penalty in section 49 of the principal Act which deals with the connection and use of unauthorised fittings. The new penalty will be $100.

Clause 8 amends section 50 of the principal Act which provides a penalty for breaking valves, etc., by increasing the penalty from £10 to $100. Clause 9 amends section 52 of the principal Act by increasing the maximum penalty for a contravention of the Act from £5 to $200. This increase, of more than 500 per cent, is necessary as this section provides the maximum penalty available under the Act for a contravention of the provisions of the Act which may lead to the waste, misuse or contamination of water.

Clause 10 increases the penalty provided in section 53 of the principal Act for wasting water or not repairing fittings, etc., from £5 to $50. Clause 11 increases the penalty for unlawfully taking water in section 55 of the principal Act from £5 to $50. Clause 12 amends section 59 of the principal Act, which provides a penalty for permitting substances produced in gas-making to flow into any water works, by increasing the penalty from £20 a day to $100 a day. Clause 13 amends section 60 of the principal Act by increasing the penalties provided for the fouling of water in certain circumstances from £20 to $100 and with an additional daily penalty of $50.

Clause 14 increases the penalty provided in section 62 of the principal Act for obstructing the construction of works from £5 to $100.

Clause 15 increases the penalty for illegally diverting water provided in section 63 of the principal Act from £20 to $200. Clause 16 amends section 65 of the principal Act which deals with trespassing by increasing the penalty from £5 to $50.

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

INDUSTRIAL SAFETY, HEALTH AND WELFARE ACT AMENDMENT BILL

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

The Hon. B. A. CHATTERTON (Minister of Agriculture): I move:

That this Bill be now read a second time.

It amends the Industrial Safety, Health and Welfare Act in two areas. First, it includes in this Act provisions normally contained in other Acts to enable the permanent head to delegate authority for dealing with matters associated with notifications and registrations and by removing specific references to the permanent head in connection with the receipt and recovery of fees.

The main problem for the permanent head at present lies in section 26 which provides that fees are to be paid to him and that he must take action to recover unpaid fees. By removing the specific references to the permanent head, the section is brought into line with current practice and, although the effect of the section is not changed, it will be, in practice, easier to administer.

Section 37 of the principal Act is also amended to provide that an allegation in a complaint that a notice has not been given or the prescribed fee has not been paid shall, unless evidence to the contrary is given, be deemed to have been proved. This, again, will improve the administration of the Act.

Secondly, the penalty for breaches of the regulations is increased from a maximum of $200 to a maximum of $500. This is to correct an oversight in 1976 when all other penalties of $200 contained in this Act were increased to $500. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the Act to

come into operation on a day to be fixed by proclamation. Clause 3 provides a power of delegation for the permanent head by enacting section 7a of the principal Act. Clause 4 amends section 24 of the principal Act by removing most of the references to the permanent head in that section. It is not necessary to specify that fees be paid to the permanent head nor that they be recovered by the permanent head in a court of competent jurisdiction. The removal of the references to the permanent head does not change the effect of the section.

Clause 5 amends section 37 of the principal Act to include in the list of allegations of which proof need not be given those that a notice has not been given to or that the prescribed fee under section 26 has not been paid. It is suggested that these amendments are reasonable, since it is within the knowledge and capacity of the defendant that he gave the notice or paid the fee, but it is a matter of some complexity to prove that the defendant did not perform these acts. Clause 6 increases the penalty provided for breach of regulations from $200 to $500.

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

BOTANIC GARDENS BILL

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

ADOPTION OF CHILDREN ACT AMENDMENT BILL

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

RESIDENTIAL TENANCIES BILL

(Second reading debate adjourned on March 7. Page 1952.)

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—"Interpretation."

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

Page 2, lines 16 and 17—Leave out all words in these lines and insert definition as follows:

' "landlord" means the grantor of a right of occupancy under a residential tenancy agreement or his successor succeeding subject to the interest of the tenant:'.

The purpose of the new definition is to clarify the meaning of the term "landlord" so that it includes his successor. This new definition ensures that the associated law remains untouched for the time being.

Amendment carried; clause as amended passed.

New clause 5a—"Crown bound."

The Hon. J. A. CARNIE: I move to insert the following new clause:

5a. This Act binds the Crown.

I was very disturbed when I saw that the report of the Select Committee of the House of Assembly made no recommendation that this Bill should bind the Crown. The biggest landlord in South Australia is the South Australian Housing Trust, and another big landlord is the Highways Department. Both bodies made representations that they should not be bound by the legislation, and obviously their will prevailed. I cannot see why the biggest landlord in South Australia should be exempt from legislation that binds other landlords. The point has been made that the Housing Trust provides types of rental housing that no private landlord will supply; that is perfectly true, particularly in the case of welfare housing. The side heading of clause 90 is as follows:

Tribunal may exempt tenancy agreement or premises from provisions of Act.

While there will be areas where the Housing Trust and perhaps the Highways Department should be exempt, those bodies may apply to the tribunal under clause 90, in the same way as any other landlord can apply.

The Hon. D. H. L. BANFIELD: The Government opposes the new clause, because a blanket provision such as this is wrong. The Housing Trust has its own administrative procedures to deal with grievances. The Opposition's proposition would affect the priorities of people on the waiting list. People approach honourable members asking them to see what can be done in connection with the allocation of Housing Trust houses. If we inserted this new clause, the priorities of people would be affected, and the trust might not be able to allocate houses in order of greatest need. I stress that some of the Housing Trust's accommodation is designed for families, and the rentals are reasonable. Further, the Teacher Housing Authority sometimes provides houses for teachers on a temporary basis.

The Hon. R. C. DeGARIS (Leader of the Opposition): The proposed new clause is fair and just. However, I agree with the Minister that there are problems in relation to the Housing Trust. I fully accept the Minister's argument that the trust is in a unique position. It has a role to perform in the community, and it is governed by its own Act and by its own rules and regulations. Some of the provisions should apply to the Housing Trust. Some landlords are quite willing to accept children but, under clause 57, they are not even able to make an inquiry about children.

I ask the Minister to reconsider the position. Clause 90 allows the tribunal to grant an exemption if the tribunal considers it necessary or desirable that any provision should not apply to a person or organisation. In the case of any provision that cuts across the normal arrangements of the Housing Trust, an exemption would be given. Some properties owned by the Crown that are leased to the public should be under the full control of this legislation; the Minister must agree with that.

One can say that the Housing Trust should be exempt from some, if not all, of the provisions, and that the Education Department and the Police Department should be exempt, too. They could get exemption, but I cannot be convinced that the Highways Department, which has acquired between 500 and 1 000 houses in South Australia compulsorily for road purposes and is leasing them to the public, should be exempt from the provisions of this Act. At this stage we should bind the Crown and rely upon clause 90 for the tribunal to give an exemption. If the Housing Trust, the Education Department or the Police Department requires exemption it can apply and I have no doubt it will get it; in the last two departments they are dealing with their own employees. However, there are houses owned by the Crown to which this Act should apply. Will the Minister reassess his viewpoint based on these arguments?

The Hon. C. M. HILL: I support the amendment. The Housing Trust, the Crown, and all other instrumentalities of the Crown should be on the same basis as the citizens of this State. There should not be one law for the people and another for the biggest landlord in the State, the Housing Trust. Fundamentally, two different laws leads to bad policy.

The Minister gave one reason why the trust had to be excluded from the provisions of this Act; it did not want to be bound by this Bill, so that a tenant is able to assign his tenancy to a person of his choice. That is what will happen if this Bill passes in its present form: the landlord will not

be able to withhold consent on the grounds of caprice and so forth if the tenant says, "I am going to Tasmania and there is another person to take over my tenancy"; whereas, if the Housing Trust tenant says that and the Housing Trust has a prospective tenant in greater need than the assignee of the tenant, the Housing Trust wants the *status quo*. In regard to the private landlord and the private tenant, the landlord might have a person in very great need of accommodation and, by negotiation and discussion with the tenant who wishes to vacate, somebody in urgent need of accommodation can be put into that tenancy. So I do not accept the point of the Minister as a valid argument.

Not only did he say that the trust might have accommodation that is suitable for children but also that it might have accommodation unsuitable for children. In saying that he admitted that the trust should have the right to say to the prospective tenant, "How many children have you, because this accommodation may not suit you the best?" Why should not the private landlord have the same right? He is not even allowed to ask any applicant for accommodation whether or not he has children. He cannot say, "Have you children?" and, if the answer is, "Yes", then say, "I have accommodation in another flat alongside a playground, which is far more suitable for your needs as a tenant than that for which you have applied." That is some of the silliness of this Bill that, in the best interests of the tenant, that question cannot be asked. Yet the Minister says the trust cannot be involved in this Bill because it wants to ask those questions and wants to put prospective tenants in accommodation best suited to the tenant with children.

He says that the trust should not be covered by this Bill because it wants that right, but he is binding everyone else in the private sector in this difficulty as regards children. The Minister's submission justifying the fact that the Crown should not be in this Bill can be taken point by point and argued about, and it can be seen that it is very unfair on the whole population of the State to have this giant landlord, this State instrumentality, not prepared to be bound by the so-called great changes in the tenancy administration that this Government wishes to implement.

I commend the Hon. Mr. Carnie for endeavouring to bring the Crown into this Bill. The Housing Trust and the other Government instrumentalities, like the Highways Department, which has hundreds of houses on its books, should all be bound by the Bill. The total population of the State and the Government instrumentalities and the people in the private sector should all be on the one level; that is just and fair. I strongly support the amendment.

The Hon. J. C. BURDETT: I support the amendment for the reasons given by the speakers on this side of the Chamber. I was somewhat surprised to hear the Minister oppose the amendment because there is a strong argument to say that the Crown is bound anyway. Submissions to this effect were made to the Select Committee, based on section 10 (1) (*a*) of the Crown Proceedings Act, and I understood that the Attorney-General agreed that those submissions were probably right. That section states that, subject to that Act and any other Act, the Crown shall be liable in respect of any contracts made on behalf of a person in the same manner and to the same extent as a private person of full age and capacity.

Whether there is a written contract or not, it is essentially a relationship in contract. Any Act which governs that contract, therefore binds the Crown because, by virtue of the Crown Proceedings Act, the Crown is bound in contract in the same way as any person is bound. Following that, it seems to me that it is proper to make the position clear and provide that the Crown is bound anyway. There is a strong argument for saying that in a Bill such as this there is every reason for providing in the Bill a complete code, because in the case of landlords and tenants (and tenants particularly perhaps, although some landlords are very ignorant of the law, as I found in discussions on this Bill) there are strong grounds for saying that all the law in this matter should be in one Act that they can read.

The Hon. D. H. L. BANFIELD: Although the honourable member has put forward a very good argument for the amendment, the Government cannot accept it.

The Hon. J. A. CARNIE: I am disappointed that the Government is taking this stand. I made the point when moving the amendment that I accepted that there were many areas in which the trust should be exempted from the provisions of the legislation. I point out, however, that there are also many areas in which the trust should be covered. Surely, it will be better to cover the trust generally and exempt it in certain areas under clause 90.

There is another way in which the Government or the tribunal could exempt the trust. Under clause 6 (3) *(f)*, the tribunal and the Government would have ample power to exempt the Housing Trust in areas where it was considered that it should be exempted. As the biggest landlord in the State, the Housing Trust is in direct competition with the private sector and should, therefore, in many areas be included. I support what the Hon. Mr. Burdett said. I understood from remarks made by the Attorney-General that the trust was bound under another Act. I was simply trying to spell out more clearly that it should be bound by this legislation. Certainly, I believe that the Highways Department should not be exempted. It, too, is a big landlord, renting 800 to 1 000 houses. I therefore ask the Committee to support the amendment.

The Committee divided on the amendment:

Ayes (8)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie (teller), M. B. Dawkins, R. C. DeGaris, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

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

Pairs—Ayes—The Hons. Jessie Cooper and R. A. Geddes. Noes—The Hons. J. E. Dunford and Anne Levy.

The CHAIRMAN: There are 8 Ayes and 8 Noes. There being an equality of votes, I give my casting vote for the Ayes.

New clause thus inserted.

Clause 6—"Application of Act."

The Hon. C. M. HILL: I seek an assurance from the Government in relation to this clause. Subclause (2) deals with various cases to which the legislation will not apply. I notice in paragraph *(c)* thereof that the exemption will undoubtedly involve home units owned on what is commonly known as the company system, which applied in many instances before the strata title legislation was introduced in South Australia.

There is another form of ownership of home unit which is not specified, which I believe should be exempted, and which I believe the Government would be willing to exempt. I notice in clause 6 (2) *(e)* that the Government is able to prescribe by regulation certain agreements, and under the regulatory power exemptions can be obtained for certain classifications. The kind of home unit ownership to which I refer is that where a unit is in the name of a tenancy in common, and where each tenant in common occupies, under some form of lease arrangement from the registered proprietor, a home unit in the subject

block of units.

This form of ownership and occupation is not used as extensively as the company system. It is not a satisfactory form of ownership but, nevertheless, over the years in metropolitan Adelaide a considerable number of blocks of home units was purchased and occupied in this rather loose fashion. The home unit occupiers are, generally speaking, elderly people, who have not worried about the form of ownership. I am sure that it was never intended that the general concept of this Bill would apply in such cases.

Therefore, I ask the Minister whether he will give an undertaking that this form of ownership and tenancy will be considered by the Government soon after the Act is proclaimed so that people in that category and property in that class can be exempted, in the same way as the company form of home ownership is excluded.

The Hon. D. H. L. BANFIELD: I will give an undertaking that we will look at the point and, if the matter is not covered by subclause (2) *(c)*, we will decide on the question.

Clause passed.

Clauses 7 to 9 passed.

Clause 10—"Powers and functions of Commissioner under this Act."

The CHAIRMAN: The Hon. Mr. Carnie has a series of amendments and I propose, with the leave of the Committee, to allow him to speak to all of them, but I will put the first amendment to the vote. If that is carried, I will put the remaining amendments as one question.

The Hon. J. A. CARNIE: I move:

Page 4, line 7—Leave out "tenants" and insert "parties to residential tenancy agreements."

This amendment arises from an amendment recommended by the Select Committee that the clause be altered. The word "landlord" was inserted on the recommendation of the Select Committee. Originally, it was only a complaint by the tenant that was an offence. The remainder of clause 10 deals with tenants' rights. If the Bill recognises that a landlord may lodge a complaint, it is logical that the whole clause should deal with both tenants and landlords, and my amendment does that. I made the point in my second reading speech that the Bill seemed to be slanted towards tenants. I do not object to that, because the average tenant needs protection. However, landlords should have rights, because the Bill is designed to protect the rights of both.

The Hon. D. H. L. BANFIELD: I oppose the amendment. This provision is for the protection of the consumer, who in this case is the tenant. The Hon. Mr. Carnie said that the landlord has not got rights under the Bill. That is not so. In some instances the landlord has more rights than the tenant. We believe that tenants should not be involved in the imbalance that the Government feels exists between landlords and tenants. The Bill follows the Prices Act in regard to protection of the consumer. Subclause (1) (*d*) has been amended to allow landlords to complain about offences under the Act.

In relation to the other amendments to this clause, we accept those down to and including line 17 but we oppose those from line 24 to line 41. If there is a possibility of a division (although I know that members opposite will accept my argument), I do not intend to call for a division. The last one indicated which way the result would go. However, I want to make clear that, if the matter gets to a conference, it cannot be said that we did not press for a division. We are fair dinkum about any amendments that we oppose.

The Hon. R. C. DeGARIS: I accept the Minister's point about a division. Regarding the amendment, I feel that the whole Bill should be recast on one question. That is that I do not believe that the Bill can work unless an inspectorial staff operates independently of the landlord and the tenant and can make an inspection on the complaint of either. I believe that the Commissioner should not be involved in this Bill. The draft of the measure should include the tribunal, with inspectorial staff. Then, both landlord and tenant, on a reasonable complaint, could go to the tribunal and the inspectorial staff could inspect and report.

If the concept behind the Bill is that the staff of the Commissioner for Consumer Affairs is to be virtually the inspectorial staff, I believe that the amendments are reasonable. I refer to the provision that the landlord must give seven days notice before he can inspect premises. I understand that some landlords have been rather casual in respect to the times when they wish to inspect a flat. Nevertheless, problems can arise in regard to a landlord's being forced to give seven days notice before an inspection can be made. If the landlord on reasonable grounds suspects that a flat, which he let to two people, has five, seven, or nine people living in it, he should have the right to go to an inspectorial system and say, "I want that flat inspected tomorrow." An inspector should make that inspection with the landlord. That is what I mean by an inspectorial system. It would be difficult to recast the whole Bill in that way at this stage. Therefore, we must concern ourselves with the existing Bill, and the Commissioner for Consumer Affairs must assume that inspectorial role. Both landlord and tenant should have equal access to the Commissioner for that purpose. I support the amendments.

The Hon. J. C. BURDETT: I, too, support the amendments, and I support what the Hon. Mr. DeGaris has just said. The inspectorial system has worked well in the Housing Trust, and it should function equally well in the whole field. The term "landlord" was written into clause 10 (1) *(d)* as a result of the Select Committee's recommendations. Submissions were made to the Select Committee that what applies to the tenant should also apply to the landlord. I agree that the Commissioner for Consumer Affairs should not be in the field at all but, if he is to be in the field, he should be there to advise, investigate on behalf of, and act for both parties. I acknowledge that, generally speaking, the tenant is in a weaker position than is the landlord, but the Commissioner should be empowered to act for both parties.

The Hon. C. M. HILL: Will the Minister say whether ultimately the Commissioner for Consumer Affairs will cease to be associated with the administration of the legislation and, instead, that there will be one specialist authority? Is the Commissioner for Consumer Affairs being used only for a transitional period? I wonder whether the fact that the Commissioner already has an inspectorial staff for other work led the Government to use his organisation, so that the Government could avoid the delays that would arise if the tribunal alone was given the total task.

The Hon. D. H. L. BANFIELD: The Government does not intend to hand the administration of the legislation over to the tribunal to set up its own inspectorate. Under clause 9, the Commissioner has powers of delegation. It is the intention that the Commissioner will delegate inspectorial powers to the Housing Improvement Branch of the Housing Trust. The experienced members of that branch will be able to make inspections.

The Hon. C. M. Hill: They are experienced in substandard accommodation.

The Hon. D. H. L. BANFIELD: They are experienced in inspecting. People are accustomed to go to the Commissioner for Consumer Affairs when they have

complaints, but I stress that the Commissioner has powers of delegation.

The Hon. R. C. DeGARIS: I am pleased with the Minister's reply, that the Commissioner's staff will not be the inspectorial staff. I am pleased that there will be an inspectorial staff—

The Hon. D. H. L. Banfield: The staff of the Housing Improvement Branch will act as the inspectorial staff.

The Hon. R. C. DeGARIS: It is welcome news that there will be an inspectorial staff from another section of the Public Service, but that only strengthens the case in support of the amendments: that landlords and tenants should have equal rights concerning the inspectorial staff.

The Hon. D. H. L. Banfield: They would have that.

The Hon. R. C. DeGARIS: With this amendment accepted?

The Hon. D. H. L. Banfield: No they won't.

The CHAIRMAN: Does the Minister suggest that there should be a test vote?

The Hon. D. H. L. BANFIELD: I suggest that we vote on the amendments covering lines 7 to 17, and then vote on those covering lines 24 to 41.

Amendments carried.

The Hon. J. A. CARNIE moved:

Page 4—

Line 24—Leave out "tenant" and insert "party to a residential tenancy agreement"

Line 26—Leave out "tenant" and insert "party"

Line 27—Leave out "tenant" and insert "party"

Line 28—Leave out "tenant" and insert "party"

Line 30—Leave out "tenants" and insert "such parties"

Line 39—Leave out "tenant" and insert "party"

Line 46—Leave out "tenant" and insert "party to the residential tenancy agreement"

Line 48—Leave out "tenant" and insert "party"

Page 5—

Line 2—Leave out "tenant" and insert "party"

Line 5—Leave out "tenant" and insert "party"

Line 7—Leave out "tenant" and insert "party"

Line 11—Leave out "tenant" and insert "party"

Line 12—Leave out "tenant" and insert "party"

Line 13—Leave out "tenant" and insert "party"

Line 18—Leave out "tenant" and insert "party"

Line 22—Leave out "tenant" and insert "party "

Line 29—Leave out "tenant" and insert "party to the residential tenancy agreement"

Line 41—Leave out "tenant's consent" and insert "consent of the party to the residential tenancy agreement"

Amendments carried.

The Hon. J. A. CARNIE: I move:

Page 6—

Line 8—Leave out "tenants" and insert "parties to residential tenancy agreements"

Line 10—Leave out "tenants" and insert "such parties"

Line 11—After "former tenant" insert "and 'party' in relation to a residential tenancy agreement includes a person who is prospectively or was formerly a party to such agreement".

These amendments all relate to the one thing. I have no further arguments and ask the Committee to accept them.

Amendments carried.

The Hon. J. A. CARNIE: I move:

Page 6, lines 14 and 15—Leave out all words in these lines and insert—"to a residential tenancy agreement that has terminated upon the complaint of a person who was a party to that agreement unless the complaint is made within a period of three months".

This amendment results again from another recommendation of the Select Committee in subclause (11) of clause 10, to include a former tenant as being able to make a complaint under this clause. Then, having included a former tenant, in subclause (12) he is allowed a period of six months after the termination of the residential tenancy agreement in which to make a complaint. The inclusion of "former tenant" is right and proper; it must have been an oversight in the original Bill that a former tenant was not included, because the way the original Bill read was that, once a tenant had terminated an agreement, either by agreement or by default, he then had no further right, so it was only right that "former tenant" should be brought in.

Six months is an unnecessarily long time in which to allow him to lodge a complaint. This amendment brings it back to three months, because a landlord might have hanging over him for six months the possibility of a complaint from a former tenant; it is an unnecessarily long time. If a former tenant cannot decide that he has some sort of grievance on which to lodge a complaint within three months, there is something wrong.

The Hon. D. H. L. BANFIELD: The Hon. Mr. Carnie said that this point was dealt with in the Select Committee and that this is a provision agreed to by the Select Committee. The committee had a great opportunity to look at it. No doubt, it considered the Bill thoroughly and, if there had been any merit in the suggestion, the Select Committee would have proposed three months. I oppose the amendment.

Amendment carried; clause as amended passed.

Clauses 11 and 12 passed.

Clause 13—"Residential Tenancies Tribunal."

The Hon. J. A. CARNIE: I move:

Page 6, line 31—After "person" insert "who is a legal practitioner".

I am not one generally to advocate that a particular person be recommended to any position, but in this case I have been persuaded, and it is my own opinion, that, when a matter finally comes to the tribunal, first of all the tribunal will surely try to conciliate; it will be basically a matter of common sense resolving the differences between the parties concerned. When it goes further than that, it will usually be because of some complex matter of law, and I do not think that any person without legal training will be fully equipped to deal with this matter properly. For that reason, the person to be appointed a member of that tribunal should be a legal practitioner.

The Hon. D. H. L. BANFIELD: I oppose the amendment. A legal practitioner may not have had anything to do with landlords and tenants; a person other than a legal eagle who knows something about landlords and tenants may not necessarily be a lawyer but is probably more expert in that field than is a legal man. We could be excluding somebody who knows more about the position than a lawyer. The clause does not exclude a legal practitioner and, if it is thought that a legal practitioner is the best man, as the clause stands it is flexible and enables the best man for the job to be appointed. I think the aim of the tribunal is informal proceedings. With these legal eagles, we get real problems, and there is no informality. For these reasons, the Government could not possibly support the amendment.

The Hon. J. C. BURDETT: I support what the Hon. Mr. Carnie has said. The best way of getting at this is to go to clause 21—"Powers of tribunal"—and then judge whether a lawyer or some other person is better qualified to do the job.

Set out in subclause (1) thereof are things that normally are able to be ordered by a judicial tribunal comprised of a qualified legal practitioner. Referring to subclause (2), not even magistrates have the power at present to make orders in the nature of an injunction or order for specific

performance. That function is reserved for the Local Court of full jurisdiction, constituted of judges, or the Supreme Court. Injunctions or orders for specific performance have always been regarded as peculiarly legal and complicated. It goes even further than that, because this Bill enables the tribunal to make such an order even in circumstances in which such a remedy would not otherwise be available. So, these are sweeping and peculiarly legal powers. For those reasons, I strongly support what the Hon. Mr. Carnie has said. The amendment is certainly the appropriate one.

The Hon. N. K. FOSTER: Is it not a fact that this Bill has been introduced because legal arguments arise in relation to many of the problems that occur? If a person has a grievance, what recourse does he possess? If he takes the matter to the police, he often finds that it is not within their jurisdiction and he is told to see a lawyer. However, people living in flats do not have sufficient money to do that. Even if they did, and they went to see a solicitor, they could find that the landlord belonged to an organisation that retained a solicitor. The matter would therefore get even more complicated.

Although there are provisions in the Conciliation and Arbitration Act, for example, stating that matters should be settled without one's engaging a solicitor, this amendment provides, in effect, that one must obtain the services of a solicitor. Under the Bill, a tribunal is being set up to settle disputes and to hear the complaints of aggrieved persons on both sides. There are far better qualified people (such as ministers of religion, competent social workers or, say, semi-retired people) than those in the legal profession who can settle these disputes. Surely, we should not restrict it.

I now refer to a problem that was experienced many years ago. Mr. Millhouse, during his term of office as Attorney-General from 1968 to 1970, referred to the problem of people living in aged cottage homes establishments. Is it not a fact that a woman of 83 years of age was threatened that she would be tossed into the street unless she paid an increased rent? That woman was told to get legal representation, which compounded the problem.

The Hon. J. A. CARNIE: The honourable member suggested that we seek to bring lawyers into the matter, but clause 24 specifically precludes that. My point is that the tribunal hearing the complaint should be a lawyer, irrespective of who makes the complaint. This Bill will be required by a minority of landlords and tenants only, as the majority will have no need of it. If conciliation cannot resolve the problems, complex legal matters will be involved, as the Hon. Mr. Burdett indicated.

The Hon. N. K. Foster: He's wrong.

The Hon. J. A. CARNIE: It went against my grain to move this amendment, because normally I do not like specifying that anyone in a particular position shall be a particular person, but in this case there is a good argument for having a legal practitioner on the tribunal, and I ask the Committee to support my amendment.

The Hon. R. C. DeGARIS: I appreciate the view of the Minister and the Hon. Mr. Foster and, if this matter involved purely conciliation, I would agree with them. However, the powers of the tribunal encompass more than merely the question of conciliation, and I believe that the amendment is proper. I refer to clause 21 (2).

We could be asking a layman to make a judicial judgment on a point of law that a magistrate cannot make one on now. I would accept that there can be conciliation at the inspectorial staff level and then a decision on the legal side, but a layman should not make a decision on difficult points of law. Although I favour the Hon. Mr. Carnie's amendment, I will vote against it at this stage.

The Hon. D. H. L. BANFIELD: I have never seen a lawyer put up an argument that has not been knocked down. The Bill does not exclude a legal practitioner. It gives us the right to put on someone who knows something about the matter. Members opposite should not say that a layman cannot do anything about it. Some judges cannot do anything about things. They have advisers all the way and still come down with the wrong decision. It does not mean that someone with more intimate knowledge would not know more about the matter than lawyers and magistrates. We ask for the right to pick the right man for the job. A legal practitioner is not excluded. People who know that they are to appear before a lawyer are scared before they start.

The Hon. R. C. DeGaris: It is not valid to say that.

The Hon. D. H. L. BANFIELD: I have had experience of cases in the industrial field and, when the legal eagles come down with the finer points of law, they say, "I would like you to comment on a possibility." They should have had information before they came to that stage. I ask honourable members to vote against the amendment.

The Hon. J. C. BURDETT: For the same reasons as the Hon. Mr. DeGaris has given, I will vote against the amendment at this stage but I want to consider the matter further, because I think that the reasons advanced by the Hon. Mr. Carnie are valid.

Amendment negatived; clause passed.

The Hon. J. A. CARNIE: As the Bill is going to be recommitted at a later stage I will withdraw my remaining amendment to clause 13.

Clause passed.

Clauses 14 to 22 passed.

Clause 23—"Proceedings of Tribunals."

The Hon. J. A. CARNIE: I move:

Page 10, lines 15 to 20—Leave out all words in these lines.

This subclause that I propose to leave out relates to the matter of appearing before the tribunal, and it states:

> A person is not excused from answering a question put to him under this section upon the ground that his answer to that question would tend to incriminate him, or from producing any books, papers or documents upon the ground that their contents would tend to incriminate him.

Writing into the law that a person is not excused from answering a question put to him on the ground that it may incriminate him is going completely against standard practices of British law where all people are allowed, if they so wish, to refuse to answer a question on the ground that it may incriminate them. This is another example that runs as a thread right through this Bill of a reverse onus of proof. It is something that this Government tends to do. We had an example of that this afternoon in another Bill, of the Government bringing in a reverse onus of proof. There are many examples and I have further amendments dealing with this matter in this Bill. This is not exactly a reverse onus of proof, but it is reversing what is current practice in British law.

The Hon. D. H. L. BANFIELD: I oppose the amendment. The only way in which an investigation can be carried out is by having a look at some book. The clause goes on to state:

> . . . but the answer or contents may not be used in criminal proceedings other than for perjury or any offence against this Act.

When an investigation is being carried out, how are we going to get the information? We cannot excuse a person from giving us the information, but we do preclude it from being used in criminal proceedings other than, of course, perjury, which even the Hon. Mr. Carnie would not buck at, so the person concerned is excused under this paragraph from any criminal proceedings if he has

produced the books and answers. I draw the honourable member's attention to the latter part of that paragraph.

The Hon. J. C. BURDETT: I support the amendment. It is almost universally accepted that a person is not required to make self-incriminatory statements. I was not impressed by what the Minister said about the latter part of subclause (3). True, the subclause provides that the answer or contents may not be used in criminal proceedings, but the matter will be known and available to anyone wanting to use it. So, that is not much of a saving. The effect of this subclause is to break down the long accepted rule that a person is not required to make self-incriminatory statements.

The Hon. D. H. L. BANFIELD: Can the honourable member explain how a tribunal, conducted informally, can get information if it cannot get answers to questions and cannot inspect books, papers or documents?

The Hon. J. C. Burdett: It depends on whether they are self-incriminating.

The Hon. D. H. L. BANFIELD: The person himself will decide whether they incriminate him. He only has to give that reason, according to the honourable member. We have excused the person in relation to criminal proceedings.

The Hon. J. C. BURDETT: I wonder how the Minister thinks the courts get on. The same rule applies in the courts, and it should apply in the tribunal.

Amendment carried; clause as amended passed.

Clause 24—"Presentation of cases before Tribunal."

The Hon. J. A. CARNIE: I move:

Page 11, lines 10 to 14—Leave out all words in these lines and insert paragraphs as follows:

(a) that—

(i) the party is unable to appear personally or conduct the proceedings properly himself; and

(ii) no other party will be unfairly disadvantaged by the fact that the agent is allowed so to act; or

(b) where the party is a landlord, that the agent is the agent of the landlord appointed to manage the premises the subject of the proceedings on behalf of the landlord.

This is a fairly similar amendment. I can envisage the case of a small private landlord who appoints an agent to arrange tenancies, to collect rents, and to do all the work involved in running a block of flats. The landlord enters into it only to sign the agreement, and therefore he is technically the landlord, but may have nothing to do with running the flats. Under the Bill, the tribunal could say that the party is able to appear personally or could conduct the proceedings properly himself, whereas in fact he could not do so. The agent is the only man who knows all about it. If the tribunal insisted that the landlord should go along he would have to be briefed by his own agent.

Surely, it would be better to allow the agent to appear before the tribunal, representing the landlord. If he happened to be a lawyer, that is covered by another provision. I am speaking of a man who happens to be an agent, arranges tenancies, collects rents, looks after maintenance, and generally runs the block of flats, and is paid to do so. He could be one of the tenants who, for a consideration, undertakes this work, interviewing prospective tenants, and so on. The amendment overcomes the difficulty.

The Hon. C. M. HILL: I support the amendment. It is quite proper, in my view, for an appointed agent to act on behalf of the landlord and to conduct the case on his behalf. Many widows have been left properties which are let and which provide incomes. People in this category do not want to be, nor should they have to be, involved in cases of this kind when they employ agents to run and manage the property. In such a situation it is fair and proper that the agent should have the responsibility of acting for the landlord (or landlady) in that category. The amendment would bring that situation into existence.

As the Bill stands at present, it could be held by the tribunal that a widow in the category I have mentioned could properly conduct proceedings herself, but she does not want to be involved, nor should she be forced to be involved under the law of the land. Because the amendment would put the position right, I support it.

The Hon. D. H. L. BANFIELD: I oppose the amendment. It is easy for the Hon. Mr. Hill. Never mind about little old ladies; they might be able to look after themselves. They already have protection under the Bill if the tribunal grants it.

The honourable member has moved a vote of no confidence in the tribunal before it is set up. He is saying that the tribunal cannot decide whether or not a person is capable of looking after himself.

The CHAIRMAN: Order! Will the Hon. Mr. Foster please be seated?

The Hon. J. A. Carnie: I cannot hear the Minister with the Hon. Mr. Sumner chatting to friends in the gallery.

The Hon. D. H. L. BANFIELD: That is another ploy to get me off the track. These people become specialised agents and specialists in the field and they can be as crooked as any lawyer who is likely to appear. They know all the shady deals and can explore all the nooks and crannies; they become specialists in the field appearing before the tribunal. They come to know exactly what the tribunal does and they can play on him, because they are accustomed to him. That is what will happen if this amendment is carried. People who are unable to appear personally may be exempt. This is nothing new. The Hon. Mr. Burdett will now get up and say, "This already applies in the small claims jurisdiction of the Local Court, where the business man himself has to appear." Why should that not apply in this case? No doubt the honourable member will support me.

The Hon. J. C. Burdett: You said it was not a court; you talked about an informal hearing.

The Hon. D. H. L. BANFIELD: But you now want a lawyer to try to turn it into a court by making the appearance of lawyers compulsory. You are making sure there are specialised agents. Someone who has not yet got his degree but is studying for it, is the sort of person you want. The Hon. Mr. Hill, the mighty landowner, was thinking about the poor little old lady; he is throwing her out on to the street and he wants a specialised agent to go to the tribunal and protect her.

The Hon. M. B. Cameron: Why does it have to be a little old lady?

The Hon. D. H. L. BANFIELD: Because the Hon. Mr. Hill said it was. It is fascinating how the Opposition gets rattled when it knows we have won a point. Members opposite try ridicule—that is the Liberal Party's philosophy, to ridicule something and hope that people will take some notice of it. Let the little old lady who has been thrown out by the big landlord like the Hon. Mr. Hill and the Hon. Mr. Carnie have protection from the tribunal, but do not let the specialised agent take advantage of the little old lady who has been thrown out into the street.

The Hon. J. A. CARNIE: For some years now we have listened to the Minister drag red herrings across the trail. I cannot understand why the Government has not given the control of this Bill in this Chamber to somebody who knows something about landlords and tenants. The

Minister keeps talking about specialised agents and lawyers; I am thinking of a case where one tenant in a block of flats for a small consideration is made the agent for those flats.

He interviews prospective tenants, looks after the maintenance of the building, and collects the rents, so he would possibly know more about that particular block of flats than would the landlord. He is not a lawyer or specialised agent. He is looking after a block of flats, and that is what I am looking for in this case, not the lawyer, despite the Minister's red herrings, which have nothing to do with it. I ask the Committee to consider this matter, because that is all I have in mind. I am not trying to bring lawyers into the matter or to turn the tribunal into a court. I have said all along that the tribunal should be treated as an informal, conciliatory body, in the first instance, and go to legal matters only as a last resort. I ask that a small agent be able to act.

The Hon. D. H. L. Banfield: But you're putting "an agent".

The Hon. J. A. CARNIE: All right. There are other clauses in the Bill under which the tribunal can override this provision if it wishes. I ask the Committee to accept my amendment.

The Hon. D. H. L. BANFIELD: The honourable member is trying to impress on members that the only people with whom he is concerned are those who live in a number of units together.

The Hon. J. A. Carnie: I'm concerned with the small landlord.

The Hon. D. H. L. BANFIELD: Yes, the one who owns a dozen units in the one building, compared to a landlord who owns a only a single unit or house. The honourable member is saying that he is thinking of the little landlord, but he is not thinking of him. The little landlord possibly owns only one home lived in by a single tenant. The honourable member is talking about a whole block consisting of 20 or 30 units. He is trying to tell me that that is the little man of whom he is thinking. Some such blocks cost up to $500 000—is that a little landlord to the honourable member's way of thinking? I am concerned about the little landlord who has only one tenant, just as the Hon. Mr. Hill is thinking of the little old lady with only one tenant. The honourable member should get his facts straight. Let there be the little old lady or tenant, but he should not say that he is looking after the landlord who owns 30 or 40 units in the one block.

The Hon. J. A. CARNIE: The Minister is thinking of the little landlord as being the landlord with one unit. Obviously, that landlord will not have an agent, so this position will not arise.

Amendment carried; clause as amended passed.

Clause 25—"Settlement of proceedings."

The Hon. C. M. HILL: I am interested in what the Government envisages as the *modus operandi* of this whole proposal. Is it the Government's view that the tribunal should resort, wherever possible, to conciliation before taking the matter to a more formal procedure of endeavouring to settle the dispute?

I should have liked to see a provision requiring the tribunal to try to conciliate in the first instance. However, I have been told that it is difficult to put such a provision in the Bill. Will the Minister give a clear undertaking that the Government intends that the tribunal will make very effort to settle disputes by conciliation, and that it will always resort to conciliation initially when disputes are before it for settlement?

The Hon. D. H. L. BANFIELD: It has been the Commissioner's practice to try to conciliate on all complaints, and it is intended that that practice will continue.

The consumer will go first to the Commissioner and an attempt will then be made to conciliate. If an inspector must become involved, he will be able to size up the position and also try to conciliate. The tribunal will be the last resort, after the consumer has exhausted the avenues to which I have referred.

The Hon. C. M. HILL: I take it that, at the last stage, the tribunal, as well as the other parties to which the Minister referred, will be obliged to make every effort to conciliate.

The Hon. D. H. L. BANFIELD: The emphasis is on conciliation all the way through, until the matter is finalised. At any stage during the proceedings, the tribunal may see that there is some matter on which agreement can be reached.

Clause passed.

Clauses 26 to 27 passed.

Clause 28—"Order of tribunal final."

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

Page 12—Strike out clause and insert new clause as follows:

28. (1) A right of appeal shall lie to a Local Court of full jurisdiction within the meaning of the Local and District Criminal Courts Act, 1926-1976, against any order or decision of the tribunal made in the exercise or purported exercise of its powers under this Act.

(2) The appeal must be instituted within one month of the making of the decision or order appealed against.

(3) The Local Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

(a) affirm, vary or quash the decision or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;

(b) remit the subject matter of the appeal to the tribunal for further hearing or consideration or for rehearing;

(c) make any further or other order as to costs or any other matter that the case requires.

(4) The tribunal shall, if so required by any person affected by a decision or order made by it, state in writing the reasons for its decision or order.

(5) If the reasons of the tribunal are not given in writing at the time of making a decision or order and the appellant then requested the tribunal to state its reasons in writing, the time for instituting the appeal shall run from the time when the appellant receives the written statement of those reasons.

(6) Where an order has been made by the tribunal and the tribunal or Local Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.

(7) Where the tribunal has suspended the operation of an order under subsection (6) of this section, the tribunal may terminate the suspension, and where the Local Court has done so, the Local Court may terminate the suspension.

(8) The powers conferred by section 28 of the Local and District Criminal Courts Act, 1926-1976, include power to make rules regulating the practice and procedure in respect of appeals made under this section and imposing court fees with respect thereto.

(9) Any decision or order made by the Local Court under this section shall be final and binding on all parties to the proceedings in which the decision or order is made and no further appeal shall lie with respect thereto.

The existing clause prohibits any appeal, but my

amendment will provide a right of appeal to a Local Court of full jurisdiction. That will be the final appeal. One must remember that, as the Bill now stands, members of the tribunal need not be qualified, legally or otherwise. A member of the tribunal could be an office boy, with no qualifications whatsoever, dealing with important matters and able to make complicated legal orders, and there would be no right of appeal against his decision. That is not good enough.

There must be a right of appeal from the decision of one man who may have no qualifications at all and who is dealing with important matters. I stress the importance of this matter. Honourable members may think that it is summary, or involves just landlord and tenant matters. However, the landlord and tenant jurisdiction has always been complicated and regarded in the law as important.

It is important. To the tenant it is a question of a roof over his head or other matters of vital importance. To the landlord it may also be of extreme importance, including a matter of return on his capital. It may be his sole source of income, so to both parties it is an important matter. It is unjust and contrary to the general principles of justice that an unqualified tribunal should be able to make orders on a matter and that there should be no appeal.

As a result of the Select Committee's report I am pleased to see that prerogative writs have been written back into the Bill, as they were excluded before. These are not a substitute for a right of appeal, particularly in what is intended to be a fairly summary matter. The orders that may be made under clause 21, particularly those in the nature of specific performance or injunction, are extremely complicated, and there must be some right of appeal. Objection has been raised that the right of appeal would be expensive, would take time, would complicate matters and the like, but the amendment restricts the right of appeal to a single appeal to a local court of full jurisdiction, and it stops there.

The evidence would not be given again, as a transcript of the evidence would be transmitted to that court and it would be merely a question of arguing the evidence already given. Generally speaking (except in complicated cases) it would take only a short time, perhaps about an hour. It is only a right of appeal—it is not an obligation to appeal. Although there may be some delays, the requirement of justice is an over-riding factor, and it is a deprivation of the right of justice not to provide the right of appeal.

The Hon. D. H. L. BANFIELD: I oppose the amendment. It could be in the landlord's interest to evict the tenant speedily and, through a right of appeal, the tenant can play the matter along for some months.

The Hon. C. M. Hill: You're not here supporting the landlord?

The Hon. D. H. L. BANFIELD: I am supporting a little old lady, who might own a cottage and who might want to evict a troublesome tenant. The cottage may be her only means of income, because the Federal Government is too lousy to pay her social services, because she owns the dwelling. She may want to speedily evict a tenant who is not paying rent, and the right of appeal could hold up the matter for two or three months. An appeal may or may not take an hour, but the appeal has to get before the court, as the Hon. Mr. Burdett knows.

The honourable member is putting both landlord and tenant at a disadvantage. If the procedure is held up for even a month much damage can be done to the landlord or the tenant, whichever is on the receiving end. The honourable member said that the Select Committee gave much thought to the matter. The Select Committee report states:

> Many witnesses expressed concern about clause 27 which provides that an order of the tribunal shall be final and no appeal shall lie. This is a matter to which your committee has given much thought. On the one hand, we recognise the desire of those who feel that an injustice has been done to appeal to a higher court. On the other hand, we see great benefits in the speedy, cheap settlement of disputes between landlords and tenants. The aim could be defeated if appeals were allowed. It would not always be the tenant who would be disadvantaged by appeal provisions. It could well be that a landlord who obtained an order for termination would be severely disadvantaged by a tenant who appealed to a higher court and retained possession of the premises until the appeal was determined. On balance, the committee recommends that no alteration should be made to this provision but that clause 28 should be amended to allow the prerogative writs to run.

The committee has considered the matter. We believe that this is a case where a speedy and cheap settlement should be arrived at when there is a dispute between landlord and tenant, and there would be as much disadvantage to one as to the other. I ask the Committee not to accept the amendment.

The Hon. J. A. CARNIE: I support the amendment. One of the first things I noticed in the Bill was that clause 28 provided that no appeal should lie in respect of any order made by the tribunal. There should always be a right of appeal on any matter such as this. The right of appeal has been treasured in our system of democracy.

I accept the Minister's statement that an appeal should not go on and on. The purpose of the tribunal is to deal with a dispute amicably and quickly, but the Minister's argument that this amendment could delay matters for months is not correct. The Hon. Mr. Burdett has explained the matter thoroughly, and I think the Minister will accept that that honourable member knows a little about the law.

There need not be any long delay in regard to an appeal. As the Hon. Mr. Burdett has said, it is not an obligation to appeal: it is a right to appeal, and that right should be treasured. An appeal to a court such as the High Court could take months, but the Hon. Mr. Burdett has provided in the amendment that only one appeal shall be available. The matter can be dealt with summarily.

The CHAIRMAN: I put the question: "That the clause stand as printed."

The Hon. J. C. BURDETT: I was expecting, Sir, that you would put the whole amendment. I seek your guidance. It does not worry me as long as we are all clear that those who support me will oppose the clause and then support the new clause.

The Hon. D. H. L. BANFIELD: We had a discussion a while ago that this would be a quick procedure. The Hon. Mr. Carnie was supported by the Hon. Mr. Burdett, yet the Hon. Mr. Burdett's own amendment gives either party one month to make up his mind whether or not to appeal. He had it all sewn up a minute ago; it was just a matter of going to the court. Now he is giving them a month to appeal. Do not honourable members opposite know what they are moving?

The Hon. J. C. Burdett: We do.

The Hon. D. H. L. BANFIELD: Then how can the honourable member say that no-one will be disadvantaged? People can have a month to think about it.

The Hon. R. C. DeGARIS: There is a clause in the Bill which allows a former tenant six months.

The CHAIRMAN: Those who support the Hon. Mr. Burdett will oppose the question. I put the question: "That the clause stand as printed." For the question say

"Aye", against say "No". The Noes have it. I now put the question: "That new clause 28 be inserted."

Amendment carried: clause as amended passed.

Clause 29 passed.

Clause 30 —"Rent in advance".

The Hon. J. A. CARNIE: I move:

Page 13—

Line 4—Leave out "two" and insert "four".

Line 6—Leave out "two" and insert "four".

This is a matter with which I am a little concerned. I can understand quite well why this clause is in the Bill. By the time a prospective tenant pays rent in advance, a security bond, perhaps has the phone connected, moves the furniture, he could be up for a substantial amount of money. The Government, rightly I believe, is trying to keep this sum down as much as possible. I move this amendment to test the feeling of the Committee, because many landlords collect rents on a monthly basis, often on the first of the month. The landlord has geared his entire procedure to collecting rents on the first of the month. A tenant comes along and takes tenancy, say, from the tenth of the month. The most the landlord can collect is two weeks rent. To get the new tenant on the same basis as all his other tenants, he has to go along and collect another weeks rent. My amendment is purely as a matter of convenience for, perhaps, both parties, although in this case perhaps more so for the landlord. I stress that it provides for an amount not exceeding four weeks rent. Although I must agree that there is a case for having only two weeks, I think equally, from the other point of view, there is a case for four weeks.

The Hon. D. H. L. BANFIELD: Obviously, the honourable member has deserted the little old lady, who might be asked to find $100.

The Hon. J. A. Carnie: Possibly. I have admitted this.

The Hon. D. H. L. BANFIELD: Yet the honourable member still insists that the little old lady would have to starve for the extra fortnight. If there is any hardship for the landlord, he can go to the tribunal and ask for a modification. If he can come to a satisfactory arrangement with the little old lady, he is allowed to do it. I am concerned about the second two-week period in respect of which the honourable member is trying to impose a hardship on the little old lady. Of course, the victim may be a family man who may prove to be an excellent tenant but, because an agent wants to make life easier for himself by getting four weeks rent in advance, the family man has to face the hardship of finding perhaps $200 before he can use the accommodation.

The Hon. R. C. DeGARIS: I appreciate the points made by the Hon. Mr. Carnie, but I will vote against the amendment at this stage and re-examine it later. There is a logical argument that, where a landlord collects his rent monthly, it should be possible for him to require rent in advance to the next rental collection period. Nevertheless, it should not be an obligation in all cases for a tenant to pay a month's rent in advance.

Amendment negatived; clause passed.

Clauses 31 to 34 passed.

Clause 35—"Excessive rent."

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

Page 15, after line 2—Insert paragraph as follows:

(b1) the rate of interest charged upon overdrafts by the Commonwealth Trading Bank of Australia;

My amendment inserts another criterion that the tribunal shall take into account in determining whether or not rent is excessive. As a result of the deliberations of the Select Committee of the House of Assembly, new criteria were inserted in subclause (2). However, it is obvious that, if the landlord is borrowing money on the premises, the rate of interest charged upon overdrafts is one of the costs that ought to be taken into account.

Whether or not he is borrowing money, the return on capital invested is a matter which should be taken into account. The estimated capital value and the return on capital should be considered, as tested against the rate of interest charged on overdraft by the Commonwealth Trading Bank of Australia.

I hope the Government will accept this amendment. The clause is almost identical with the provision in the Excessive Rents Act, which has this criteria that I seek to insert, to include the rate of interest as one of the criteria. If the amendment is passed, the clause will be identical with the provisions of the Excessive Rents Act, and that Act has never been criticised in the matter of fixing rent. Bradbrook, who wrote the report for the Poverty Commission, who has been praised by the Minister in introducing the Bill, and whose work has been said to provide a basis for the Bill, praises the South Australian Excessive Rents Acts, saying that it is the closest to what he thinks legislation should be of any legislation in Australia. Some things he thought should be added have been included elsewhere in the Bill.

In the matter of rent fixing, he did not fault the Excessive Rents Acts, which was mentioned by the Minister in another place as being a good piece of legislation in the field of rent fixing. I suggest we should retain the whole of it. It has been said that this matter of interest can be included under clause 35 (2) *(g)*, which relates to "any other relevant matter". I suppose it could, but then we might as well delete *(a)* to *(f)* inclusive.

The Select Committee thought fit, notwithstanding that any other relevant matter may be taken into account, to insert as one of the criteria the estimated capital value. I suggest it would be equally logical to take account of the return on capital in the form of the rate of interest.

The Hon. D. H. L. BANFIELD: We oppose the amendment. The Select Committee looked at this recommendation. If we got down to stating express criteria, there would be a never ending number of things to be stated, all of which are already covered, as the Hon. Mr. Burdett said, under paragraph *(g)*. For those reasons, we oppose the amendment.

Amendment carried.

The Hon. J. A. CARNIE: I move:

Page 15, line 20—Leave out "one year" and insert "six months".

I do this mainly for the sake of consistency. Clause 33 (1) (ii) deals with increases in rent or variations in rent, and provides:

> 33. (1) Subject to this section, the rent payable under a residential tenancy agreement may be increased by the landlord by notice in writing to the tenant specifying the amount of the increased rent and the day as from which the increased rent becomes payable, being a day—
>
> (ii) not less than six months after the day on which the tenancy commenced, or, if the rent has been increased under this section, the day on which it was last so increased . . .

This virtually means that, subject to various considerations, the rent could be reviewed and varied every six months but, when we get to clause 35, which deals with excessive rent, when a case is taken to the tribunal and it is found that the rent increase as proposed is excessive, subclause (4) provides that the landlord shall not make another attempt to increase the rent for 12 months, commencing on the day on which the order is made. If rents are allowed to be reviewed every six months, they should be allowed to be reviewed right through every six months. It is possible to tie those two clauses together. It

could be another 12 months before the landlord can review the rent, which makes a total of 18 months. That is excessive and, for the sake of consistency in both cases, the period allowed should be six months after an order has been made that the rent is excessive, and again the matter could come up for review in six months.

The Hon. D. H. L. BANFIELD: The Government cannot accept this amendment.

The Hon. J. A. Carnie: Can't we win one?

The Hon. D. H. L. BANFIELD: You have the numbers and you can win by numbers. I speak for the little old lady. There is power to revoke the decision of the tribunal, and we believe that that is sufficient. For that reason, we oppose the amendment.

Amendment carried; clause as amended passed.

Clauses 36 to 44 passed.

Clause 45—"Landlord's responsibility for cleanliness and repairs."

The Hon. J. A. CARNIE: I move:

Page 17, after line 11—Insert new subclause as follows:

(1a) A landlord is not obliged to compensate the tenant under the term prescribed by paragraph *(c)* of subsection (1) of this section unless the repairs are carried out by a person who holds a licence that he is required to hold under any Act to perform such work and the tenant has furnished to the landlord a report prepared by that person as to the apparent cause of the state of disrepair.

During the second reading debate, I pointed out the possibility, under clause 45 (1) *(c)*, of collusion between a tenant and another person where they could effect repairs that might or might not be necessary and afterwards claim that such repairs were necessary; that they had tried to contact the landlord but could not; and the repairs were done at a grossly inflated price. My amendment simply means that such repairs shall not be carried out unless by a licensed tradesman, and further that that tradesman shall submit a report stating the apparent cause of the state of disrepair.

That means that, when the tenant goes to the landlord and says that he had to effect certain repairs and could not contact him, but called in a tradesman and had it done, the landlord could see whether the damage had been caused as a result of a breach of the agreement, in which case he would not be liable for the damage.

The Hon. D. H. L. BANFIELD: What about in an emergency caused by a window being broken or the roof being damaged during the landlord's absence overseas? Should the tenant wait for a report to the landlord before going ahead and effecting the repairs? Does the honourable member want the house to have broken windows during the time the landlord is being tracked down or while a tradesman is being located to prepare a report for the landlord before the landlord gives his approval?

The Hon. J. A. CARNIE: The amendment does not say that at all or that the tenant has to contact the landlord before he can effect repairs.

Paragraph *(c)* is still there, and I am not altering the provision by my amendment. For the Minister to pretend that I am altering the provision so that the tenant must contact the landlord even when overseas is completely untrue. All I am saying is that, under paragraph *(c)*, the tenant has taken the necessary action in an emergency and that, when he gets someone to make the repairs, there must be a report on what was the probable cause of the damage. This is another case of the Minister drawing red herrings across the path. All I ask is that there be a report stating that damage was not caused by a breach of the agreement.

The Hon. D. H. L. BANFIELD: If the tenant has a dicey landlord, and has his roof blown off or his windows broken and calls in a tradesman, he is caught because he has to pay the tradesman. The landlord may be away for two years and may not give compensation in that time. Unless a tradesman furnishes a report, there is no way in which the tenant can get his money back if he has had to attend to an emergency and to pay the tradesman.

The Hon. C. M. HILL: I support the amendment. Taking the Minister's example where a roof is blown off and has to be repaired, if the tenant employs a builder without a restricted builder's licence, there would be a breach of the law. Why should the Minister object to the amendment on that basis?

The Hon. D. H. L. Banfield: He's exempt up to $100, isn't he? Someone can do a repair costing up to $100 before he requires a licence.

The Hon. C. M. HILL: I should like to hear of a roof being repaired for that. If the amendment is carried, in the circumstances referred to by the Minister, the tenant would be obliged to get a properly qualified tradesman (as he should do any way under the law), and obtain from him a report stating the cause of the damage. However, the Minister says that he cannot live with an amendment of that kind. He is being hidebound in this matter and is showing no flexibility whatsoever. The object of the Hon. Mr. Carnie's amendment is to check the good faith of the tenant and to avoid any mischievous action that might be taken by him.

Collusion has been referred to, and this amendment will tend to prevent that occurring. A tenant could bring in his brother-in-law and say, "Let us pick up $95 on the side. Let us say that the property has suffered damage that was not caused by me as a tenant. We can say that I asked you to repair it and I paid you $95. Tomorrow, I will claim that $95 from the landlord." That could happen under this Bill, but is that the kind of legislation that the Government wants to pass? If the amendment is carried, a report will have to be obtained from a properly qualified tradesman, stating that the work had been carried out, what it had cost, and how the damage had been caused. Surely, if we want to keep that record straight in relation to this Bill, the Minister will accept the amendment.

The Hon. N. K. FOSTER: I am concerned about what could happen in an emergency that occurred in, say, a flat where a woman, whose husband was away, was living with her two children. If a tap in that flat burst, the woman would not know how to deal with it. However, the burden of proof would be put on that woman if she called in a plumbing company. As the burden of proof should not be placed on such a person, the Committee should reject the amendment.

Amendment carried; clause as amended passed.

Clauses 46 and 47 passed.

Clause 48—"Landlord's right of entry."

The Hon. J. A. CARNIE: I move:

Page 18—After line 11, insert new paragraph as follows:

(a1) for the purpose of determining whether or not the tenant has breached the agreement, where he has reasonable grounds for suspecting that such breach has occurred, at any reasonable hour, after giving the tenant not less than forty-eight hours notice;

The Committee is aware of the need for protection of the tenant, and I am told that landlords sometimes arrive at odd hours, particularly when the tenant is a single girl, seeking to inspect the premises. Unpleasant situations could arise. At the same time, landlords should have some rights. A landlord may believe that the tenant is in breach of the agreement, but under the Bill he must approach the tenant saying that he wants to inspect the premises in

seven days. If the tenant is in breach of the agreement, he or she would know why the landlord wanted to inspect the premises and could remedy the problem. The Hon. Mr. DeGaris referred to a flat that may be let to two people, but the landlord had reason to believe that another 10 people were accommodated there, causing all sorts of damage. The agreement may provide that pets are not allowed and the landlord may suspect that dogs or cats are present, thereby being in breach of the agreement. If seven days notice is required, a tenant could correct the situation. True, a tenant has a right not to be harassed by the landlord's arrival without notice, demanding to inspect the premises, and I have tried to effect some sort of compromise in this amendment.

It could be argued that in 48 hours a tenant in breach of the agreement could still remedy the breach but seven days is too long a time where there are reasonable grounds to suspect a breach.

The Hon. D. H. L. BANFIELD: We oppose the amendment and believe that there is sufficient flexibility in the existing provision.

The Hon. J. A. CARNIE: Where does the Minister say there is sufficient flexibility?

The Hon. D. H. L. BANFIELD: I am not going to do your homework.

Amendment carried; clause as amended passed.

Clauses 49 to 52 passed.

Clause 53—"Tenant to be notified of the landlord's name and address."

The Hon. J. A. CARNIE moved:

Page 19—

Line 36—Before "address" insert "business"

Line 43—Before "address" insert "business"

The Hon. D. H. L. BANFIELD: I accept the amendments.

Amendments carried; clause as amended passed.

Clause 54 passed.

Clause 55—"Landlord to deliver copy of written residential tenancy agreement to tenant."

The Hon. J. A. CARNIE moved:

Page 20, line 16—After "tenant" insert ", or, where that is not reasonably practicable in the circumstances, within such longer period as is so practicable"

The Hon. D. H. L. BANFIELD: I oppose the amendment.

Amendment carried; clause as amended passed.

Clause 56 passed.

Clause 57—"Discrimination against tenants with children."

The Hon. J. A. CARNIE moved:

Page 20, lines 29 to 32—Leave out all words in these lines.

Page 21, line 9—After "where the landlord" insert "or his agent appointed to manage the premises"

Amendments carried; clause as amended passed.

Clauses 58 and 59 passed.

Clause 60—"Termination of residential tenancy agreements."

The CHAIRMAN: On page 22, line 9, the figure "(4)" should be "(3)" and on line 13 the figure "(3)" should be "(2)". I propose to direct that these errors be corrected as clerical amendments.

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

Page 21, after line 41—Insert new paragraphs as follows:

'(*c*1) where a person succeeding to the title of the landlord becomes entitled to possession of the premises;

(*c*2) where a mortgagee in respect of the premises takes possession of the premises in pursuance of the mortgage;'.

As regards paragraph (*c*1), under the Real Property Act, a purchaser of property subject to an unregistered lease of more than one year takes the property and is immediately entitled to possession. This new paragraph ensures consistency with that Act. As regards paragraph (*c*2), under some mortgages, a mortgagee can take possession of premises if the mortgagor fails to meet his payments. This provision is aimed at ensuring that those premises are no longer subject to any tenancy when the mortgagee takes possession. I ask honourable members to support the amendment.

Amendment carried; clause as amended passed.

Clauses 61 to 65 passed.

Clause 66—"Termination by landlord and proceedings for order or order fixing rent under Housing Improvement Act."

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

Page 24, line 16—After 'paragraph (*a*)' insert 'or (*b*)'.

The amendment is simply technical to ensure that a landlord must establish that he requires possession to carry out repairs or renovation.

Amendment carried; clause as amended passed.

Clauses 67 and 68 passed.

Clause 69—"Notice or termination by tenant."

The Hon. J. A. CARNIE moved:

Page 24, line 41—Leave out "fourteen" and insert "twenty-one".

The Hon. D. H. L. BANFIELD: It sounds reasonable to me.

Amendment carried; clause as amended passed.

Clauses 70 and 71 passed.

Clause 72—"Application to Tribunal by landlord for termination and order for possession."

The Hon. J. A. CARNIE moved:

Page 26, lines 26 to 31—Leave out all words in these lines.

The Hon. D. H. L. BANFIELD: The Government opposes this change for the same reasons referred to in opposing clause 57.

The Hon. R. C. DeGARIS: I point out to the Minister that in subclause (4) it is once again a reverse onus. The landlord also has to prove that he was not wholly or partly motivated. In other words, if he is motivated by even 1 per cent it is difficult for him because the subclause uses the words "wholly or partly motivated".

Amendment carried; clause as amended passed.

Clauses 73 to 84 passed.

Clause 85—"Application of income derived from investment of Fund."

The Hon. J. A. CARNIE moved:

Page 29, lines 39 to and 40—Leave out "As the Minister may approve" and insert "as may be prescribed".

The Hon. D. H. L. BANFIELD: The Government opposes this change. There are already grounds clearly set out which are to be prescribed. The extra ground of application as the Minister approves enables a necessary flexibility. For instance, the regulations will no doubt lay down guidelines as to the percentage of compensation to landlords to be paid out of the fund, but the flexibility allows the Minister to approve an extra payment to a particular landlord in a particular case.

Amendment carried; clause as amended passed.

Remaining clauses (86 to 94) and title passed.

Bill reported with amendments. Committee's report adopted.

LOCAL GOVERNMENT ACT AMENDMENT BILL

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

ADJOURNMENT

At 11.12 p.m. the Council adjourned until Thursday, March 9, at 2.15 p.m.