LEGISLATIVE COUNCIL

Thursday 28 September 1978

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

ASSENT TO BILLS

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

Administration of Acts Act Amendment,
Constitution Act Amendment (No. 2),
Evidence Act Amendment,
Soil Conservation Act Amendment,
State Transport Authority Act Amendment (No. 2).

PRESIDENT'S STATEMENT

The PRESIDENT: I wish to make a statement concerning yesterday's business. At the conclusion of Question Time yesterday, and after I had called on the business of the day, the Hon. Mr. Foster rose and, as I understood his remarks at that time, wished to ask a further question. I ruled him out of order on the grounds that I had called on the business of the day and that the time for asking questions had therefore expired. I have, however, read the *Hansard* report for yesterday and from that report feel there could have been some misunderstanding between the Hon. Mr. Foster and myself. Apparently the Hon. Mr. Foster wished to raise a point of order in relation to the question which had just been asked by the Hon. Mr. Geddes. I apologise to the Hon. Mr. Foster for this misunderstanding.

Having read the report of the question asked by the Hon. Mr. Geddes, I feel that I erred in allowing his question. Athough the *Hansard* report does not record it, I recall indicating to the Minister that he was not obliged to answer the question. It was a question which was not within the Minister's responsibility. As the Minister rightly pointed out in his answer, he cannot check on the membership of persons in any political Party and, as I have stated, the question should have been ruled out of order.

PERSONAL EXPLANATION: BEAUT TOURS

The Hon. T. M. CASEY (Minister of Lands): I seek leave to make a personal explanation.

Leave granted.

The Hon. T. M. CASEY: I draw honourable members' attention to remarks made in another place regarding the Beaut Tours brochure put out by the Tourism Division of the Tourism, Recreation and Sport Department. An honourable member in another place referred, as follows, to part of the reply (page 738 of 12 September *Hansard*) I gave to the Hon. Mr. Hill in reply to a question he had asked:

> I can assure the honourable member that the Beaut Tours organisation, as depicted in the brochure, has been operating for many years. Two Beaut Tours are outlined in the brochure.

I said at that time that two new tours were referred to in the brochure, one to Coober Pedy and the other to Alice Springs. This matter has already been explained by me at Naracoorte in the South-East and to a conference of regional tourist officers from throughout the State which was held only a short time ago at Wallaroo. I want merely to make that correction.

QUESTIONS

CITRUS INDUSTRY

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

Leave granted.

The Hon. R. C. DeGARIS: I hope that, in persisting with questions regarding the Minister's submission on tariff protection for the citrus industry, I am not accused of hitting below the belt.

The Hon. R. A. Geddes: Don't you mean below the navel?

The Hon. R. C. DeGARIS: That is probably a better way of expressing it. Following the report in this morning's *Advertiser* of a statement by Mr. E. H. Cope, General Secretary of the Australian Citrus Growers Federation, it seems that the Minister's allegation on Tuesday that honourable members displayed a remarkable degree of economic illiteracy is difficult to sustain. For example, Mr. Cope was reported in this morning's *Advertiser* as saying:

> The viability in the Australian citrus industry can be maintained only on a grower return of $100 a tonne of fruit, or the equivalent of 30c a litre of juice. At the moment countries such as Brazil are offering Australian processors citrus juice at about 13c to 14c a litre.

Using the easy conversion method explained by the Minister, that comes to $43 to $47 a tonne. If one adds to that a 35 per cent *ad valorem* tariff, plus transport costs of 3c a litre, processors could buy imported juice concentrate for about 24c a litre or, using the Minister's rapid conversion table, about $80 a tonne. Would the Minister care to comment on the figures given by Mr. Cope, and on my ability to convert from cents per litre of juice to dollars per tonne of oranges?

The Hon. B. A. CHATTERTON: I should like to comment on the figures used by Mr. Cope, as reported in this morning's *Advertiser*. I have every confidence in the submission made to the Federal Minister, Mr. Fife. The reason why the figures that Mr. Cope quotes are different from those that we have used is that he uses a different figure for processing costs. There is a range of processing costs in the industry; this material has been collected from a survey done by the Industries Assistance Commission. Mr. Cope uses the highest figures of any processors, and we have used the average figures, which I think are much more reliable. That is the reason for the difference between Mr. Cope's figures and our figures. It is completely explained in terms of the processing costs. I have every confidence in the figures that we have used, and I think our approach is much more reasonable than to pick out the highest figures anywhere in the processing industry.

YATALA LABOUR PRISON

The Hon. C. M. HILL: Has the Minister of Health a reply to my recent question about Yatala Labour Prison?

The Hon. D. H. L. BANFIELD: An incident occurred at Yatala Labour Prison at lunchtime on Wednesday 30 August 1978, when the security prisoners confined within the walls refused to leave the dining room to go to the

exercise yards after lunch. The Superintendent agreed to see a deputation, and the meeting took place at 1 p.m., when it was arranged that a further meeting between the Superintendent, staff, and a deputation from the prisoners would take place on the morning of Thursday 31 August. The inside workers did not return to work that afternoon, as they spent the afternoon in the yards electing the deputation and framing their complaints. The meeting took place on Thursday 31 August, as arranged. There was no riot, no damage done, and no charges laid as a result of the incident. No attempt was made to withhold information from the media. There were several telephone calls and visits from mobile cameramen, but there was nothing to tell them.

WATER QUOTAS

The Hon. N. K. FOSTER: I seek leave to make a brief statement before asking a question of the Leader of the Government in this Council about restrictions on water quotas in the Virginia area.

Leave granted.

The Hon. N. K. FOSTER: Mr. President, I have noted the remarks that you made in the Council earlier today. I did not intend to canvass the matter that was opened up yesterday by the way of a question that you disallowed; far be it from me to indulge in that sort of witch-hunting during Question Time. I will deal with the matter in some detail at the appropriate time.

People in the Virginia area are concerned about wild allegations that are being made following the apprehension by the police of a small number of market gardeners who have been charged with growing marihuana. It has been alleged that people who have been growing marihuana will lose their water entitlements because of a provision restricting the use of the water to the growing of vegetable plants. It is rumoured that the Engineering and Water Supply Department intends to cut off the water supply to some properties. I do not believe this rumour but, to set the minds of the people at rest, will the Minister ascertain from the Minister of Works whether or not the department intends to examine the water quotas of people who have been charged with growing marihuana; or, would the department take the view that it is a matter for the courts to determine the guilt or otherwise of people who are accused of cultivating marihuana?

The Hon. D. H. L. BANFIELD: The allegation made by the honourable member is very serious, and I am sure that my colleague will clear up this matter. I will refer the honourable member's question to my colleague.

DROUGHT RELIEF

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

Leave granted.

The Hon. R. A. GEDDES: Now that the drought relief scheme is virtually wound up, apart from the repayment by farmers of the money borrowed and the return of stock held on agistment to their respective properties, can the Minister of Agriculture indicate whether funds under the drought relief scheme will be available for restocking properties which are carrying huge quantities of feed but have no stock and no ready financial means of acquiring them?

The Hon. B. A. CHATTERTON: Carry-on loan funds have been available for restocking purposes for some time. I made an announcement on this question some time ago, and I will ascertain for the honourable member the terms and conditions under which such loans are available. It has been necessary to apply some limits to restocking loans to try to prevent an excessive rise in stock prices. Although there are some conditions concerning carry-on loans for restocking purposes, funds have certainly been made available and will continue to be made available to farmers for this purpose.

BIGGLES

The Hon. J. C. BURDETT: Has the Minister of Agriculture a reply to the question I asked on 14 September about *Biggles* books?

The Hon. B. A. CHATTERTON: The *Little Red Schoolbook* was purchased at the time of its release in South Australia in 1972, and was placed in the Young People's Services Branch under the following conditions of access:

Youth Lending Services Section: Not to be kept on public access shelves. To be lent only to registered borrowers who can produce a letter signed by a parent giving parental permission for the child to borrow the book.

Children's Library Section: Not to be kept on public access. Children may not borrow the book, but adults may.

These conditions have been, and are still, enforced.

The *Little Red School-book* was purchased because it was, at the time, one of the few books putting forward in a popular way the attitudes and beliefs of an emerging subculture of radical permissiveness. It was contentious, and for that reason likely to attract considerable public interest. It was also recognised that whilst a number of children and adolescents may have wished to read it that many parents would not wish them to do so. For that reason the above restrictions were placed on its use by children.

The State Library has not held W. E. Johns' *Biggles* books in the lending collections for over 20 years, although they are available on request for reading in the library. It is believed that most requests for *Biggles* books made by children follow suggestions from parents who remember the books from their childhood with affection, but who have little knowledge of children's publishing since the *Biggles* books were at their most popular. The irrelevance of *Biggles* books to most children, and the now generally unacceptable attitudes on racial and national characteristics, together with a vastly increased range of high quality books for children by first-rate authors, have led to a preference for the purchase of newly published material rather than the continual replacement of dated, largely irrelevant books of the 1930's and 1940's.

PRAWN LICENCE FEES

The Hon. J. A. CARNIE: I seek leave to make an explanation before asking a question of the Minister of Fisheries about prawn licence fees.

Leave granted.

The Hon. J. A. CARNIE: A report in the *News* of 20 September refers to statements by the Minister as follows:

> Defiant prawn fishermen have been given until October 6 to renew their licences at the Government's proposed fee. Fisheries Minister, Mr. Chatterton, said today South Australia's 53 prawn men were being notified of this individually . . . If not renewed by October 6, the licences will lapse, and the authorities will be offered to other fishermen.

Regulations concerning the new prawn fishing licence fees were gazetted last Thursday and tabled in this Council and in the House of Assembly on Tuesday. The motion for

their disallowance was to be moved in both Houses on the same day. The Subordinate Legislation Committee has not heard any evidence on the regulations and has not made a recommendation. I understand that further discussions will take place between the Premier and fishermen after the fishermen have met. In view of this, will the Minister remove the threat of a deadline on 6 October and not take further action until time has been allowed to debate the motions of disallowance, to allow the Subordinate Legislation Committee to consider evidence and make a report, and to allow the fishermen to have further discussions with the Premier?

The Hon. B. A. CHATTERTON: The prawn fishermen met the Premier and me on Tuesday last, and we had useful discussions. The fishermen's representatives are now taking the matter back to their members at a meeting, I believe on Wednesday next. I will not make a statement on those negotiations or on changes that may or may not take place until after that meeting and after the fishermen have had an opportunity to discuss the proposals.

OTTOWAY FOUNDRY

The Hon. D. H. LAIDLAW: Has the Minister of Health a reply to the question I asked regarding losses at the Government foundry at Ottoway?

The Hon. D. H. L. BANFIELD: The replies to the three-part question are as follows:

1. 1 560 tonnes.

2. At 30 June 1977, 113 persons were employed, and 61 persons are actually employed at present.

3. The Government proposes to achieve an acceptable balance between work load and labour by gradually reducing the manpower involved by way of natural attrition and transfers to suitable work elsewhere in the Engineering and Water Supply Department.

EMISSION CONTROLS

The Hon. R. A. GEDDES: I seek leave to make an explanation before asking the Minister representing the Minister of Transport a question about emission controls on motor cars.

Leave granted.

The Hon. R. A. GEDDES: I have a report of the Australian Environment Council, on which the Minister of Transport has a representative. One part of the report states:

> Australian Environment Council notes that data available from the testing of motor vehicle emissions by New South Wales environment authorities indicate that emission controls are not contributing significantly to increased fuel consumption, other than for larger vehicles, and, in fact, for smaller vehicles it has been established that fuel economy is improved.

Can the Minister say in relation to what types of vehicle there are difficulties regarding petrol consumption because of emission pollution controls?

The Hon. T. M. CASEY: I will refer the question to my colleague and bring back a reply.

SHORT-SELLING OF SECURITIES (PROHIBITION) BILL

Third reading.

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

That this Bill be now read a third time.

The Hon. D. H. LAIDLAW: In the Committee stage, the Minister complimented me on having amended an Act that had been repealed in whole at Westminster in 1960, and I noted a touch of sarcasm in his voice.

The Hon. D. H. L. Banfield: It was enthusiasm.

The Hon. D. H. LAIDLAW: I suggest to the Minister that, if the members at Westminster had realised at that time how many bankruptcies would occur through legalising the short selling of shares unconditionally, they would have acted differently and in a manner similar to the way we have acted in this Chamber.

If this Bill passes, as amended, trading in stock options will be legalised in this State, and short selling of securities will continue to be illegal except in a few prescribed instances.

Sir John Barnard's Act will be deemed never to have had application in this State, so that a dealer in options will be able to recover a debt incurred prior to this time and subject to the Limitations of Actions Act. Such a case occurred in Adelaide last year, when a dealer in options sued to recover a debt. His case failed on other grounds, but the judge questioned whether the debt was recoverable because of the application of Sir John Barnard's Act passed in Westminster in 1734.

Bill read a third time and passed.

AUSTRALIAN MINERAL DEVELOPMENT LABORATORIES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 September. Page 1077.)

The Hon. R. A. GEDDES: Before I speak in support of the Bill, I wish to apologise to you, Mr. President, and to the Council for asking a question yesterday that may have embarrassed the Chair. I did not realise then that it was a transgression of Standing Orders and common decency. The Australian Mineral Development Laboratories (Amdel) began operating in 1960, about 18 years ago, as an independent, contracting organisation engaged in research, development, consultation, and service work for industry and Government in the field of mineral and material sciences. The laboratories, although instituted by an Act of the South Australian Parliament when Sir Thomas Playford was Premier and Sir Lyell McEwin was the Minister of Mines, function on a commercial basis, relying solely on earnings to provide the services offered. Amdel's extensive services and facilities are based in Adelaide, and I believe that the aim in 1960 of the then Premier was to maintain the enviable record previously established by the South Australian School of Mines as the major school of learning for the mining industry in Australia. With the changing times and the increases in technological knowledge by the industry, Amdel would fulfil a need for the future of that industry.

We should also remember that in 1960 the development of the petroleum industry and mining for petroleum was in its infancy, but great technological knowledge was required to further such work. Today, Amdel provides services including analytical chemistry, mineralogy, petrology, geochemistry, geochronology, materials sciences, operations research, computer services, geostatistics, mine planning, mineral engineering, chemistry, metallurgy, feasibility studies, and plant design and commissioning.

This is indeed a wide range of services offered not only in Australia but also overseas and as far away as Russia, South America and especially in South-East Asia. Amdel

has become recognised as the centre of knowledge not only in the mining industry but also in many other industries. Because of the technical and material resources available, Amdel has been able to provide such work for various industries.

Interestingly, the South Australian Police Force uses Amdel's forensic capability to assist in identifying rocks or mineral ores used in its search for proof of crime. This type of scientific approach leaves far behind the type of deductions used by Sherlock Holmes.

Amdel's powers and functions are broadened, and the management structure has been reviewed to meet the changes brought about through the experience gained in the past 18 years. Clause 4 widens the range of the organisation and the powers and functions. Clause 7 provided expanded powers to overcome a problem confronted by Amdel in wishing to provide greater scientific knowledge to industry where in the past it has been hampered. That problem will not recur under this provision.

There is now to be a council that must meet at least once a year. It will provide the overriding policy for Amdel. There is also to be a new board of management, which is to meet and which is to literally give cover for the day-to-day procedures of Amdel. One clause permits the State Treasurer to allow Amdel to borrow funds with a State guarantee.

Concern has been expressed about whether or not there are sufficient checks and counter-checks for the council and its board of management, and whether the State Government will have sufficient control of its operation. I have studied the Bill carefully in relation to determining whether there are sufficient or insufficient checks and counter-checks. First, the State has two representatives on the council. Secondly, under clause 7, the Minister in charge of Amdel can instruct the board of management in relation to other work assignments.

Thirdly, the consent of the State Treasurer is required to borrow funds. Fourthly, the Auditor-General must audit Amdel's accounts and must submit his report to Parliament. Fifthly, the council must submit an annual report on Amdel's activities to the Minister, and that report must be tabled in Parliament annually. Furthermore, the mining industry, the State Government and the Federal Government must each contribute $500 000 to Amdel, which is a private enterprise type of operation, working hand in glove with two Governments.

The fact that representatives from the mining consortium belong to the Australian Mineral Industries Research Association Limited indicates that those representatives would be loath to increase spending beyond a legitimate range because they are representatives of yet another vast organisation that has elected them to the Amdel board. Amdel has a reputation with world-wide significance, and it has lived up to the reputation that Sir Thomas Playford and Sir Lyell McEwin intended for it in the 1960's. Because the need for change is so common as a result of changing circumstances in today's world, I support the second reading.

The Hon. B. A. CHATTERTON (Minister of Agriculture): Several questions were asked by honourable members during the second reading debate. First, the Hon. Mr. Griffin asked whether AMIRA was consulted and whether it agreed to the proposed decline in the number of representatives on the Amdel council.

The original Act provided for a council and no board of management. It provided for two representatives each from the State of South Australia and the Commonwealth Government, and three representatives from AMIRA. The seven members so appointed had the power to nominate an additional three members to council. Under the proposed amendments to the Act, the council will consist of two members each from the State, the Commonwealth, and AMIRA but, in addition, there will be a board of management consisting of five members of whom one, the Chairman, will be appointed by AMIRA, one will be the Chief Executive of Amdel and the other three, of whom at least two are not employed in Amdel, will be appointed by the council.

The Hon. R. A. Geddes: Is there any guarantee that the State will have a representative on the council?

The Hon. B. A. CHATTERTON: I do not know whether there is any guarantee, but it seems likely that this will happen. The Hon. Mr. Griffin also asked what proportion of the staff contributed to the South Australian Superannuation Fund, and how many of the staff contributed to an alternative fund. Staff members other than temporary or casual employees are given the opportunity to become members of the South Australian Superannuation Fund.

At present, there are two exceptions to this situation. One is a senior consultant who elected, on joining the staff, to become a member of the Amdel superannuation fund, and he is the only member of that fund. The other is the newly-appointed Managing Director, and suitable arrangements to provide superannuation benefits for him are currently being negotiated. These could take the form of entry into the South Australian Superannuation Fund. At present, of the 130 members of the staff eligible to join the South Australian Superannuation fund, 76 have done so.

The Hon. Mr. Griffin also asked under what circumstances and for what purposes would Amdel wish to borrow money, and what would be the extent of such borrowings. The powers sought under clause 19 (4) of the Bill are not inconsistent with the amending Act No. 56 of 1963. Under that Act, the organisation "may borrow from that bank or otherwise upon such terms and conditions and upon such security including any guarantee by the Treasurer as the Treasurer may approve". The powers sought under clause 19 (4) of the Bill are not inconsistent with the amending Act No. 56 of 1963. Under that Act, the organisation "may borrow from that bank or otherwise upon such terms and conditions and upon such security including any guarantee by the Treasurer as the Treasurer may approve".

The clause is designed to provide the organisation, subject to the supervision of the Treasurer, with access to finance that will enable it to meet the normal requirements of commercial activity. Honourable members will be aware of the significant fluctuations that have occurred in the mining industry over the past 10 years. Although the amending legislation is designed to allow for greater diversification in the activities of the organisation, it will still be greatly dependent on that industry.

At present the laboratories council has adopted the use of bank overdraft facilities as a short-term measure until Amdel's viability has been fully re-established. However, it is conceivable that changes in the market for the services of the organisation could, at short notice, require investment in extremely expensive, sophisticated equipment. Additionally some of the buildings used by the organisation are now over 20 years old, are out of date for efficient laboratory usage, and are showing signs of deterioration due to soil problems in the area. It is not inconceivable that borrowings to the extent of $500 000 could be required to service such activities.

The Hon. Mr. Hill also asked questions about certain aspects of the Bill, and referred particularly to his concern

about the ability of Amdel to manufacture and sell industrial products. The honourable member was concerned that this could result in unfair competition to other manufacturers in the industry.

It is pointed out that this power has been given to Amdel to enable it to enter into the manufacture of sophisticated and specialised equipment in the industry not normally available commercially, which could result in contracts being let for components that would be of general benefit to Australian industry.

The Hon. Mr. Hill is concerned that Amdel should be responsible to a Minister. It has always been assumed by the organisation that it was to all intents and purposes responsible to the Minister of Mines, now the Minister of Mines and Energy. Consequently, there is no objection to the amendment to formalise that arrangement.

The Hon. Mr. DeGaris was concerned about the requirement for Amdel to seek the Treasurer's consent in relation to borrowing operations. This is considered to be a normal requirement for statutory authorities and, again, there is no disagreement in relation to the proposed arrangements.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—"Constitution of organisation."

The Hon. C. M. HILL: I move :

Page 3, after line 12—Insert subsection as follows:

(8) The organisation shall be responsible to the Minister.

I was pleased to hear the Minister say in his reply that it was always assumed that the organisation should be responsible to a Minister and that the Government was willing to accept the amendment.

Amendment carried; clause as amended passed.

Clauses 7 to 18 passed.

Clause 19—"Repeal of section 18 of principal Act and enactment of section in its place."

The Hon. K. T. GRIFFIN: I move:

(4a) Page 7, after line, 45—Insert subsection as follows: Notwithstanding the provisions of any other Act, the powers and functions of the Treasurer under subsections (3) and (4) of this section shall not be transferred or delegated to any other person.

The amendment is designed to ensure that, wherever the Treasurer's consent or approval is required with respect to investment or the borrowing of money, it is, in fact, the Treasurer who exercises that power.

Under the Administration of Acts Act, which has recently been amended, it would be possible for the Treasurer to delegate authority under clause 19. Where there is likely to be substantial borrowing and where the certificate of the Treasurer is required, the Treasurer himself ought to exercise that authority.

The Hon. B. A. CHATTERTON (Minister of Agriculture): I do not object to the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (20 to 24) and title passed.

Bill reported with amendments. Committee's report adopted.

CHILDREN'S PROTECTION AND YOUNG OFFENDERS BILL

Adjourned debate on second reading.

(Continued from 27 September. Page 1195.)

The Hon. K. T. GRIFFIN: I support the Hon. Mr. Burdett in calling for a Select Committee on this Bill, and he has already stated his reasons for seeking to appoint a Select Committee. I do not intend to deal with any of the recommendations of the Royal Commissioner now.

No reason has been given why some recommendations of the Royal Commissioner and Judge Wilson have not been acted upon. That, in itself, should be the subject of an inquiry, so that this Council can satisfy itself that all recommendations of the Royal Commissioner and Judge Wilson have been considered before a comprehensive scheme to deal with the children's protection and young offenders is adopted. Many people gave evidence to the Royal Commission about the matter then before it; this evidence was sifted and conclusions were reached, all of which were interrelated and dealt with in the context of a comprehensive system. Of course, this Bill was not before the Royal Commission, but it takes into account only some of the recommendations.

People whose recommendations are included may not want to make a submission to a Select Committee. However, they may wish to do so if their recommendations have not been faithfully interpreted or do not relate to a comprehensive scheme, as they may have wanted them to do. Further, people whose recommendations and submissions have not been accepted are likely to want to make submissions to a Select Committee. All members of the community ought to have the opportunity to comment on a Bill as important as this, which affects not only children who come within its immediate ambit but also parents and others who have dealings with children. When enacted, the Bill should provide a comprehensive code for the care of children who are likely to fall within its ambit.

It is therefore important that the Bill be not rushed and that all interested persons have an opportunity to respond to the proposals incorporated in the Bill. This can best be achieved by appointing a Select Committee; it will result in an improved and comprehensive system for children's protection and care, and for dealing with young offenders. I support the call by the Hon. Mr. Burdett for this Bill to be referred to a Select Committee, and at this stage I support the second reading.

The Hon. C. M. HILL: I, too, support the second reading. The Bill repeals the existing Juvenile Courts Act, 1971, which was hailed at that time as being progressive legislation. However, history has since proved that it was not satisfactory legislation at all. In his second reading explanation, the Minister said:

> In recent years, South Australia has become the leading State in Australia in the field of juvenile justice and child protection.

There is a contradiction in that statement, because the Bill introduced by the Government in 1971 is now being repealed, and an entirely new Bill is to take its place. Because the previous legislation was not satisfactory, a Royal Commission was appointed which reported in July 1977. The matter was then examined by a committee which acted as architects for this particular legislation. That committee, in consultation with His Honour Mr. Justice Mohr (the Royal Commissioner), brought forward this Bill.

Because of the rather boastful approach of the Minister when he introduced this measure, one should be quite cautious in approaching the Bill. Surely the legislation that Parliament passes on this occasion must prove to be, with the passing of time, better legislation than that which was presented in 1971. In supporting the second reading, I also support those provisions in the Bill that follow the recommendations of the Royal Commission, which thoroughly investigated the whole area. I agree with the Hon. Mr. Burdett's view that further research needs to be done, because important recommendations made by the

Royal Commissioner have not been accepted by the Government.

I support the proposal for a Select Committee for three main reasons. The Bill ought to be considered further, and members of the public who are interested in this matter should have an opportunity to express their views. This can be done through a Select Committee.

The Hon. R. C. DeGaris: Also, any variations of the Royal Commissioner's recommendations.

The Hon. C. M. HILL: Exactly. The first of the three reasons why this Bill should be referred to a Select Committee deals with the power that the Attorney-General retains to refer cases to an adult court. What worries me is public opinion that quite a number of juveniles between 16 years and 18 years should be treated as adults in connection with offences. In discussions with the public, police officers, and correctional training officers, strong opinions have been expressed that some juveniles ought to be dealt with as adults.

I think the Hon. Miss Levy might support this contention, too, because she introduced a Bill into this Council to fix 14 years as the age at which juveniles could seek medical and dental treatment. Many other examples are evidence that for some purposes the law considers people under the age of 18 years can be treated as adults: children can now legally leave home, and obtain a driver's licence at 16 years of age. The general approach by the Attorney-General to his duties, which are very responsible duties, leads me to the conclusion that he would not use the prerogative sought in this Bill to refer many cases to the adult court.

The Hon. F. T. Blevins: That is quite an improper remark: you have no evidence for it.

The Hon. C. M. HILL: I can back up what I say by claiming that the Attorney-General has shown some immaturity.

The Hon. F. T. Blevins: That has to be a reflection on the Attorney-General.

The Hon. C. M. HILL: Of course it is a reflection on him.

The Hon. F. T. Blevins: You should not be making it.

The Hon. C. M. HILL: As the honourable member knows, the Attorney's recent intemperate remarks during the visit to this State by Mary Whitehouse got the Attorney-General into trouble with his Cabinet, and indicated his immaturity. That is evidence to me that justifies my remark.

The Hon. F. T. Blevins: What has that got to do with this Bill?

The Hon. ANNE LEVY: I rise on a point of order. Is there not a Standing Order that prohibits reflections on members of Parliament?

The PRESIDENT: It can hardly be termed an unparliamentary remark. The reflection was on his ability, rather than on the man's character. I will not take it as a point of order.

The Hon. C. M. HILL: This is not the only example I have for believing that the prerogative sought in this Bill will not be exercised much. Many areas of criticism indicate that, when we pass legislation giving certain rights to the Attorney-General, we have no assurance that those rights will be exercised.

On page 32 of the Royal Commissioner's Report he referred to the need for certain juveniles to be dealt with in a court other than the Children's Court, and said:

> I favour a scheme whereby the Attorney-General is given the right to apply, in Chambers, to a judge of the Supreme Court for an order that a particular child be deemed for the purpose of trial and sentence to be an adult. This application would of course, be made on notice to the child who will have the right to be present and be heard. A right of appeal would lie to the Full Court for both the Crown and the child.
>
> The advantages seen under this proposal are that the decision would be made on a high judicial level taking into account all relevant factors, and that a full right of appeal would be available to both parties. It may also be seen as an advantage that, where appropriate, a warning could be given to a particular child at an appearance before the Children's Court that if he offends again such an application will be made.
>
> One major disadvantage is seen and that is, if a particular child appears before a jury on a comparatively minor offence, the jury may deduce that the child has a bad record. I do not think this would be so as the application would be heard in private and any appeal would be listed without publication of name, and in any case other children may well be appearing because of their own election to be so tried. Further, if the trial judge had any fear of this attitude being taken by a jury the appropriate warning could be given.
>
> One other use could be made of this procedure and that is in the case of joint offenders where some are over the age of 18 years and one or more under that age. It may be that in appropriate cases an order that all accused be tried together in an adult court and on conviction be sentenced on the same basis would be highly desirable. Cases are not unknown in District Criminal Courts and the Supreme Court where a juvenile joint offender has escaped relatively scot free (although he was the ring leader) and his adult companions have received sentence of imprisonment.

This matter is dealt with in clause 47 of the Bill. The Attorney-General mentioned it when he explained the Bill and said:

> One of the major features of the Bill is the procedure whereby a child can be admitted to an adult court for trial or sentence upon application of the Attorney-General.

There should be some means to ensure that certain cases should go to an adult court. I am convinced, by people who have spoken to me and are concerned about this, that more cases should go to an adult court than have in the past. The Hon. Mr. Burdett mentioned another approach to this yesterday that has been taken in the State of Washington in the United States of America, in which certain prescribed offences are dealt with in an adult court; this could be done here. More discussion and research is needed on that aspect, and the best way to do this is through the machinery of a Select Committee.

If the Attorney-General's approach can be improved then the new legislation would be better than that which is before us now. My second reason for a deeper investigation is that the Royal Commissioner concluded that the media should be admitted to the proceedings of the Children's Court, but the Government has not followed that recommendation. It is a major matter and is of grave public concern. I do not support the publication of names of juvenile offenders, but I believe the public, during the past few years, have been wanting to know what has been going on in the Juvenile Court and they have not been able to find that out. The Royal Commissioner in his report said:

> The secrecy surrounding Juvenile Court proceedings has given rise to considerable public disquiet.

I totally agree with that. A Select Committee could investigate this matter, hear further evidence, and weigh up the questions so that Parliament would be in a better position to judge whether this principle should be included in this legislation. My third reason for further investigation is that, contrary to the Royal Commissioner's Report, the Government wants judges who will sit in the Children's Court to be judges of the Local and District Criminal Courts and not judges of the jurisdiction provided under

the Bill. In paragraph 18.2 the Royal Commissioner said:

> Appointments of judges to the Children's Court should be provided for in the Children's Court Act and those appointed should have jurisdiction only under that Act.

Therefore, the Bill differs completely from the recommendation in that respect. This conflict of opinion between the architects of the Bill and the Commission should be considered further and people ought to be given an opportunity to put their views.

Because of those differences (particularly the last-mentioned two which are of extreme importance) between the report and the Bill, I think that further research is needed. I cannot see how anyone can complain that it is wrong that legislation of this kind should be referred to a Select Committee. The State must have the best possible legislation in the interests of the young people and the community and the best legislation comes after the most searching inquiry. Therefore, I fully support the concept of a Select Committee and also support the second reading.

The Hon. ANNE LEVY: I support the second reading, and I support the Bill in its entirety, but should like to comment on some aspects of it. The main one concerns Part III, which will alter the system regarding neglected children. They no longer will be charged with being neglected and taken before the court. Instead, they will be placed under the guardianship of the Minister or under the Director-General of the department following a declaration by the court that the child needs care. For a long time it has struck me as absurd that a child neglected by its parents or guardians should be charged with being a neglected child.

Although the number of such children is not large (in 1975, 1976 and 1977 there were 57, 25 and 40 such cases, respectively), it seems to me totally absurd and a mockery of our legal processes that children should be charged with being neglected, as though being neglected was something within their control. I certainly welcome the part of the Bill that will remove that anomaly, while still ensuring that children whose parents or guardians have fallen down on their responsibilities will have proper care taken of them.

Yesterday, the Hon. Mr. Burdett criticised the Bill in that it will permit the Training Centre Review Board to discharge young offenders from their place of training or detention. He questioned this, on the basis that such releases should have to come back to the court for authorisation. The Parole Board acts in a similar way regarding offenders who are in goal to that proposed in the Bill. Both the Parole Board and the Training Centre Review Board will be under the chairmanship of judges, and it seems anomalous to have provisions for young offenders that are more stringent than those for adult offenders.

The record of our juvenile courts is good. A perusal of reports since the Juvenile Courts Act was implemented in 1972 shows that the number of children brought before the court has been either decreasing or static. In 1975 there were 3 358 appearances, in 1976 there were 3 574, and in 1977 there were 3 296. The reports refer to a possible decrease in juvenile crime in this State, and I am pleased about these figures, as other members should be. I would not be surprised if the report for 1977-78, due in a few days, showed a continuation of this trend.

One point that members opposite have raised in their request for a Select Committee is whether the media should be admitted to proceedings in the Children's Court. At present, results of proceedings can be publicised provided the identity of the offender is protected. If media reporting should occur, I agree that identification still should be protected, but it seems that members opposite overlook the fact that the ballyhoo that can result from publication of court proceedings, particularly in the juvenile courts, could influence adolescents who are at a susceptible age.

I compare this to the frequent calls that we hear for a reduction in the amount of violence on television. That violence may lead people of susceptible age to emulate what they see on the screen.

While the Hon. Mr. Burdett speaks of community interest, I suggest that the interest may be a prurient or titillating one and that community interest in a different sense may best be served by not encouraging commission of similar offences, as well as ensuring the complete protection of young offenders. I cannot believe that children of 16 or 17 years appearing before the Children's Court are hardened criminals. Every chance for rehabilitation and protection should be given by not publicising details of their offences.

In this respect, I agree with the Hon. Mr. Hill that the provisions in the Bill that permit the Attorney-General to apply to have a young offender tried in an adults court would adequately cover cases where the protection of the Children's Court was not considered desirable. I thought that describing the Attorney-General as immature was an injurious reflection on him. Any such matter should be raised on a substantive motion after notice has been given. To do otherwise is contrary to Standing Order 193.

Finally, I oppose the suggestion by members opposite to refer the Bill to a Select Committee. That is totally unnecessary. Whilst we are not denying the importance of the measure, the issues have been canvassed in the Royal Commission and by the working party following the report of the Royal Commission. The Commission received evidence, from almost everyone even remotely connected with this question, and all matters have been thoroughly canvassed in the press and in the reports.

It is somewhat anomalous for the Hon. Mr. Burdett to say that he wants a Select Committee because the Bill does not follow the Royal Commission in all respects, whereas the Hon. Mr. Hill claims that one reason for the establishment of a Select Committee concerns a matter, dealt with by the Bill, which follows the recommendation of the Royal Commission. Opposition members are trying to have their cake and eat it, too. Certainly, it seems unnecessary to go through yet another inquiry into this matter, especially when all possible views have already been canvassed and carefully considered decisions have been made in the light of the opinions that have been expressed throughout the community. A further Select Committee would be a waste of time and would unnecessarily defer implementation of what is undoubtedly a valuable measure. I support the Bill.

The Hon. R. C. DeGARIS (*Leader of the Opposition*): I did not intend to speak in this debate, but I believe that what the Hon. Anne Levy has said deserves some comment. The honourable member said that she agreed with the Bill in its entirety. That can only mean that she disagrees with the recommendation of the Royal Commissioner. It means also that she disagrees with the expressed opinion of a senior judge, who has made certain comments on these matters.

The Hon. Anne Levy: They're not gods.

The Hon. R. C. DeGARIS: I am not saying that; no-one is claiming that. The honourable member said that she disagreed with the findings of the Royal Commission and that she disagreed with the comments of a senior judge. The fact is that, as the Government appointed a Royal Commission, and as several people (judges and others

associated with the law) have made comments upon this matter (especially as the Government has not seen fit to follow the recommendations), it is reasonable that the Council should appoint a Select Committee to allow those questions to be examined.

I have been in this Council for some time and, especially recently (I think in the Debts Repayment Bill debate), there has been opposition from the Government to the idea of a Select Committee. However, most of the recommendations coming from that Select Committee were unanimous. Honourable members will find that the number of amendments recommended are greater in volume than the five respective Bills that came before this Chamber. Yet once again the Council was criticised for referring those Bills to a Select Committee.

Further, these two Bills do not follow the recommendations of the Royal Commission, and they do not follow or take note of the criticisms levelled by judges. Therefore, it is reasonable for this Council to refer these Bills to a Select Committee. That is the only point I wish to make. I can say that some Labor Party supporters, people close to the Labor Party, are concerned about some of the things that have not been included in these two Bills. I know strong supporters of the Labor Party who totally agree with the decision to refer these Bills to a Select Committee. I support the second reading, but I also support reference of the Bill to a Select Committee.

The Hon. T. M. CASEY (Minister of Lands): One argument alone is at stake here: whether a Select Committee should be established to re-examine the Bill. I agree with what the Hon. Anne Levy has said: we had an inquiry into the matter in 1976, and a Royal Commission inquired into it in 1977. I do not believe there will be people, who did not give evidence on either of the previous occasions, who will now come forward to give evidence. There may be, but it is a remote possibility.

This Chamber seems to be reaching the stage now where, if any Bill results from the recommendation of a Royal Commission or from some other person or body outside Parliament, then it has to be referred to a Select Committee. Other honourable members who have spoken to the Bill have claimed that over the years this matter has been urgent. The Hon. Mr. Burdett claimed before the last election that the Act should have been rewritten. However, the Government, too, realised that this was an urgent matter, and it has acted on it as speedily as possible. The Government has considered all the matters that should be included in the Bill, but now we find that more time will be wasted. More time will be spent on this matter while a Select Committee takes evidence. For those reasons, I oppose the establishment of a Select Committee.

Bill read a second time and referred to a Select Committee consisting of the Hons. F. T. Blevins, J. C. Burdett, J. A. Carnie, T. M. Casey, K. T. Griffin, and Anne Levy; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 9 November; the quorum of members necessary to be present to be four; and the Chairman to have a deliberative vote only.

COMMUNITY WELFARE ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 27 September. Page 1195.)

The Hon. K. T. GRIFFIN: As this Bill is substantially related to the one with which we have just dealt and which we have referred to a Select Committee, I believe that, because of the inter-relationship between the two Bills, it should also be referred to that Select Committee so that the two Bills can be considered accordingly and in tandem. I support the second reading.

The Hon. C. M. HILL: I, too, support referring this Bill to a Select Committee. Most of its clauses are consequential upon the Bill that this Council has just agreed should be referred to a Select Committee. The whole area of the welfare of juveniles, especially concerning the guardianship of minors, with which this Bill deals, ought to be considered by a Select Committee.

The Hon. T. M. CASEY (Minister of Lands): As the previous Bill before the Council was referred to a Select Committee, and as it has been indicated that this Bill should also be referred to that committee, I have no objection.

Bill read a second time and referred to the Select Committee on the Children's Protection and Young Offenders Bill.

JURIES ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 27 September. Page 1193.)

The Hon. J. C. BURDETT: One of the most significant things about this Bill is, as the Hon. Mr. Griffin said yesterday, that it was introduced in such a hurry. The Government has expressed a desire to pass the Bill in a hurry. I understand that representations were made to the Government in April to do something of this kind. It is a pity, therefore, that honourable members are now asked to deal in such a hurry with an important matter touching on our criminal justice system, that is, the appointment and proceedings of juries.

The Government has somewhat belatedly brought on this matter in a hurry and tried to get it passed quickly because of problems that have arisen in relation to a certain trial. While inevitably this happens and certain problems call for legislation to be hastily introduced and passed, it is a pity that we are asked to rush our deliberations because of one problem that may or may not bear on the overall procedure.

This Bill is only one solution to the problem of a juror in murder trials becoming sick. I have no doubt that this problem has been proposed against a background that murder trials are no longer capital punishment trials and that, therefore, the penalty is no longer death. It is therefore thought not to be inconceivable that in certain circumstances, when one juror was sick, a verdict could be brought in by 11 jurors and, if two jurors were sick, by 10 jurors, all being unanimous.

Although murder is no longer punishable by death, there is a mandatory sentence of life imprisonment, whereas for other crimes where the penalty of life imprisonment is provided it is simply the maximum penalty. In the case of murder, it is mandatory that the sentence be life imprisonment, and this is no unimportant matter.

Any person charged with murder has cause to be most concerned that he will get a fair trial and that the system is such that he will not be convicted unless it is really proven to the jury that he is guilty. Of course, he has cause to be concerned, because murder is a most serious offence, usually regarded in modern times as the most serious one,

except perhaps for treason, which rarely seems to arise.

True, there has been a tendency recently for murder trials to be more protracted in time than they once were. This is largely because forensic science has advanced and because scientific evidence is used to a greater extent than it was used previously. Often, it is necessary to identify objects that are subject to forensic tests, and so on. Much technical but necessary evidence must be given before the real substance of scientific evidence is reached. Of course, it follows that, as murder trials are tending to be longer than they used to be, it increases the risk of a trial's being aborted or held up because of the sickness of a juror.

It is worth while noting that our system of criminal justice has taken a long time indeed to develop. Although it is sometimes criticised (no system of justice is beyond criticism), I suggest that this has been a fair and just system, which has served this community, and all communities in which the British system of justice exists, very well indeed. It should not be hastily changed, and we must be careful indeed when changing a system that has served us so well.

It may be hard to contemplate what a change of this type will have on the system. I have said that a problem may have been exacerbated by the greater length of murder trials. There may have been a risk of a trial's being aborted because of the sickness of a juror.

This Bill poses only one solution. Another viable solution recommended by the Mitchell committee is to provide a reserve juror so that, in addition to the 12 jurors, a thirteenth juror should be held in reserve who can take the place of any juror that becomes sick.

The Hon. C. J. Sumner: He listens to the whole case?

The Hon. J. C. BURDETT: That is so. Various suggestions have been made on how this could be done, one of which is that the extra juror should sit in the body of the court and listen to the trial until he is called on. Of course, there could be objections to that, as the extra juror could talk to the public and would not be set aside in the way that the other jurors were.

Another suggestion is that the extra juror should sit with the jury and be present in all its deliberations until he is called on. I do not think that is a perfect solution, but it was recommended by the Mitchell committee. That suggestion has its pros and cons, and there is probably not much point in my debating them now. However, I point out that there is another solution, and that the Bill provides only one solution.

The thing that perturbs me more than anything about this Bill is the question of its application to existing trials. As is well known, a murder trial, in which the problem of a sick juror has arisen, is proceeding at present. It seems to me that, if this Bill is passed now and assented to, it will become law and will have effect in relation to existing trials. That could be argued to the contrary, but certainly, at the very least, it is an argument that has concerned the people engaged in the trial to which I have referred.

It seems to me to be wrong that, if a trial is started under one set of rules, it should finish under another set of rules. Certainly, on the face of it, all this Bill does is change certain sections of the Juries Act. It seems that, if it is passed and assented to, the Bill will thereupon have effect.

Some people have said that this legislation has a retrospective effect. However, I do not think that that is entirely accurate. It would be accurate to say that it does, arguably, have effect on trials that have already been commenced. Together with other honourable members of this Council, I have spoken to members of the legal profession who specialise in the criminal jurisdiction, and I am told that such people are fairly unanimous that the Bill should not apply to existing trials and that this should be made perfectly clear.

When and if this Bill is passed, that should be spelt out. The Law Society became aware of this Bill only very recently. There is some argument as to when the Law Society became aware of it (the initial approach was informal), but it was very recently indeed. It has been a long-standing tradition that an arrangement exists between the Attorney-General of the day and the Law Society that it should be acquainted with Bills of this kind, in which the Law Society has a very obvious and legitimate interest. The Law Society has not been able to deliberate on this Bill and make recommendations. Of course, other bodies were consulted. I have spoken to specialised criminal lawyers who have said that their first reaction is against the Bill. That is what they first thought and what they now think. However, they admitted that, when they have the opportunity to discuss the Bill among themselves, they may change their minds.

So, more time should be allowed for them, as well as members of this Council, to consider this Bill. I have not made up my mind about the Bill, which changes our hallowed jury system, which has been pretty effective. We must carefully consider what effect this Bill will have. I am not prepared to vote for the second reading of this Bill today, but I will, if given the opportunity, consider it further.

The Hon. JESSIE COOPER: I rise to speak briefly on this Bill, about which I find I have some serious misgivings. Although I appreciate the reasons underlying the Government's decision to introduce such a change in the matter of juries in murder trials, nevertheless I feel that there is a dangerous possibility that this change is not as simple as it would first appear, but is one that will bring about a completely new era in the history of the jury system in murder trials. To commit a man or woman to prison for life (and it is mandatory) is a very serious decision.

This Bill, if passed, will virtually mean that the unanimous decision will lie not with 12 people but with 10. We all have known or heard of jurors who, during the course of a long murder trial, have suffered agonies of mind in not being able to agree with the majority of other jurors. This strain could easily produce such a state of serious tension that illness would result. Pure nervousness, as we all know, can produce illness. Moreover, it is likely that, where one or two jurors stand out against the rest, certain subtle persuasions could easily induce illness and indeed this could make the way easy for getting rid of any juror who stubbornly stuck to his views.

Perhaps I may be allowed to refer to the fictional Miss Marple, created by Agatha Christie, who did not wilt when, as a juror in a murder trial, she found that she was alone in her opinion. In spite of duress, she eventually managed to convince her fellow jurors that she was right. I believe that we, as legislators, are not here to facilitate court or legal proceedings, although we can appreciate the difficulties confronting those who have the technical responsibility of getting justice concluded. Rather, I believe that it is our duty to ensure that the historic principles relating to juries in cases of murder are not lost.

The origins of the jury system go back even further than the Norman conquest. Certainly, it was part of the Anglo-Saxon judicial system in that 12 or more jurators could come forward and swear to a man's innocence when he was charged with a serious offence, and so have him declared innocent. But certainly, for many hundreds of years, people have trusted the jury system, as the Hon. Mr. Burdett has said, as a means of ensuring justice. In 1768, Blackstone enshrined the jury in the ordinary

Englishman's heart as the palladium, the bulwark of his liberties. As late as 1956, 200 years after that, Lord Devlin concluded his Hamlyn lectures by saying:

> The first object of any tyrant in Whitehall would be to make Parliament utterly subservient to his will; and the next to overthrow or diminish trial by jury, for no tyrant could afford to leave a subject's freedom in the hands of 12 of his countrymen. So that trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives.

Cornish's book *The Jury* has some interesting things to say in this connection, as follows:

> In the great transformation to an industrialised and more democratic society, the courts came under pressure to deal with many new kinds of dispute, and to modernise and simplify their procedure . . . Gradually, over the past century—

and he is writing in the previous decade—

> the jury has lost its traditional place in common-law matters tried in the High Court, as well as the temporary popularity which for a time it held in contested divorce and probate cases. It has not developed new functions . . . There are many reasons for the jury's decline: they include the need to keep expenses down, to keep court timetables flexible, to cut down the length of trials, to avoid inconveniences and delays which the summoning of juries occasions.

Later, Cornish goes on to say:

> To many people, the appeal of the jury system is primarily an emotional one, representing both a commitment to the ideal of individual liberty and a link in the traditional chain of impartial administration of justice in England. It would certainly be foolish to dismiss too hastily the obvious fact that a great many people simply *believe* in the jury system. A measure of trust in the fairness of its criminal courts is something which it is difficult for any State to establish or to maintain.

The question of cost in relation to the present system of discharging a jury when prolonged delay has occurred owing to the illness of a juror has come up, but I would say that the cost of an occasional case where this has occurred is a cheap price to pay for the maintenance of the principle that 12 people must be unanimous in their decision without any doubt about the guilt or innocence of the accused.

I myself am sympathetic to the view expressed, I understand, in the Mitchell Report that one or two extra jurors should be empanelled with the same responsiblity as the 12, except for making the final decision. Then, in the event of illness of one or two jurors, the number would never fall below 12. One may ask: what is magical about the number 12? I would say, nothing magical; it is the safeguard proved by history that the decision reached unanimously by 12 people is less likely to result in a miscarriage of justice than if it were reached by 11 or 10 or even less. The question requires more time for serious consideration, as other members have said, and I hope that the Government will not ask for a hasty passage for this Bill.

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

PRICES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 September. Page 837.)

The Hon. C. J. SUMNER: I oppose this Bill, which attempts to remove section 49a from the Prices Act. That section gives the Commissioner and any authorised officer immunity from "any action in relation to any act done, default made or statement issued by the Commissioner or authorised officer in good faith in the course of the administration of this Act or the performance of his duties or functions thereunder". It also states that the Crown, in addition to the Commissioner or authorised officer, shall not be liable for those acts. This is not an uncommon provision in legislation of this kind, and it apparently exists in New South Wales, Western Australia, Queensland, Tasmania and the Australian Capital Territory. One of the reasons for it is that it would reduce the effectiveness of the Act and the Commissioner's role if he were unduly inhibited in naming companies or traders involved in unfair practices, even though technically they are within the law. The public education role of the Commissioner would therefore be curtailed considerably by the passing of this Bill and the removal of that immunity.

The Hon. Mr. Burdett, in his speech in support of the Bill, relied largely on the fact that people acting in the office of the Commissioner for Consumer Affairs should not act unfairly in competition with members of the private legal profession. Generally, the officers are not giving legal advice: their role is to try to sort out problems on an informal basis and to educate consumers about their rights, so that those consumers can then either take matters up on their own behalf or seek legal advice. Secondly, the advice given is generally confined to small claims matters, and this cannot be regarded as being in competition with the private legal profession, because not a great deal of work is done by members of the profession in that area; they are excluded from appearing in court on small claims matters. Even in the preliminary proceedings leading up to the actual court hearing, solicitors do not generally encourage this kind of work, because it is not profitable. The Commissioner accepts the legal carriage of a complaint only when it is in the public interest.

In his second reading speech, the Hon. Mr. Burdett said that where a public officer was acting in the public interest an immunity clause was not uncommon. Therefore, if anything serious occurs where the public interest is affected and where the Commissioner takes a complaint to the courts, presumably the Hon. Mr. Burdett would have no objection to the immunity. Many cases go to the Consumer Affairs Department where consumers request that legal action be taken and the department declines to act for them, or alternatively, as I understand happens quite often, the officers suggest that the complainant or consumer seek private legal advice. This is one option that is frequently put to the consumer by the officers in their role of educating the consumer, so that the Consumer Affairs Department probably creates work for the profession rather than acting in competition with it.

I understand that the legal practitioners who are seconded to the Consumer Affairs Department are not authorised officers within the terms of the Act and therefore would, personally at least, be bound by the same ethical rules as apply to any admitted legal practitioner. On those grounds, I oppose the Bill.

The Hon. K. T. GRIFFIN: In considering this Bill, it is important to remember the wide powers which the Commissioner has under the principal Act. The Commissioner's functions are set out in section 18a of the Prices Act and include "the investigation of and conduct of research into aspects of and matters relating to or affecting the interests of consumers generally or any particular consumer or consumers". It deals with the publication of reports, the dissemination of information, and the "giving of such advice to persons on the provisions of this Act or any other law relating to or affecting the interests of

consumers as he thinks proper".

Section 18a of the Act also provides that the Commissioner may, upon being satisfied that there is a cause of action and that it is in the public interest or proper so to do, on behalf of any consumer, institute legal proceedings against any other person or defend any proceedings brought against a consumer, where the amount claimed or involved in any case does not exceed the sum of $5 000. There is a very wide range of powers, which are not limited only to matters which could ordinarily be regarded as coming within the small claims jurisdiction of the Local Court; these powers involve cases where the amount in question does not exceed $5 000. This section contains other wide powers which the Commissioner has in the conduct of any proceedings. He is placed not in the position of a professional adviser or advocate who acts on the instructions of a client and gives advice to a client, but in the same position as the consumer. Subsection (4) *(b)* provides that in relation to any proceedings that are taken, or taken over, by the Commissioner he may, "without consulting or seeking the consent of the consumer, conduct the proceedings in such manner as the Commissioner thinks appropriate and proper".

That means that the Commissioner can disregard the requests or requirements of the consumer. He has the conduct of the proceedings and can take them where he will, when he will, and how he will. Under subsection (4) *(c)* of section 18a, any recovery made by the Commissioner on behalf of the consumer, excluding costs, is paid to the consumer without deduction and belongs to him, but the converse also applies and any amount awarded against the consumer shall be paid by and be recoverable from the consumer.

The Commissioner can give wrong advice or conduct the proceedings in a way which, in the light of the facts, may not be proper. Judgment may be awarded against the consumer and the consumer would have no recourse against the Commissioner for negligence. Whilst I do not suggest there is any negligence on the part of those in the Commissioner's office who act in this capacity, I am not in a position to be aware of any facts about what goes on when a consumer seeks advice.

The Hon. Mr. Sumner has suggested that what the Hon. Mr. Burdett raised was a matter of disadvantage to the private enterprise sector, but I suggest that it is a matter of principle, not one of private enterprise against the public sector. In the private sector, any person who is a professional adviser, whether a lawyer, a doctor, an accountant, a geologist, a financial adviser, or any other type of adviser, is generally liable for the advice given and, if it is negligent, that person must be accountable for it. However, the Commissioner is not liable for negligence.

The Hon. F. T. Blevins: Do you think a barrister should be liable?

The Hon. K. T. GRIFFIN: A barrister does not give advice. He acts for and on behalf of a party to proceedings, through his solicitor, and it is the solicitor who is responsible for the advice given. However, in the case before us, the Commissioner has no responsibility to a consumer. He is not liable for negligence. The Commissioner is not just giving advice: he is acting in the shoes of the consumer, and he may act contrary to what is regarded as the interest of the consumer, but he is not accountable.

Anyone who gives professional advice, such as the Commissioner does, ought to be accountable for that advice. If it is wrong advice, the Government ought to bear the responsibility for that wrong advice. It is improper that a consumer should be in a position where he has no say in the conduct of proceedings yet has no rights for negligence arising out of that conduct. Therefore, I support the Bill, because it brings to account the Commissioner and those who may act on his behalf in the wide range of matters dealt with.

The Hon. D. H. L. BANFIELD (Minister of Health): I strongly oppose the Bill. The main clause provides for the deletion of section 49a of the principal Act. This section serves to protect the Commissioner, authorized officers employed in the Consumer Services Branch, and the Crown from acts of the Commissioner or an authorized officer in good faith and in the course of his duties. The intention of the provision was basically to enable the Commissioner fearlessly to name publicly traders taking regular unfair advantage of consumers, even where no offence against the law could be proven. This important educative function could have been severely inhibited had protection against the threat of defamation suits not been provided by the Parliament: in the event, however, it has been responsibly discharged here as in New South Wales, Western Australia, Queensland, Tasmania and the Australian Capital Territory, where equivalent officers have similar protection. It is also noticeable that Western Australia and Queensland have Liberal Governments. They may not have them for much longer, but officers there act in the same way as do officers in South Australia.

The Hon. D. H. Laidlaw: Would you like to have 20c on their not having the Governments much longer?

The Hon. D. H. L. BANFIELD: The honourable member will know next Saturday week. Judging by the way things went last Saturday, the honourable member would lose his money. On 7 October, members opposite will be told how badly they have been going. However, I thank the honourable member for the opportunity to state the position. In New South Wales, there was a swing of about 12 per cent, which is not bad.

The Hon. Mr. Burdett does not seem to dispute what I have said about other places, but is seeking to repeal section 49a on the ground that it is having unintended consequences. To support his case, the Hon. Mr. Burdett quotes the Hon. Sir Arthur Rymill, who, when the 1970 amending Bill was before this Council, claimed he had difficulty in justifying the clause. What the Hon. Mr. Burdett did not tell us was that the Hon. Sir Arthur Rymill was satisfied enough with the explanation of that clause by the then Chief Secretary (Hon. A. J. Shard) to support the Bill.

He then goes on to assert that solicitors attached to the branch have set themselves up in competition with the private legal profession, with the important advantage that their services are free to the consumer and there is no liability for negligent action or advice.

The Hon. Mr . Burdett's argument has three important flaws. First, no section of the Public and Consumer Affairs Department is in competition with the private legal profession. The advice given to the complainants by ordinary investigation officers is not legal advice: it is practical educative advice on how to get out of or, hopefully, to avoid the problems that the market place can present.

The Hon. R. C. DeGaris: Looking for loopholes?

The Hon. D. H. L. BANFIELD: It is a matter not of looking for loopholes but of looking for an opportunity to assist the consumer who has been "touched". Members opposite should not try to tell me that people are not "touched" from time to time. If they were not, the branch would not be necessary, and the reports show that it was justified. What the Hon. Mr. Burdett is saying (and he seems to be backed up by the Hon. Mr. DeGaris) is that

the legal boys should have it all their own way, and that people should not be able to get advice. The Hon. Mr. Burdett suggests that it should all be legal advice, but then we get the position of two legal eagles giving different advice because it suits their cases. This is a "Lawyer's Protection Bill". Consumers encouraged to think critically for themselves and are under no obligation to put into action any course suggested as an option by the investigator.

The Hon. R. C. DeGaris: What about consumers who—

The Hon. D. H. L. BANFIELD: Consumers can at least be told the different aspects of the position without having to pay for it. The Hon. Mr. Burdett suggests that the consumer should be getting legal advice, but one must pay for that advice. Often advice is no good, and that happens all the time. Members opposite believe that legal practitioners should be getting their chop from this in addition to the amount that the consumer has already been asked for.

The Hon. R. C. DeGaris: You say the advice is free?

The Hon. D. H. L. BANFIELD: I did not say the advice is free: I said that the advice given to the complainants by ordinary investigation officers is not legal advice. It is the sort of advice that the Leader gives us from time to time: sometimes it is accepted and sometimes it is not.

The Consumer Service Branch legal officers certainly dispense legal advice and action, but not in competition with private practice. Assistance is sometimes given to consumers on the preparation of a small claims summons or defence, work which is not at all attractive. We have heard this week that small claims are not attractive to lawyers, because comparatively small amounts are involved and solicitors cannot represent parties to a small claims action without leave of the court. The Commissioner, under section 18a (2), only accepts the legal carriage of a complaint when it is in the public interest. This is comparatively rare: occasions when legal action is sought and declined, and when private legal action is suggested as an alternative, are frequent. In fact, it is probable that the Commissioner's office is responsible for the creation and direction to the profession of many times the amount of work that it takes itself.

Secondly, the solicitors seconded to the Commissioner's office from the Crown Law Office are not authorised officers under the Act, so cannot in any way take the advantage of section 49a.

Thirdly, it seems likely that the difficulty of proving that an act was done in good faith has the effect of giving the Commissioner very little protection, rather than giving "complete protection in respect of anything he did". The protection of section 49a would be called in aid only when action was being taken against the Commissioner; it would then surely be for the Commissioner (not the plaintiff) to prove the defence applied. As Sir Arthur pointed out, this could be a formidable task. I oppose the Bill.

The Hon. J. C. BURDETT: I rise to reply to the speech of the Minister and the Hon. Mr. Sumner. It would be easy to reply to them both at the same time, because both speeches were almost identical. The Minister said that the consumer has no obligation to accept the advice tendered to him by an officer of the department but, as the Hon. Mr. Griffin pointed out, under the Act, when the Commissioner undertakes the conduct of a case on behalf of a consumer, he can run it himself, acting contrary to the wishes of the consumer in conducting the case on his behalf, or even without consultation on behalf of the consumer, and be free entirely from any action for negligence. That situation is ridiculous.

Government members indicated that, if this Bill passed, the Commissioner would not have an immunity when he names suppliers who have been prosecuted for alleged improper practices, but that was not what I had in mind when I referred to the liability for negligence where actions are conducted or advice given that is negligent. Many people have criticised the fact that the Commissioner names people, even those who have been successfully proceeded against in the court. Those people have suffered damage once but, as if that is not enough, should they be published in the media or on a notice board, as is the present case?

The Minister is protected when he makes a fair and contemporaneous report of legal proceedings in a court, as is the media, but in a so-called educative report, as referred to by Government members, in naming suppliers who have not been proceeded against, why should the Commissioner or his officers not be liable for action?

The Commissioner or his officers sometimes act for consumers in much the same way as solicitors, giving legal advice. The Commissioner can conduct actions and has often done so. I have received one complaint about a solicitor seconded for this work to assist a consumer. The case prepared for a $60 claim in the small claims jurisdiction was so complex that it was far more suited to be dealt with in the Supreme Court.

In some cases a Minister or the Government acts in the public interest, and there should be immunity but, where an officer acts for an individual in the same way as a person in private practice, I see no reason why the Government or its officers should be protected by immunity if there is negligence.

As the Hon. Mr. Griffin said, by no means was the main reason for this Bill's introduction the protection of the legal profession: rather, it was the protection of the consumer, it is not a "Lawyer's Protection Bill". If the Commissioner or his officer acts for a consumer in a case and has full control over it, even if the consumer believes it is being handled the wrong way, it is not proper that the consumer has no redress against the Commissioner if there is negligence.

The Minister claimed that solicitors employed by the Commissioner are not authorised officers but are seconded from the Crown Law Office. That is the present situation, but it may not always be the case. True, whilst they are governed by the ethical rules of conduct, they are not responsible, nor is the Commissioner, for damages. Exactly what this Bill seeks to do is to remove immunity for liability for damages.

The Council divided on the second reading:

Ayes (9)—The Hons. J. C. Burdett (teller), J. A. Carnie, Jessie Cooper, M. B. Dawkins, 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 PRESIDENT: There are 9 Ayes and 9 Noes. To allow some further legal opinions to be expressed on the Bill, I give my casting vote for the Ayes.

Second reading thus carried.

Bill read a third time and passed.

ADJOURNMENT

At 4.36 p.m. the Council adjourned until Tuesday 10 October at 2.15 p.m.