LEGISLATIVE COUNCIL

Thursday 8 February 1979

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

QUESTION

EMISSION CONTROLS

The Hon. R. A. GEDDES: I seek leave to make a short statement before directing to the Minister representing the Minister of Transport a question dealing with exhaust emission controls on motor cars.

Leave granted.

The Hon. R. A. GEDDES: Press reports about the proposed new car exhaust emission controls, which I understand are to be implemented by motor vehicle manufacturers in 1981, suggest that the petrol consumption of popular motor vehicles made in Australia will increase by a further 5 per cent, making the total increase (according to the press) in petrol consumption as high as 16 per cent since emission controls were first introduced. Will the Minister confirm the accuracy of press statements about increased petrol consumption and release a statement indicating why such controls are necessary and that official tests prove the inaccuracy of such press statements in relation to popular makes of motor vehicles?

The Hon. T. M. CASEY: I will refer the honourable member's question to my colleague and bring down a reply.

REAL PROPERTY ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

It is complementary to the provisions of the Contracts Review Bill. The Bill has two objects. First, it permits the registration of orders made under the proposed Contracts Review Act on the title to land that is subject to the Real Property Act. Where such an order is registered, the title of the registered proprietor is subordinated to the terms of the order. In appropriate cases, the registration of the order will operate as an effective conveyance of the land to the person named in the order as being entitled to the land. Secondly, the Bill expands the provisions of the principal Act relating to caveats. It provides that a person who has, in good faith, instituted proceeding, under the Contracts Review Act, and who proposes to seek in the course of those proceedings an order affecting the title to any land, has a caveatable interest in the land.

Clauses 1 and 2 are formal. Clause 3 provides for the registration and enforcement of orders made under the Contracts Review Act affecting title to land. Clause 4 provides that a person who has in good faith instituted proceedings under the Contracts Review Act and who proposes to seek an order affecting the title to land has, for the purposes of section 191, a caveatable interest in the land.

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

SOUTH AUSTRALIAN INSTITUTE OF TECHNOLOGY ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

It amends the South Australian Institute of Technology Act upon a number of separate subjects. First, the Bill increases student representation on the council from two members to three members. A related amendment empowers the institute to make statutes allowing for staggered terms of office for the members of the council elected by the students and the staff. This will permit greater continuity of experience amongst the council members elected in these categories.

Secondly, the Bill empowers the council to grant leases of Crown land placed under the care, control and management of the council. This amendment should resolve the doubts upon this matter expressed by the Hon. Mr. Justice Wells in the case of *S.A. Institute of Technology v. Corporation of Salisbury*. Thirdly, the Bill enacts evidentiary provisions relating to offences involving motor vehicles and provides for the expiation of such offences. The Bill also deals with a number of other minor matters. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 provides that the institute is to hold its property on behalf of the Crown. This amendment brings the principal Act into consistency with other Acts relating to colleges of advanced education. Clause 4 provides for the election of an additional student member of the council and prevents a student from being elected as a student member if he is also a member of the staff of the institute. Clause 5 permits staggering of the terms of office of student members, and members elected by the academic staff. Clause 6 increases the quorum of the council from 11 to 12.

Clause 7 empowers the institute to lease Crown land that has been placed under its care, control and management. Clause 8 enacts evidentiary provisions relating to offences against by-laws that involve motor vehicles and permits the expiation of such offences. Clause 9 inserts a financial provision that conforms with similar provisions in other legislation relating to colleges of advanced education.

The Hon. JESSIE COOPER secured the adjournment of the debate.

REAL PROPERTY ACT AMENDMENT BILL (No. 3)

Second reading.

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

That this Bill be now read a second time.

It makes amendments to the Real Property Act, 1886-1975, on a number of unrelated topics. In the near future the system of registration of land and dealing in land will be complemented by the land ownership and tenure system. This system makes use of a large computer for

recording of interests in land. At times, up to 1 000 instruments are lodged at the Lands Titles Office each day, the daily average lodgments at present being approximately 750 instruments; and the purpose of the new system is to increase the speed and efficiency with which information can be extracted.

However, it will still be necessary for officers to check instruments to ensure that they comply with the Act before the information they contain is fed into the computer. This is a complex process that can be simplified by the use of what is known as "panel forms". Instruments under the Act at the moment are in a narrative form. The new forms will set out the required information in separate "boxes", each designed to contain only one category of information. It will then be easier for the examining officer to cast his eye down the form to check that the proper information has been supplied. The Bill paves the way for the introduction of panel forms by providing that instruments shall be in a form approved by the Registrar-General. This will enable the modification of forms from time to time as experience with the new system requires.

Another amendment to facilitate the introduction of the land ownership and tenure system is the abolition of dealings by endorsement. It is impracticable under the system to record a dealing endorsed on another instrument. It is important for the efficient operation of the Lands Titles Office that there be an efficient method for appointing an Acting Registrar-General and Acting Deputy Registrar-Generals. On occasion the Registrar-General and a Deputy Registrar-General are absent from the Office in their official capacity. When this occurs during the absence of other deputies on account of sick, recreation or long service leave, the need to appoint officers to act in their place becomes apparent. The Bill redraws the provisions now in sections 13 to 18 of the Act to provide for these appointments and to update the wording of the Act. The Bill also makes a number of unrelated amendments that are best dealt with in the explanation to the clauses. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 replaces rather outmoded provisions in the Act relating to the Office of the Registrar-General and its administration. By sections 14 and 15 the Bill provides for appointment of an Acting Registrar-General and Acting Deputy Registrar-Generals. The Registrar-General and all officers under him have, for many years, been employed under the Public Service Act. Subsection (5) of section 13 recognises this.

Clause 4 makes amendments to section 23a of the principal Act. Paragraph *(a)* widens the reference to "mortgagee". Paragraph *(b)* adds a new subsection that enables the Treasurer to require the production of evidence that succession duty or other claims have been satisfied. Clauses 5 and 6 make amendments to the service of notice relating to the bringing of land under the principal Act. Often a large number of notices must be served in respect of one allotment and the requirement that service must be by registered post results in unwarranted expense. In many cases service by registered post is unnecessary; for example, to persons obviously long since deceased, or to proprietors with no appropriate address and description such as "of Adelaide, Yeoman". The amendments give the Registrar-General discretion as to the mode of postage.

Clause 7 replaces subsection (1) of section 54 of the principal Act. The subsection is a general one dealing with all instruments registered under the principal Act and providing that they must be in accordance with the principal Act. The new subsection has the same effect except that instruments must now be in a form approved by the Registrar-General. The ability of the Registrar-General to direct, and if necessary change, the form of instruments will further simplify their preparation, increase efficiency in registration procedures and make searching of the register easier and will also greatly assist the successful introduction of the land ownership and tenure system.

Clause 8 simplifies a reference to writs of execution. The amendment is consequential upon the Enforcement of Judgments Act, 1978. Clause 9 replaces section 73 of the principal Act. The section has the same effect except that the form of certificates of title must be approved by the Registrar-General. It is unnecessary to provide specifically for units in a strata plan because they come within the definition of "land" in the principal Act. Clause 10 amends section 79 of the principal Act which enables the Registrar-General to issue a substituted or new certificate of title in place of one lost or destroyed. At present notice must be given in the *Gazette* even in cases where notice is unnecessary. The amendment gives the Registrar-General discretion and consequently hastens the issue of a substituted or new certificate of title where notice is unnecessary.

Clause 11 amends section 96 of the principal Act to provide that transfers must be in a form approved by the Registrar-General. Clause 12 makes an amendment to section 105 of the principal Act consequential on the Enforcement of Judgments Act, 1978. Clause 13 by amending section 107 provides for a form approved by the Registrar-General on the transfer of property after a sale on execution. Clause 14 amends section 116 to provide for a form approved by the Registrar-General where lands are leased. Clause 15 replaces section 120 of the principal Act. The new section provides for surrender of a lease by the use of a form approved by the Registrar-General and not by endorsement upon the lease. The land ownership and tenure system is not designed to handle dealings with land by endorsement.

Clause 16 removes a passage from section 122 relating to production of a lease bearing an endorsement. Clause 17 amends section 128 to provide that mortgages and encumbrances be in a form approved by the Registrar-General. Clause 18 removes an unwieldy passage from subsection (2) of section 129 and replaces it with a simple authority in the Registrar-General to require plans and specifications to be attached to a mortgage or encumbrance when deemed necessary. Clause 19 removes the reference to "a receipt or memorandum" in section 143 which provides for discharge of mortgages and encumbrances. These interests are frequently discharged by the endorsement on the back of the duplicate instrument of "a receipt or memorandum". The amendment requires a separate instrument in a form approved by the Registrar-General.

Clause 20 repeals section 144 of the principal Act which is unnecessary because of the amendment to section 143. Clause 21 replaces section 150 of the principal Act so that the transfer of a mortgage, lease or encumbrance must be in a form approved by the Registrar-General. Clause 22 repeals sections 153 and 154 of the principal Act. Section 153 provides for extension of a mortgage, encumbrance or lease by an endorsement on the instrument and section 154 provides for the effect of an extension. After the passing of

the Bill extensions will be made by separate instrument in a form approved by the Registrar-General under the general power in section 54. The clause enacts a new section 153 relating to a problem that has arisen with the extension of leases. Where a registered lease includes a right to renew or extend the term, that right takes precedence over a subsequent dealing with the land such as a transfer or mortgage.

A prospective transferee would be unable to determine from the Register Book whether a lessee had exercised his right of renewal even after the initial term of the lease had expired. He would be subject to a renewal made in accordance with the lease but registered after the registration of his transfer. Where a new title is issued after the initial term of a lease has expired that lease is not noted on the new title. A person dealing with the land might suddenly find his dealing subject to a lease of which he had no notice. The effect of the new section 153 is that a lease will cease to have effect as a registered instrument at the end of its term unless the term is renewed or extended by registered instrument. The Register Book will therefore always state accurately the interests to which a registered dealing will be subject.

Clause 23 removes the reference to the thirteenth schedule in section 155 because the use of the form is optional and there is no need to refer to it in the Act. Clause 24 by paragraph *(a)* amends section 157 of the principal Act to provide that the revocation of a power of attorney must be in a form approved by the Registrar-General. Paragraph *(b)* removes the reference to a "registration abstract". Registration abstracts are historical anomalies. Clause 25 repeals section 189 of the principal Act and replaces it with a new section. The present section enables a married woman to have the marriage noted on the title to land in respect of which she is registered. The new section makes a general provision for a registered proprietor to have a change in his name, address, occupation or status noted on his title. Clause 26 repeals section 190 of the principal Act. Section 190 is an anachronistic provision left over from the 19th Century allowing a husband to be registered on the title to his wife's land in certain circumstances.

Clause 27 amends section 191 of the principal Act to provide that caveats must be in a form approved by the Registrar-General. Clause 28 replaces subsection (3b) of section 220. At present the procedure that the Registrar-General must adopt to reject an instrument is clumsy and time consuming. Clause 29 amends section 223a of the principal Act to provide that an application to the Registrar-General for the rectification of a certificate must be in a form that he approves. Clause 30 amends section 274 of the principal Act. This section prohibits any person who is not a solicitor or licensed land broker from receiving fees for the preparation of instruments under the Act. However, the Land and Business Agents Act, 1973-1977, allows an agent involved in the transaction to charge for work done by a legal practitioner or licensed land broker in his employment. The amendment made by this clause allows that provision of the Land and Business Agents Act to have effect. Clause 31 replaces section 276 of the principal Act which, at present, requires service by registered post. This is both unnecessary and extremely costly. Clauses 32 to 35 repeal those schedules which provide forms that from now on must be approved by the Registrar-General. Clause 36 repeals the twenty-fifth schedule to the principal Act and re-enacts it in a simplified form.

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

SECURITIES INDUSTRY BILL

Second reading.

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

That this Bill be now read a second time.

The need for legislation governing the conduct of stockbrokers in the securities industry has been recognised throughout Australia for a number of years. Legislation governing the industry was initially enacted in New South Wales in 1970. That Act was repealed by Act No. 3 of 1976, and it is this latter Act which has formed the basis of the Bill which I am now presenting.

In the intervening period several amendments were made and a good deal of experience was acquired. To that was added the recommendations of the Rae Report on securities and exchange, certain aspects of the Commonwealth Corporations and Securities Industry Bill and comments and representations by interested persons and bodies. The Act has been adopted uniformly by the member States of the Interstate Corporate Affairs Agreement.

Negotiations between the States and the Commonwealth for nationally uniform securities industry legislation have reached a point where Ministers have agreed on certain proposed amendments to the uniform legislation which is in force in New South Wales, Victoria, Queensland and Western Australia. In fact, South Australia and Tasmania are the only States without Securities Industry Legislation and the administration has no experience in this area. The purpose of this Bill is to ensure that South Australia is legislatively in line with the other States and as a result to assist the administration here in South Australia to fit more quickly and efficiently into the national scheme upon its introduction. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1, 2 and 3 are self-explanatory. Clause 4 is the interpretation clause and contains a number of expressions which are self-explanatory. However, there are several which need elaboration. The Bill draws a distinction between the "business rules" of a Stock Exchange and the "listing rules". The "business rules" are rules governing—

(a) the activities or conduct of the Stock Exchange itself or of its members.

(b) the activities or conduct of other persons in relation to the Stock Market maintained by the Stock Exchange.

The "listing rules" in relation to a Stock Exchange are those governing or relating to:

(a) the admission to, or removal from the list of, the Stock Exchange of bodies corporate, governments, unincorporated bodies or other persons for the purposes of the quotation of their securities by the Stock Exchange and for other purposes;

(b) the activities or conduct of bodies corporate, governments, unincorporated bodies and other persons who are admitted to that list.

"Dealing" in relation to securities is defined to cover the acts of:

(a) acquiring, disposing of, subscribing for or underwriting securities;

(b) making or offering to make an agreement for or with respect to any of those acts;

(c) inducing or attempting to induce a person to

make or to offer to make an agreement for or in respect of any of those acts;

(d) making or offering to make an agreement the purpose of which is to secure a gain to a person who does any of the acts in *(a)* or to any of the parties of the agreement in relation to securities;

(e) inducing or attempting to induce a person to make or offer to make an agreement within *(c)*.

Certain persons are permitted to carry on the business of dealing in securities without having to be licensed under the Act because their activities are sufficiently regulated under other laws. "Exempt dealer" is defined as meaning:

(a) corporations which are either authorised dealers in the short-term money market;

(b) Public Authority;

(c) Official Receivers and Trustees operating under the Bankruptcy Act;

(d) a Receiver or Receiver and Manager;

(e) a personal representative of the deceased dealer but for a limited time;

(f) a public trustee;

(g) a body corporate dealing only in its own debentures.

An "Investment adviser" is a person who carries on a business of advising other persons, or in the course of a business carried on by him issues or publishes analyses or reports concerning securities but excludes various specialised groups. The definition of "officer" which appears in section 5 of the Companies Act, 1962-1974, has been substantially adopted for the purposes of this Bill but has been extended to include a person made responsible in any way for the management of a body corporate pursuant to a scheme of compromise or arrangement. "Securities" is defined exhaustively as to cover Government issued securities, securities issued by a body corporate or unincorporate, rights or options in respect of securities and interests as defined in the Companies Act, 1962-1974. The concept of an "arbitrage transaction" has been adopted and is relevant in relation to the exceptions to the ban on short selling contained in clause 54. An "arbitrage transaction" is possible when the same security is selling more cheaply on one Stock Exchange than on another. To be outside the prohibition on short selling the transaction must involve a purchase on one Stock Exchange and an off-setting sale on another Stock Exchange at the same time or at as nearly the same time as practicable. Because there is no substantial time lag between the sale and the purchase, the prohibition on short selling contained in clause 54 is not considered appropriate. The definition of "odd lot" is also only significant in relation to the exceptions to the short selling ban and means a number of securities other than a marketable parcel or a multiple or a marketable parcel of securities. Subclause (4) is significant in that it exempts from the definition of "dealer" the situation where one deals through the holder of the dealer's licence. Thus, in determining whether an individual or company which invests in securities, is carrying on the business of dealing in securities for the purposes of the Bill, no regard will be had to those dealings effected by the person or company through sharebrokers who would normally be holders of a dealer's licence.

Clause 5 sets out the circumstances in which a person has an interest or is deemed to have an interest in securities. This is particularly relevant for the purposes of clause 52 which is concerned with the disclosure of certain interests in securities. Clause 6 adopts the concept of associated persons from the Companies Act — this concept is of considerable relevance in clauses 51, 52, 53, 112 and 115 of the Bill.

Part II comprising clauses 7 to 15 inclusive deals generally with the administration of the Act. The provisions dealing expressly with the establishment and functioning of the Corporate Affairs Commission are to be included in the amendments to the Companies Act, 1962-1974, which will be introduced to the House in the near future. Clause 7 allows delegation by the Commissioner of certain powers, authorities, duties and functions imposed upon him by the Bill. Clause 8 extends the powers of inspection already contained in the Companies Act, 1962-1974, to allow an inspector to inspect and make copies of or take extracts from licensee's books and banker's books. The person making such an inspection is required to make a declaration of secrecy. Clause 9 is designed to assist the commission's officers in determining the identity of persons from, or to, or through whom, or on whose behalf, securities have been acquired or disposed of. In particular paragraph *(c)* enables the commission to require details from any person believed to have acquired or disposed of securities as trustee for, or for, or on behalf of, another person. Clause 10 allows the commission to make an application to the Supreme Court for an order authorising the inspection of banker's books or books under the control of a person requiring a licence under the Act, or requiring the production of such books for inspection in circumstances where the commission has reasonable grounds for believing that an offence related to dealing in securities has been committed.

Clause 11 provides the commission with a general power to investigate suspected offences. Clause 12 gives the Supreme Court power to make certain orders on the application of the commission where it is satisfied that an offence has been committed, or there has been a contravention of the conditions or restrictions on a licence, or of the business rules of a Stock Exchange, or where such an offence or contravention is about to take place. Clause 13 prohibits the use of information gained by officers of the commission or persons appointed to discharge any function of the commission in the course of that employment or appointment otherwise than to the extent necessary to perform their official duties. Clause 14 imposes upon the commission and officers of the commission the same penalty as is imposed upon inside traders by clause 112, for dealing in or causing or procuring some other person to deal in securities, in circumstances whereby, in the course of official duties, information is obtained relating to those securities which, if generally known, would be likely to materially affect the price of the securities. Clause 15 requires an employee or person appointed to discharge any function of the commission to inform the Commissioner in writing if required to consider in the course of his official duties any matter relating to securities in which he has an interest, or to any person or body with whom or which he has or has had an association.

Division II or Part II of the Bill provides special investigation provisions similar to those contained in sections 168-179 *(b)* inclusive of the Companies Act, 1962-1974. But, while the Companies Act provisions necessarily restrict the appointment to the investigation of affairs of companies, the provision of this Bill, contained in clauses 16 or 26 inclusive, provide for the appointment of an inspector to investigate any matters concerning dealings in securities.

Part III of the Bill deals with the establishment of and controls imposed on the operations of Stock Exchanges. In particular, clause 29 vests in the Minister the power of veto over amendments to the Rules of the Stock Exchange and

the listing rules. Further a Stock Exchange is required by clause 30 to provide such assistance as the Commissioner reasonably requires including access to the trading floor, and most significantly, pursuant to clause 31, the Supreme Court may order the observance of, enforcement of, or giving effect to the business rules or listing rules of a Stock Exchange on the application of the commission or any person aggrieved by the failure to observe, enforce or give effect to those rules. In addition a Stock Exchange will be required to report details of disciplinary action taken against members to the Corporate Affairs Commission.

Part IV of the Bill, comprising clauses 32 to 39 inclusive, deals with licences. The system introduced is one of permanent licences subject to annual review by means of a statement containing prescribed information designed to disclose any circumstances occurring since the issue of the licence or the previous annual statement which might be detrimental to the licensee's character or financial position. In support of this system the commission is given the power to revoke or suspend licences subject to the holder's right to a hearing before the Commissioner and, in some cases, before the Supreme Court. Clauses 32, 33, 34 and 35 require the persons who fall within the respective categories to obtain licences as dealers, dealers' representatives, investment advisers and investments representatives. A dealer's licence is not required to be held by an exempt dealer as defined in clause 4 of the Bill whilst an investment adviser's licence is not required by the holder of a dealer's licence or an exempt dealer. Similar provisions are included in relation to the obligations to obtain representatives' licences.

Clause 36 provides the machinery for applying for licences and clauses 37 and 38 provide the criteria in relation to which the commission must satisfy itself when considering an application for a licence. In relation to a dealer or an investment adviser, this involves a consideration of the applicant's character and financial position and, in the case of a corporate applicant, the character of each of its Directors and of the Secretary, as well as a consideration of the interests of the public, in determining whether the applicant is a fit and proper person to hold the licence applied for. In relation to a representative there is no financial test but the commission must form the opinion that the applicant is a fit and proper person to hold the licence applied for and to act on behalf of the principal or principals named in the application.

Clause 39 provides for the variation of a licence held by a representative by the substitution of one or more different principals for the name or names of the holders of dealer's or investment adviser's licences, as the case may be, on whose behalf he may act. Clause 40 contemplates the imposition of conditions or restrictions upon licences, either generally by regulations, or particularly by the commission, upon issue of the licence, and provides for the revocation or variation by the commission of any such conditions or restrictions as are imposed on the licence. The commission is to be required to advise the Stock Exchange upon the imposition, variation or revocation of conditions or restrictions upon the licences of members. If the licensee is a partner in a member firm the commission shall also be required to so advise the member firm. Clause 41 requires the commission to keep a register of licence holders containing specified information which shall be open for inspection by the public. Any changes is these particulars are required by clause 42 to be notified to the commission, as is the fact that a licensee has ceased to carry on business or, in the case of a representative, has ceased to act for a principal named in his licence.

Clause 43 requires the holder of a licence to pay the prescribed fee at the time he is required by clause 44 to lodge an annual statement containing prescribed information. The regulations will specify the information to be included in the statement, which will be designed to disclose anything detrimental to the licensee's character or financial position which may have occurred since the issue of the licence. Clause 45 allows the commission in its discretion to extend the time within which the statement may be lodged and the fee paid.

By clause 46, the commission is empowered to revoke or suspend a licence in certain circumstances including the licensee's bankruptcy, convictions for certain offences involving fraud and dishonesty or insanity, and in the case of a corporate licensee, on the winding up, cessation of business or receivership: and generally, upon failure to submit the annual statement or pay the prescribed fee, or upon request by the holder of the licence. Upon the revocation or suspension of a principal's licence, a representative is prohibited from acting on his behalf.

Clause 47 makes further provision for revocation or suspension of a licence in circumstances where a licensee has contravened or failed to comply with a condition or restriction affecting his licence, or where the commission is satisfied that the holder of the licence, or the Director, Secretary or person concerned with the management of a corporate licensee is not a fit and proper person to hold a licence. The clause also allows the commission to apply to the Local and District Criminal Court for an order disqualifying a person, whose licence has been revoked, from holding a licence either permanently or temporarily. During any period of suspension of a licence, clause 48 deems a person not to be the holder of a licence for the purposes of determining whether he is in contravention of clauses 32, 33, 34 or 35. Clause 49 gives to any applicant or holder of a licence, as the case may be, unless he has previously been disqualified by the court, the opportunity to appear at a hearing before the commission before the grant of his licence is refused, his licence is revoked or suspended, or before conditions or restrictions are imposed upon his licence, or having been imposed, are varied.

Part V of the Bill, comprising clauses 50 to 54 inclusive, deals with certain aspects of the conduct of securities business by the holders of licences. Clause 50 prohibits the holder of a licence from representing that his abilities or qualifications have in any way been approved by the commission but he is not prevented from representing that he is a holder of a licence. Clause 51 requires a dealer other than an exempt dealer to issue a contract note containing specified particulars in respect of any transaction for the sale or purchase of securities, other than a transaction between stock brokers entered into in the ordinary course of business on the trading floor of a Stock Exchange. Clause 52 requires the inclusion in letters, circulars and other written communications which contain a recommendation with respect to securities, a concise statement of any interest in the securites, referred to therein and in their acquisition or disposal, which is held by the responsible dealer, investment adviser, or representative or by a person associated with him. The clause requires the written communication to be signed by the person who sends it, or in the case of a firm, by a partner of that firm, or in the case of a corporation by a Director, Manager or Secretary. Circumstances in which an interest in securities will arise for this purpose are expressed by subclause (3). There is a provision which requires disclosure of the purpose for which securities were acquired by a person who makes a recommendation, whether orally or in writing, with respect to those securities, when offered by him for purchase after having

acquired those securities for the specific purpose of offering them to the public for purchase. A further provision in subclause (4) requires similar disclosure of the circumstances of acquisition of securities, before offering for subscription a purchase or making a recommendation in respect of securities which have been, or will, or may be, acquired under an undertaking agreement by reason of a short fall. Copies of communications forwarded to the Stock Exchange shall be preserved for a period of seven years.

Clause 53 restricts the circumstances in which a dealer can deal in securities with a person who is not a dealer. Such transactions are prohibited unless the dealer first informs the person with whom he is dealing that he acts as principal and not as agent. The clause gives an extended meaning to "as principal" transactions by including transactions on behalf of associated persons, as well as transactions on behalf of a body corporate in which the dealer or the dealer and his partners have a controlling interest: and the dealer is prohibited from charging brokerage, commission or any fee otherwise than in circumstances where the transaction is one for the sale or purchase of securities under an approved deed. This prohibition in inapplicable in circumstances where a dealer is dealing as principal only by reason of the fact that he is entering into a transaction on behalf of a person associated with him. If a dealer enters into a transaction as principal in contravention of this clause, in addition to the penalty provided for breach, the purchaser or vendor, as the case may be, may rescind the contract.

Clause 54 takes the form of an outright prohibition against short selling followed by a series of exceptions with built-in power to provide further exceptions by regulation should this be seen to be necessary.

Part VI of the Bill deals with the accounts and audit requirements applicable to dealers by adopting many of the equivalent provisions of the Companies Act. Clause 57 obliges a dealer to keep proper accounting records and specifies the minimum requirements needed to satisfy that obligation. Clause 58 specifies the obligations of a dealer in respect of his client's security documents received for safe custody, and restricts the circumstances in which such documents can be deposited by the dealer as security for a loan or advance, to circumstances where a client who is indebted to the dealer is advised of the dealer's intention to raise a loan on the security of the client's documents and the amount so raised is not more than the amount owed by the client on the day the documents are deposited as security. The dealer must withdraw the documents immediately upon being paid by the client, and until so paid must give the client written notice every three months of the fact that the documents are still deposited.

Clause 59 requires all money held by a dealer in trust for a client to be paid into a trust account not later than the next bank trading day following receipt. It is intended that, by regulation, the period within which the moneys shall be deposited shall be extended to three days to conform with the present requirements under the Share Brokers Act, 1945-1975. Subclause (4) describes what is meant by money held in trust for the purposes of this clause. There is a provision to exclude from the obligation to pay into the trust account brokerage and other proper charges of money received in payment for securities previously delivered to the dealer. Clause 60 specifies the limited circumstances in which moneys may be withdrawn from the trust account.

Clause 61 provides for the appointment of an auditor, imposing restrictions similar to those contained in the Companies Act. Provision for the removal and resignation of auditors is made in clause 62, while clause 63 requires the dealer to pay the auditors reasonable fees and expenses.

Clause 64 obliges a dealer to prepare a true and fair profit and loss account and balance sheet for lodgment with the commission annually, together with the auditor's report. Clause 65 requires the auditor to report to the commission matters which may adversely affect the dealer's ability to meet his obligations or which constitute breaches of clauses 57, 58, 59 and 60 of Part VIII of the Act. Copies of the auditor's report must be sent to the dealer and to any Stock Exchange of which the dealer is a member.

Clause 66 requires the Stock Exchange to report to the commission any of the matters referred to in clause 65 of which it becomes aware, and clause 67 expresses the qualified privilege attaching to any defamatory matter published by an auditor in the course of the performance of his functions and duties under the provisions of the Bill. Clause 68 confirms the right of a Stock Exchange to impose its own accounts and audit requirements upon its members so far as they are not inconsistent with the requirements of this Bill.

Clause 69 provides the Supreme Court with power to make orders restraining dealers dealings with any bank account of a person who is or has been a dealer, upon being satisfied by the commission that any one or more of the grounds specified in the clause exist. Clause 70 obliges a banker to make certain disclosures and give certain assistance to the commission in relation to any account to which an order relates. Clause 71 authorises the court to make additional orders, including orders requiring payment to the commission of moneys in an account affected by the order. Clause 72 elaborates further the nature of an order that may be made under clause 71.

Part VII, comprising clauses 73 to 80 inclusive, deals with the registers of interests in securities required to be kept. Clause 73 defines "financial journalist", restricts the meaning of securities for the pruposes of the register to securities of a public company or securities quoted or dealt in at a stock market; and excludes the odd lot specialist on the Stock Exchange from the obligations of the Part. Clause 74 specifies, as the persons required to maintain a register, any person who is the holder of a licence, or who is a financial journalist, as defined, and clause 75 requires such a person to maintain a register and enter in it particulars of securities in which he has an interest, the nature of his interest and particulars of any change in that interest.

Clause 76 requires notification to the commission of the place where the register is kept and for any change in that place. Clause 77 provides offences for failing to comply with clauses 75 and 76. Clause 78 gives the commission power to require production of, to make copies of, and to take extracts from the register. Clause 79 requires a proprietor or publisher of a newspaper or periodical to supply the commission with details of persons who contribute specific advice or prepare particular analyses or reports published in his newspaper or periodical; and clause 80 empowers the commission to supply a copy of, or extract from, a register to any person who in the opinion of the commission should in the public interest be informed of the matters disclosed in the register.

Part VIII, comprising clauses 81 to 85 inclusive, provides for the deposit with the Stock Exchange of minimum amounts calculated on the basis of the balance standing in the stockbroker's trust account from time to time. Clause 81 requires each sole trader and each member firm to lodge and maintain these minimum deposits which are payable out of monies held in his trust account, with the Stock Exchange: Clause 82 provides the

means of calculating the minimum required to be lodged and maintained, and clause 83 requires the Stock Exchange to invest the money so deposited on interest bearing deposit in a bank, with the Treasurer or on the official short-term money market and to pay interest so earned into its fidelity fund established under Part IX.

Clause 84 requires a Stock Exchange to keep proper accounts of deposits received under this Part, to cause a balance sheet to be prepared each quarter, and to appoint an auditor. The auditor is required to audit the accounts relating to the deposits and prepare a report to be laid before the committee. The Stock Exchange is required to give the Commissioner a copy of each auditor's report, together with the accompanying balance sheet. Clause 85 preserves any claim or lien of the sole trader or member firm and any rights and remedies of any other persons in relation to a deposit.

Part IX, comprising clauses 86 to 108 inclusive, relates to the establishment of a fidelity fund by the Stock Exchange and for the application of that fund. Part X, comprising clauses 109 to 116 inclusive, includes the serious offences relating to trading and securities. Clause 109 makes it an offence to create a false or misleading appearance of active trading or a false or misleading appearance with respect to the market for, or price of, securities. It is also an offence to inflate, depress or cause fluctuations in the market price of securities by means of purchases or sales that involve no change in beneficial ownership and there is a provision that deems certain practices to have created a false or misleading appearance of active trading. The practices involve taking part in a transaction that does not involve a change in the beneficial ownership of securities: and organising a purchase or sale of securities at a specified price in the knowledge that an associate has arranged a corresponding sale or purchase at the same time.

Clause 110 prohibits the making of any statement or disseminating any information that is false or misleading in a material particular and is likely to induce the sale or purchase of securities or is likely to have the effect of raising or lowering the market price of securities if the person responsible does not care whether it is true or false—or he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular. Clause 111 creates the offence of fraudulently inducing persons to deal in securities by means of misleading, false or deceptive statements, promises or forecasts or by dishonest concealment of material facts or by recklessly making misleading, false or deceptive statements, promises or forecasts.

Clause 112 prohibits dealings in securities of a body corporate by a person who has been connected with the body corporate within the preceding six months and who, through that connection, is in possession of confidential information which, if generally available, would be likely to materially affect the price of those securities. The prohibition extends to preventing a person who, by virtue of his connection with a body corporate, is in possession of confidential information in relation to any body corporate, from dealing in securities of that other body corporate. The clause goes even further to catch the person to whom an insider passes on confidential information. Such a person—a "tippee"—is procluded from dealing in securities if he has obtained information who, to his knowledge, is an "insider" who is himself prohibited from dealing in the securities, and the persons were associated and had some arrangement for the communication of such information with a view to either or both of them dealing in securities. The clause also prohibits both an insider and a "tippee" in those circumstances from causing or procuring any other person to deal in the securities and from communicating the information if the securities are listed for trading on a Stock Exchange and the other person is likely to make use of the information. A further prohibition flowing from the inability of the insider or "tippee" to deal in securities attaches to a body corporate in circumstances where an officer of the body corporate is procluded from dealing in securities under this clause. Prohibition is relaxed in a situation where the officer concerned had no say in the decision to deal in those securities and no information in his possession was communicated to a person connected with the decision.

Clause 113 imposes a maximum penalty of $10 000 or five years imprisonment for breach of any one of the foregoing provisions of this Part, and includes a specific maximum penalty of $50 000 for any breach by a body corporate. Clause 114 provides civil remedies to compensate persons who suffer loss as a result of insider trading or other contraventions of clause 112 and requires the offender to account to the body corporate for any profit. A person who contravenes clauses 109 and 110 is also liable to compensate persons who suffer loss as a result of the activities that constitute the contravention. The commission is given the power, if it considers it in the public interest to do so, to bring an action for compensation in the name of the person entitled under this clause.

Clause 115 requires a dealer to give a client's orders priority over transactions he may enter into a principal or on behalf of persons associated with him. This will not apply if the dealer is prevented from fulfilling a client's order because specific conditions of price cannot be achieved by the dealer. Clause 116 prohibits joint purchases of securities by dealers or investment advisers with their employees and also prohibits the giving of credit by a dealer or investment adviser to an employee to allow the employee to purchase securities.

Part XI includes miscellaneous provisions including offences other than those specifically dealing with trading in securities. Clause 117 restricts the use of the term stock broker or sharebroker to persons who are members of Stock Exchanges. Clause 118 gives a general right of appeal to the Local and District Criminal Court to a person who is aggrieved by the commission's refusal to grant a licence or by its revocation of a licence or by any other act or decision of the commission. Clause 119 makes it an offence to make a false or misleading statement or a wilful omission of material matter in, or in connection with, an application for a licence; and to lodge with the commission a document containing a statement that is false or misleading.

Clause 120 provides for the retention of registers and records required to be kept in relation to a business, for a minimum period of five years, and clause 121 prohibits the concealment, distraction, mutilation, alteration or sending from the State of books required to be kept by a licensee or financial journalist as a result of which a purpose of the Act is defeated, or an examination, investigation or audit prevented, delayed or obstructed. Clause 122 makes it an offence to falsify records which are recorded or stored by means of mechanical or electronic devices or any other device in illegible form, and clause 123 requires a person who is required to keep any records to take reasonable precautions against falsification and for facilitating the discovery of falsification.

Clause 124 creates miscellaneous offences for obstructing the commission in the exercise of its powers, failing to produce books and failing to comply with a requirement of the commission under clause 9. Clause 125 provides a general penalty of $500 for failure to comply with any

provisions where no specific penalty is provided. Clause 126 implicates any officer of a body corporate in any offence committed by the body corporate if the officer was knowingly a party to the commission of the offence. Clause 127 provides for proceedings to be taken by the commission or, with the Minister's consent, by any person: it also restricts the time within which proceedings may be taken to a period of three years from the date on which the offence is alleged to have been committed, subject to any extension of that period by the Minister. Offences punishable by imprisonment for a period exceeding two years are, as provided in clause 128, punishable on indictment, all other offences being punishable summarily. Clause 129 allows the Minister to require assistance in prosecution from persons who are or have been partners, servants or agents of individual defendants or who are, or have been, officers, servants or agents of corporate defendants. Such assistance may not be required of a person who is, or who is likely to be, a defendant. Clause 130 provides for reciprocity of offences between States and Territories with corresponding provisions. Clause 131 is the usual "default penalty" provision; and clause 132 provides the general regulation-making powers. Clause 133 repeals the existing Sharebrokers Act, 1945-1975.

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

COMPANIES ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

The States of Australia and the Commonwealth are currently negotiating with a view to the introduction of uniform companies legislation into all Parliaments. Since the enactment of the so-called uniform companies legislation in the early 1960's the amendments made by the various States caused the legislation throughout Australia to become more and more diverse. However, New South Wales, Victoria, Queensland and Western Australia, the States that are parties to the Interstate Corporate Affairs Agreement, have recently brought their Acts into uniformity with each other for the purposes of the agreement. As a preliminary step towards national uniformity it is considered desirable to make the South Australian Companies Act uniform with that of the parties to the Interstate Corporate Affairs Agreement. This is the principal purpose of this Bill.

The Bill enacts a new Part XIII that establishes the Corporate Affairs Commission as a body corporate constituted of the Commissioner for Corporate Affairs. The Commissioner will be appointed until he attains the age of 65 years. He can be removed with the consent of both Houses of Parliament.

The Bill enacts a new provision that is not found in the legislation of other States relating to disclosure of gifts by companies for charitable and political purposes. The measure seeks to inform shareholders of the purposes of donations made by their company. 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 commencement of the Bill and enables the commencement of different parts of the Bill at different times. Clause 3 makes consequential amendments to section 3 of the principal Act. Clause 4 makes amendments to section 4 of the principal Act. Paragraph *(a)* brings the principal Act up to date by referring to the Industrial Conciliation and Arbitration Act, 1972-1975. Paragraph *(b)* strikes out subsection (13) which is a transitional provision that is no longer required.

Clause 5 amends section 5 of the principal Act to bring the definitions of words used in the Act into line with the interstate legislation. Paragraph *(c)* replaces the definition of "company" with the uniform definition. Paragraphs *(d)*, *(i)* and *(r)* strike out the definitions of "current liability", "non-current liability" and "the profit or loss", respectively. These definitions have been transferred to section 161 of the principal Act. Paragraph *(g)* expands the definition of "director". Recent prosecutions in other States have shown deficiencies in the previous definition and the amendment is designed to remedy these.

Clause 6 repeals and re-enacts section 6a of the principal Act. This section deals with interests in shares other than ownership of the legal title to the share. The section widens the definition and renames it as a "relevant interest" to conform with interstate legislation. Clause 7 replaces section 7 of the principal Act. The old section 7 provided for the appointment of the Registrar and Deputy Registrar and for the administration of the Act. The establishment of the Corporate Affairs Commission and the appointment of the Commissioner and the Deputy Commissioner are provided for by the new Part XIII of the Act. The new section 7 deals exclusively with the administration of the Act. It departs from the interstate legislation in omiting the provisions required by States that are parties to the Interstate Corporate Affairs Agreement.

Clause 8 amends section 8 of the principal Act removing subsection (11) which provides that the Registrar of Companies shall be the Registrar of the Companies Auditors Board and enacting provisions relating to the appointment of a Registrar under the Public Service Act, 1967-1978. Clause 9 replaces section 9 of the principal Act dealing with auditors and liquidators. Under the new section the Companies Auditors Board will be able to refuse registration of a person as an auditor or liquidator if he is not resident in a State or Territory of the Commonwealth. Under subsection (5) a person qualified as an auditor may apply for registration as a liquidator in respect of a specific company. Subsections (11), (13) and (14) extend the powers of the board in dealing with auditors and liquidators guilty of misconduct.

Clauses 10 and 11 repeal sections 10 and 11 of the principal Act. Clause 12 replaces section 12 and 13 of the principal Act with provisions in line with the uniform legislation. Subsections (3) and (4) of the new section make provisions relating to documents recorded on microfilm. Subsection (7) which replaces existing subsection (5) has been expanded to make more effective the commission's power to ensure that proper documents are filed. Subsection (8) is a new provision empowering the commission to require further information relating to his acceptance of a document submitted to him. New subsections (13) and (14) enable the commission by notice to require compliance with subsection (7). Failure to do so is an offence punishable by a fine of $200.

Clause 13 amends section 14 of the principal Act to allow large firms of accountants constituted by 100 members or fewer to practise without the need for incorporation. Clause 14 makes amendments to section 15 of the principal Act that make it uniform with interstate legislation and make improvements to the drafting. Clause 15 makes consequential amendments to section 16 of the principal Act that are self-explanatory. Clause 16 makes a

small amendment to section 20 of the principal Act for the purpose of uniformity.

Clause 17 makes amendments to section 21 of the principal Act that are consequential and designed to bring the section into conformity with the interstate legislation. Clause 18 by paragraph *(a)* makes consequential amendments to subsection (1) of section 22 of the principal Act. Paragraph *(b)* replaces the last five subsections of that section with new provisions that conform with the interstate legislation. Clause 19 makes consequential amendments. Clause 20 makes a consequential amendment to section 24 and by paragraph *(b)* replaces subsections (4) and (5) and adds new subsections that are in line with the interstate provisions.

Clause 21 makes consequential amendments to section 25 of the principal Act. Clause 22 by paragraphs *(b)* and *(d)* strikes out references to private companies in section 26 of the principal Act. The Act provided for the conversion of all private companies to public or proprietary companies and there are now no private companies in South Australia. The other paragraphs make consequential amendments substituting the commission for the Registrar. Clause 23 removes references to private companies from section 27 of the principal Act and makes amendments to the drafting to bring it into conformity with interstate legislation. Clauses 24 to 28 make consequential amendments to sections 28, 28a, 29, 34 and 36 respectively.

Clause 29 deletes a reference to a "proposed corporation". This reference is considered unnecessary and it not found in the interstate legislation. Clause 30 makes amendments to section 38 of the principal Act necessary for conformity with interstate legislation. Reference to "proposed corporations" is deleted from subsection (1) and powers presently given to the Governor in this section will after the amendment be exercised either by the Minister or by the commission. Clause 31 makes consequential amendments to section 39 of the principal Act. Clause 32 replaces section 40 of the principal Act with three new sections. These sections are designed to prevent circumvention of the requirement of a prospectus when making an offer of shares in or debentures of a corporation. Their purpose is the same as the existing provision but they give a wider and tighter control than the present section.

Clause 33 replaces subsections (2) and (2a) of section 42 of the principal Act to bring it into line with interstate legislation. Clause 34 makes a consequential amendment. Clause 35 replaces section 50 of the principal Act with consequential and minor drafting amendments in line with the interstate legislation. Clauses 36 and 37 make consequential amendments to sections 51 and 52 of the principal Act.

Clause 38 makes minor amendments and consequential amendments to section 54 of the principal Act for the sake of conformity. Paragraph *(e)* removes subsection (8) which is now of historical interest only. Clause 39 replaces section 57 of the principal Act with a simple prohibition against the issue of share warrants. Clause 40 makes consequential amendments to section 58 of the principal Act. Clause 41 removes subsection (3) of section 60 of the principal Act. This subsection is a transitional provision that is no longer required. Clause 42 strikes out subsection (6) of section 61 of the principal Act and makes a consequential amendment to subsection (8). Clause 43 replaces subsection (4) of section 62 of the principal Act with the uniform provision. Clause 44 makes a consequential amendment to section 63 of the principal Act.

Clause 45 amends section 64 of the principal Act to bring it into conformity with interstate legislation. Clause 46 enacts section 64a which requires a return relating to the division of shares into classes to be lodged with the commission. Clause 47 enacts subsection (4a) of section 65 of the principal Act which provides for an appeal from a decision of the court to the Full Court with the leave of that court. The clause also makes consequential and minor drafting amendments to other subsections.

Clause 48 by paragraph *(a)* vests the powers presently vested by section 69a of the principal Act in the Governor in the Minister. Paragraph *(b)* widens the concept of interest in stocks and shares in subsection (4) to a power exercisable in relation to stocks and shares. Clause 49 extends the scope of section 69b of the principal Act to unincorporated bodies. Clause 50 makes a consequential amendment.

Clause 51 replaces subsections (2) and (3) of section 69d of the principal Act making them uniform with interstate legislation. Clause 52 brings the drafting of section 69e into line with the interstate legislation.

Clause 53 replaces subsection (2) of section 69f of the principal Act with the uniform provision that requires notice that a person has ceased to be a substantial shareholder to be given after he becomes aware of that fact. The present subsection requires notice whether or not the person concerned knows that he has ceased to be a substantial shareholder. Clause 54 makes a consequential amendment to section 69g of the principal Act. Clause 55 repeals section 69h of the principal Act. Clauses 56 and 57 make consequential amendments to sections 69j and 69k of the principal Act.

Clause 58 removes the defence provided by section 69m and replaces it with an evidentiary presumption relating to proceedings under section 69l and 69n. These changes are necessary for uniformity. Clause 59 makes consequential amendments to section 69n of the principal Act and amendments necessary for uniformity. Clause 60 makes a consequential amendment to section 70 of the principal Act, and deletes subsection (8) of that section, to bring it into uniformity with the interstate legislation. This subsection contained a minor provision relating to debenture registers kept at places other than the registered office of a company.

Clause 61 amends section 74 of the principal Act to make it uniform with the interstate legislation. After the amendment a registered liquidator will not be able to be a trustee for debenture holders. Clause 62 by paragraphs *(a)* and *(b)* makes consequential amendments to section 74a of the principal Act. Paragraph *(c)* replaces subsection (5) with the uniform provision which is wider than the older provision and includes the necessary consequential changes. Also, reference to the commission is substituted for existing reference to the Registrar.

Clause 63 removes a transitional provision that is no longer required from section 74b of the principal Act. Clause 64 amends section 74d of the principal Act making it uniform with interstate legislation. The amendments to paragraphs *(c)* and *(d)* of subsection (1) will require the trustee for debenture holders to ensure that the guarantors of a borrowing corporation comply with Division VII of Part IV of the Act and will require it to take reasonable steps to discover any breach of the covenants of a debenture by a guarantor.

Clause 65 amends section 74f of the principal Act to bring it into line with the interstate legislation. Clause 66 of the principal Act makes a consequential amendment to section 74h of the principal Act. Clause 67 expands the definition of "interest" in relation to partnership agreements in section 76 of the principal Act and makes a drafting amendment to the definition of "investment

contract". Subclause *(b)* adds subsection (1a) to the section. Clauses 68 and 69 make consequential amendments.

Clause 70 removes subsection (2) of section 79 of the principal Act. This provision was removed from the uniform legislation some years ago. Clause 71 adds uniform subsections (1a) and (1b) to section 80 of the principal Act. Subsection (1a) empowers the Minister to remove the requirement to comply with subsection (1) in specific cases. Subsection (1b) is transitional.

Clause 72 replaces the existing subsection (1) with the more specific uniform provision. The remainder of the clause makes consequential amendments. Clause 73 makes amendments necessary for uniformity relating to registers of interest holders. Clause 74 replaces section 85 of the principal Act with alterations required for uniformity. Clause 75 replaces section 95 of the principal Act with the uniform provision. Subsection (5) of the new section deals with an application by a personal representative of a deceased person to be registered as the holder of a share, debenture or interest.

Clause 76 replaces section 96 of the principal Act with the uniform provision. Clause 77 by paragraph *(a)* makes a drafting amendment to subsection (1) of section 97 of the principal Act. The amendments made by both paragraphs *(a)* and *(b)* are necessary for uniformity. Clause 78 makes similar amendments to section 98 as are made to section 97. Clause 79 replaces section 99 with the uniform provision. Subsection (1) is expanded to include interests as defined in Division V of Part IV. The company is also required by the new subsection (1) to forward the certificates or other documents to the transferee.

Clauses 80 to 84 make consequential amendments to sections 100, 102, 103, 105 and 108 of the principal Act. Clause 85 repeals section 109 of the principal Act. This was a transitional provision which is no longer required. Clauses 86 and 87 make sections 111 and 112 of the principal Act uniform with interstate legislation. The amendments will remove technical problems that have arisen in relation to the establishment of a registered office and notification of hours during which it is open. Clause 88 replaces section 114 of the principal Act with the uniform provision. Subsection (1) provides that every proprietary company must have at least two directors. Subsection (3) is a transitional provision.

Clause 89 makes consequential amendments to section 115 of the principal Act. Clause 90 makes amendments to section 117 of the principal Act that are necessary for uniformity. Clause 91 adds subsection (8) to section 120 of the principal Act. This subsection protects a director of a public company from removal by other directors. It is identical to section 121.

Clause 92 repeals section 121 of the principal Act and replaces it with the uniform section 121 which, subject to the provisions of that section, prohibits a person over the age of 72 years acting as a director of a public company. Clause 93 amends section 122 of the principal Act to make it uniform with interstate legislation. The new paragraph *(c)* of subsection (1) includes offences under the Securities Industry Act, 1978. Clause 94 makes subsection (4) of section 123 of the principal Act uniform with the interstate provisions. The new subsection expands the requirements of a notice of interest given by a director to the other directors of a corporation.

Clause 95 amends section 124 of the principal Act, which is concerned with dealings in securities by company officers. The amendment brings that section into conformity with its interstate counterpart. Clause 96 repeals section 124a of the principal Act which does not appear in the uniform legislation.

Clause 97 extends the scope of section 125 of the principal Act to prevent loans to relatives of directors and to companies in which the director or relative has a substantial shareholding. Clause 98 makes consequential amendments to section 126 of the principal Act. Clause 99 amends section 127 of the principal Act to make it uniform with the interstate legislation. Clause 100 updates the reference to the take-over provisions in section 129 of the principal Act.

Clause 101 brings section 132 into line with the interstate legislation. Clause 102 expands section 134 of the principal Act and brings it into conformity with the interstate legislation. Particulars of other directorships will extend to public companies under the law of another State or Territory of the Commonwealth. New subsection (4) provides for the register to contain the written consent of managers and secretaries.

Clauses 103 and 104 make consequential amendments to sections 135 and 136 of the principal Act. Clause 105 amends section 137 of the principal Act. The effect of the amendment is that 200 members of a company will be able to requisition a general meeting of the company even though they do not command 10 per cent of the capital and voting rights in the company.

Clause 106 amends section 138 of the principal Act extending the notice required for the calling of a meeting of a company from seven to 14 days. Clause 107 amends section 140 of the principal Act. These amendments are either consequential or of a minor nature required for uniformity.

Clause 108 amends section 141 of the principal Act. Subsection (1) is replaced with a provision that allows two persons to be appointed proxy in certain cases. New subsection (3) makes consequential provisions relating to the notice for calling a meeting.

Clause 109 adds subsection (3) to section 142 of the principal Act in uniformity with interstate legislation. The new subsection gives voting rights to personal representatives of a deceased member in relation to meetings ordered by the court.

Clause 110 makes minor drafting amendments to section 144 of the principal Act in conformity with the interstate legislation. Clause 111 makes amendments that are required for uniformity to section 146 of the principal Act. Clause 112 amends subsections (1) and (2) of section 149 of the principal Act. The new subsection (1) requires the keeping of minutes of meetings of directors or managers at the registered office or principal place of business of the company. The amendment of subsection (2) is consequential. Clause 113 makes a consequential amendment to section 151 of the principal Act.

Clause 114 replaces subsection (2) of section 152 with the uniform provision. Reference in the subsection to notice being in the prescribed form is deleted. Clause 115 makes minor drafting amendments to subsection (3) of section 153 of the principal Act for the sake of uniformity. Clause 116 makes amendments to section 155 of the principal Act for the sake of uniformity. Clause 117 replaces subsection (4) of section 156 of the principal Act with the uniform provision. The other amendments made by the clause are consequential in nature.

Clause 118 amends section 157 of the principal Act in conformity with the uniform legislation. Clause 119 removes the existing subsection (5) from section 158 of the principal Act. This subsection enables the Registrar to allow certain companies to adopt a date other than that of the annual general meeting of the company for the purpose of preparation and filing of the annual return. This provision is not included in the uniform legislation

and is no longer considered desirable. The amendment is made by subclause (1) of the clause. Subclause (2) provides that subsection (5) has no effect after the commencement of the section. This ensures that notices given under the subsection do not continue to have effect even though the subsection has been repealed.

Clauses 120 to 122 make consequential amendments to sections 159, 159a and 160 of the principal Act. Clause 123 inserts in section 161 of the principal Act definitions of "current liability", "non-current liability" and "the profit or loss". Clause 124 repeals section 161aa of the principal Act. This is a transitional provision that is no longer required. Clauses 125 to 127 make consequential amendments to sections 161a, 161b and 162 of the principal Act.

Clause 128 makes amendments required for uniformity to section 162a of the principal Act. Clause 129 introduces a new section to the principal Act dealing with gifts made by companies for political or charitable purposes. If the total of gifts of these kinds exceeds one hundred dollars in a year they must be disclosed in the director's report. In the case of political gifts the name of the person or party to whom the gift was made must be stated. Subsection (2) provides for the situation where member companies of a group make donations. In that case the director's report for the holding company makes disclosure on behalf of the group. Clause 130 makes consequential amendments to section 162c of the principal Act and also makes amendments required for uniformity.

Clause 131 amends section 165 of the principal Act. Paragraph *(a)* makes a consequential amendment and paragraph *(b)* makes an amendment necessary for uniformity. Clause 132 of the Bill repeals and re-enacts section 165a of the principal Act, which deals with the appointment of auditors for exempt proprietary companies. The new provision, which is restricted in its application to unlimited exempt proprietary companies, provides that such companies need not appoint auditors in certain circumstances, and is expressed in terms corresponding to those of the equivalent interstate provisions.

Clause 133 repeals sections 165ab and 165b of the principal Act and enacts a new section 165b in their place. The existing section 165ab provides that exempt proprietary companies which are not unlimited companies need not appoint an auditor in certain circumstances, while the existing sections 165b sets out the general obligation of companies incorporated before the commencement of Part VI of the principal Act to appoint an auditor. The proposed section 165b substantially re-enacts the provisions of the old section 165ab in terms corresponding to those of interstate provisions. The existing section 165b has not been re-enacted in any form, as it is felt that a provision of this nature is no longer required. Clause 134 repeals and re-enacts section 166 of the principal Act. The amended section is cast in terms which bring it into line with corresponding interstate provisions.

Clause 135 amends section 166b of the principal Act. The existing subsections (5), (8), (9), (10) and (12) are replaced by new subsections corresponding to those in the interstate legislation. Clause 136 effects a similar amendment to subsections (7), (8) and (9) of section 167 of the principal Act, which sets out the powers and duties of auditors as to reports on accounts. A new subsection (numbered (8)) is inserted in section 167 of the principal Act, providing that if a company auditor becomes aware that the company has made default in complying with the provisions of section 136, or subsections (1), (3) or (4) of section 162, he shall immediately inform the commission by notice in writing. This addition brings the section into line with corresponding interstate provisions. The subsections corresponding to the old subsections (8) and (9) are now numbered (9) and (10). Clause 137 repeals and re-enacts section 167b of the principal Act. This amendment brings the terms of the section into line with the corresponding provision in interstate legislation. Clause 138 provides for a similar amendment in relation to subsection (5) of section 167c of the principal Act and also provides for minor consequential amendments to subsections (2), (7) and (9).

Clause 139 amends section 168 of the principal Act, which defines certain terms used in Part VIA of the principal Act. The amendment modifies the definition of "company" by substituting a reference to ministerial responsibility to appoint inspectors pursuant to section 170 of the principal Act for the existing reference to the Governor's authority in that regard and extends the definition to cover a related corporation of a corporation subject to investigation. This clause also inserts a new subsection (3) providing that where more than one inspector is appointed in relation to a company, each may exercise his powers of inspection independently of the other. This addition brings the section into uniformity with corresponding interstate provisions.

Clause 140 amends section 169 of the principal Act, which provides for applications for the appointment of inspectors. The amendment substitutes new subsections (3) and (4) for the existing provisions to bring the terminology of the section into conformity with interstate provisions. Ministerial responsibility for the appointment of inspectors is substituted for the Governor's existing function in that regard. Clause 141 effects a similar restatement of section 170 of the principal Act, which provides for the actual appointment of inspectors. Here, again, ministerial responsibility replaces that of the Governor and the terms of the section are brought into uniformity with corresponding interstate provisions.

Clause 142 repeals and re-enacts section 171 of the principal Act. Here again, the purpose of the amendment is to bring the section into uniformity with its interstate counterparts, and to substitute ministerial responsibility for that of the Governor in setting out the appropriate particulars of an inspector's appointment. Clause 143 enacts a new section 171a in the principal Act. The proposed section, which already exists in corresponding interstate legislation, provides that the commission itself may be appointed as an inspector. Clause 144 effects a minor consequential amendment to section 172 of the principal Act, to substitute reference to the Minister for the existing reference to the Governor.

Clause 145 amends section 175 of the principal Act, which enables an inspector to take certain action against an officer of a company subject to inspection who fails to comply with a requirement of the inspector. The amendment brings the section into uniformity with corresponding interstate provisions by removing the inspector's existing power to certify the officer's failure to the court. Under the new provision, the inspector applies to the court, which determines the matter without certification by the inspector.

Clause 146 effects a minor drafting amendment to subsection (6) of section 176 of the principal Act. Clause 147 repeals and re-enacts section 178 of the principal Act. This brings the section into uniformity with corresponding interstate provisions. Clause 148 provides for a similar amendment to section 179 of the principal Act, which is concerned with the costs of investigations, and their recovery. The amendment expands the terms of the section with additional subsections including provisions

which relate to the giving of security, the recovery of costs arising out of proceedings brought by a company in consequence of an investigation, and the recommendation by inspectors that an order for the recovery of costs be made.

Clause 149 amends section 179b of the principal Act, which is concerned with certain orders which may be made in relation to investigations. Under the proposed amendments, responsibility for these orders is transferred from the Governor to the Minister and subsections (3), (4), (5) and (6) are recast to give substantial uniformity with interstate legislation. In the proposed South Australian provision, however, the Minister's consent is not required for the institution of proceedings against a party contravening an order made pursuant to the section.

Clause 150 repeals and re-enacts section 180 of the principal Act in terms corresponding to those of the equivalent interstate provision. Clause 151 repeals section 180aa of the principal Act, which sets out certain transitional provisions which are no longer required. Clause 151a to 151m make amendments to Part VIB of the principal Act bringing it into uniformity with the interstate legislation. This Part deals with take-overs.

Clause 152 provides for minor drafting and other consequential amendments to section 181 of the principal Act, including the substitution of reference to the commission for the existing reference to the Registrar. Clause 153 amends section 183 of the principal Act providing for substituted subsections (3) and (4) to bring the section into uniformity with its equivalent interstate provisions. Clause 154 effects a similar amendment to section 186 of the principal Act. A new subsection (3) is substituted, containing minor modifications to the existing provision, which bring the section into uniformity with its corresponding interstate provisions. Reference to the commission in the section is also substituted for existing reference to the Registrar.

Clause 155 effects a minor drafting amendment to section 189 of the principal Act. Clause 156 provides for minor consequential amendments to section 191 of the principal Act which is concerned with the notification of appointment of receivers. The amendments substitute reference to the commission for the existing reference to the Registrar and remove the requirement that notice be given in a prescribed form. Clause 157 amends section 193 of the principal Act by substituting reference to the commission for the existing reference to the Registrar.

Clause 158 amends section 194 of the principal Act which sets out special provisions relating to statements submitted to a receiver. The amendment substitutes a new subsection (2) to bring the section into conformity with corresponding interstate provisions. Clause 159 similarly repeals and re-enacts section 195 of the principal Act which provides for the lodging of accounts of receivers and managers. The new section includes a provision where by the times at which accounts must be lodged can be varied so long as those accounts are lodged at least twice a year.

Clause 160 amends section 196 of the principal Act which provides for the payment of certain secured debts out of assets subject to a floating charge in priority to claims under that charge. The amendment inserts a new subsection (1a) requiring a receiver, within one month of his appointment, to call a meeting of employees entitled to priority by virtue of section 196 in order to inform them of their rights. "Employee" is defined to include a former employee.

Clause 161 repeals section 198a of the principal Act which set out certain transitional provisions which are no longer required. Clause 162 amends section 199 of the principal Act. The amendment substitutes new subsections (1) and (4) for the existing provisions to bring the section into uniformity with its interstate counterparts. Reference to the commission is also substituted for existing reference to the Registrar in section 199. Clause 163 provides for an identical substitution of terminology in section 202 of the principal Act, while clause 164 does the same in relation to section 202b.

Clause 165 amends section 203a of the principal Act. The amendment substitutes a new subsection (6) to effect uniformity with the corresponding interstate provision, and substitutes reference to the commission in the section for existing reference to the Registrar. Clause 166 effects a minor amendment to section 203b of the principal Act which brings the terms of the section into uniformity with corresponding interstate provisions. Clause 167 amends section 203c of the principal Act. The clause provides for minor drafting amendments which bring the section into uniformity with its interstate counterparts, and substitutes reference to the commission for existing reference to the Registrar.

Clause 168 amends section 204 of the principal Act, which is concerned with the termination of appointment of official managers. The amendment inserts a new paragraph *(d)* in subsection (2) of the section providing that the appointment of an official manager may be determined if the official manager becomes the auditor of the company. This modification brings the section into uniformity with its interstate counterparts. Clause 169 substitutes reference to the commission for existing reference to the Registrar in section 206 of the principal Act. Clause 170 amends section 208 of the principal Act, which is concerned with the application and disposal of company assets during official management. The amendment substitutes a new subsection (4) which makes it clear that an official manager may, with the leave of the court mortgage or charge any assets of the company. Here again, the amendment brings the section into conformity with its interstate counterparts.

Clause 171 substitutes reference to the commission for existing reference to the Registrar in section 211a of the principal Act. Clause 172 amends section 212 of the principal Act which deals with the release of official managers. Reference to the commission is substituted for existing reference to the Registrar and further modifications are effected to bring the terms of the section in conformity with its interstate counterparts. For that purpose, new subsections (9), (10) and (11) are substituted for the existing provisions, subsection (8a) which required notice of a resolution adopting the report of an outgoing official manager to be lodged with the Registrar is deleted and a new subsection (5a) is inserted requiring an outgoing official manager to give appropriate notice to the commission if a meeting of creditors held in consequence of his ceasing to be official manager is not held on the day for which it was called.

Clause 173 amends section 213 of the principal Act which requires notice of official management to appear on the stationery and business documents of any company subject to official management. The clause imposes strict liability on officers of the company who fail to comply with the requirements of the section, thus bringing it into conformity with corresponding interstate provisions. Clause 174 substitutes reference to the commission for existing reference to the Registrar in section 214 of the principal Act.

Clause 175 amends section 218 of the principal Act which is concerned with the liability of past and present members of a company on winding up. The amendment substitutes a new paragraph *(aa)* in subsection (1) of the section in order to bring its terms into conformity with

interstate provisions. For the same purpose, the provisions in subsections (2) and (3) relating to the unlimited liability of directors are deleted and the existing subsection (4), which relates to the general liability of members, is renumbered subsection (2). The clause also makes a minor consequential amendment to paragraph *(e)* of subsection (1) and substitutes reference to the commission for the existing reference to the Registrar.

Clause 176 amends section 221 of the principal Act which provides for the winding up of companies under an order of the court. The amendment removes reference in the section to petitions and replaces them with reference to applications. Similarly, reference to the presentation of petitions is replaced by the reference to the commencement of proceedings. These modifications have been introduced in the interests of uniformity. Reference to private companies has also been removed from the section. Finally, the amendment substitutes a new paragraph *(b)* of subsection (2), which is cast in terms uniform with those of the relevant interstate provision and, again for the sake of uniformity paragraph *(d)* of subsection (2) has been deleted. This paragraph prevented the court from making a winding up order in relation to a company in the process of being wound up voluntarily unless it was satisfied that the voluntary winding up could not be continued with due regard to the interests of the creditors or contributories.

Clause 177 amends section 222 of the principal Act, by deleting reference to private companies. Clause 178 repeals and re-enacts section 223 of the principal Act. The new provision corresponds with the equivalent interstate provision. Clause 179 repeals and re-enacts section 224 of the principal Act so that the new section corresponds with the equivalent interstate provision. Clause 180 repeals and re-enacts section 225 of the principal Act so that the new section corresponds with the equivalent interstate provisions. The amendment involves the deletion of paragraphs *(c)*, *(d)*, *(e)* and *(f)* of subsection (2). These relate to matters of Court procedure which, it is felt, need not be spelt out specifically in the Companies Act.

Clause 181 repeals and re-enacts sections 226 and 227 of the principal Act. The primary object of the amendment is to achieve uniform terminology with corresponding interstate provisions. The new section 227 includes a power of the court to validate any disposition of company property made subsequent to the commencement of proceedings for winding up, and to permit the business of the company to be carried on in that period, on such terms as it thinks fit. Clause 182 amends section 229 of the principal Act by substituting reference to "proceedings" for the existing reference to "petition".

Clause 183 amends section 230 of the principal Act which provides for the lodging of winding up orders. The amendment substitutes reference to the commission for the existing reference to the Registrar, and the expression "petition" is replaced by the expression "application" which brings the section into uniformity with other amended sections in the Act, and the corresponding interstate provisions. Clause 184 repeals section 231 of the principal Act and enacts new sections numbered 231 and 231a. These relate to official liquidators and their appointment as liquidators of companies, respectively, and they correspond substantially with equivalent interstate provisions. The new section 231 empowers the Minister to appoint registered liquidators as official liquidators. The new section 231a corresponds with the old section 231.

Clause 185 amends section 232 of the principal Act. The amendment substitutes a new subsection (3) for the existing provision and inserts a new subsection numbered (3a). These changes are essentially limited to the presentation, rather than the content of the section and have been introduced in the interests of uniformity. Clause 186 amends section 233 of the principal Act. The amendment substitutes reference to the commission for existing reference to the Registrar in the section, increases the time limit for liquidators to serve notices pursuant to the section from seven to 14 days, which corresponds with equivalent interstate requirements, and amalgamates paragraphs *(b)* and *(c)* of subsection (2).

Clause 187 amends section 234 of the principal Act which provides that a statement of a company's affair on the time of its winding up be submitted to the liquidator. Subsections (2) and (3) are deleted and new subsections numbered (2a), (3), (3a) and (3b) are inserted. The new subsections correspond to the equivalent interstate provisions. The class of persons who may be required to submit a statement has been expanded to include employees of corporations which are at the relevant time, officers of the company. Clauses 188 and 189 substitute reference to the commission for the existing reference to the Registrar in sections 240 and 243, respectively, of the principal Act.

Clause 190 amends section 250, of the principal Act, so that the section becomes uniform with corresponding interstate provisions, by removing unnecessary statements relating to court procedure in subsections (6) and (8), the latter of which is removed in its entirety. Clauses 191 and 192 substitute reference to the commission for the existing reference to the Registrar in sections 254 and 257, respectively, of the principal Act. In the interests of uniformity, the former clause also removes a requirement in section 254 that a prescribed notice accompanying a copy of a resolution for voluntary winding up forwarded to the commission.

Clause 193 amends section 259 of the principal Act, which requires liquidators appointed by members to wind up a company's affairs to call a creditors meeting in cases of apparent insolvency. The amendment substitutes in lieu of the present subsection (4) a new subsection corresponding to the equivalent interstate provision. This involves the substitution of reference to the commission for the existing reference to the Registrar, and other minor changes.

Clause 194 substitutes reference to the commission for the existing reference to the Registrar in section 272 of the principal Act. Clause 195 repeals and re-enacts section 276 of the principal Act. This amendment provides for minor changes of terminology which bring the section into uniformity with its interstate counterparts.

Clause 196 enacts a new section numbered 277a providing that leave of the court shall be required for persons to act as liquidators in certain cases. A corresponding provision exists in the interstate legislation. The central provisions of the section prohibit a registered liquidator from acting as the liquidator of a company, except with leave of the court, if he is indebted to the company or a related corporation in an amount exceeding $1 000 or if he is an officer of the company, a partner, employer or employee of an officer of the company, or a partner or employee of an employee of an officer of the company.

Clause 197 amends section 278 of the principal Act. A new subsection (2) is substituted for the existing provision, for the purposes of uniformity with interstate provisions, and the amendment also substitutes reference to the commission for reference to the Registrar. Clause 198 effects an identical substitution of terminology in section 280. Clause 199 amends section 281 of the principal Act, which is concerned with liquidator's accounts. This clause

substitutes new subsections (1) and (2) and inserts a new subsection numbered (6). The new subsections (1) and (2) substitute reference to the commission for reference to the Registrar and bring the section into conformity with corresponding interstate provisions, as does the additional subsection (6), which provides that accounts may be lodged with the commission at prescribed times, in lieu of the times specified in subsection (1) of the section.

Clause 200 substitutes reference to the commission for the existing reference to the Registrar in section 282 of the principal Act. Clause 201 amends section 284 of the principal Act by substituting an expanded subsection (3) for the existing provision. Subsection (3) relates to the destruction of company documents after a winding up, and the new subsection is in conformity with the equivalent interstate provisions. Clauses 202 and 203 substitute reference to the commission for existing reference to the Registrar in sections 286 and 287, respectively, of the principal Act.

Clause 204 repeals section 290 of the principal Act which empowers the court to appoint commissioners to take evidence during the course of a winding up. This provision is considered unnecessary, and has been repealed interstate.

Clause 205 amends section 291 of the principal Act. New subsections numbered (3) and (4) are inserted to bring the section into conformity with corresponding interstate legislation. These subsections lay down formulae for computing the debts of insolvent companies.

Clause 206 amends section 292 of the principal Act which sets out the priorities for payment of certain unsecured debts in a winding up. The purpose of this amendment is to bring the terms and numbering of subsections in this extensive provision into conformity with its interstate counterparts. This involves the insertion of various new subsections. First, the existing subsections (1), (2), (3) and (4) are removed and replaced by new subsections numbered (1), (1a) (1ab), (1b), (1c), (1d), (1e), (2), (3) and (4). The new subsection (1) provides for a scheme of priorities which is substantially the same as that which exists at the present time, except that three new items are inserted, giving a total of eight. The new items are so placed as to give them second, third and eighth priority. The first of the new items is set out in paragraph *(aa)* of the new subsection (1) and is concerned with the properly and reasonably incurred costs of an official manager in cases where the winding up of a company commences within two months after the determination of a period of official management. The second of the new items is set out in paragraph *(ab)* of subsections (1) and relates to debts of the company properly and reasonably incurred by an official manager in the same circumstances as those which have been just described in relation to the provisions of paragraph *(aa)*. The third of the new items is set out in a new paragraph *(f)* of subsection (1) and is concerned with the costs of investigations carried out under either the principal Act or the Securities Industry Act, 1978.

The new subsection (1a) provides that where, after the relevant date, an order for costs is made pursuant to an investigation of the type referred to in paragraph *(f)* of subsection (1) against a company that is being wound up, the amount specified in the order is admissible to proof against the company, and further, that it shall in effect, enjoy the priority granted by paragraph *(f)* of subsection (1). (The expression "relevant day" is defined later in the section to mean the date of the winding up order in the case of a company ordered to be wound up by the court which has not previously commenced to be wound up voluntarily, and the date of the commencement of the winding up, in any other case.) The new subsection (1ab) provides that where a copy of an order for costs referred to in subsection (1a) is served on the liquidator of a company and the liquidator has not admitted the amount specified in the order to proof, he shall serve notice on the Minister that he has not admitted that amount to proof and shall not make any further payments out of the property of the company, other than payments of debts which under subsection (1) have priority over all unsecured debts, until the expiration of seven days after serving that notice.

The new subsection (1b) provides that where a contract of employment with a company being wound up was subsisting immediately before the relevant date, the employee under the contract shall be entitled to payment under subsection (1) of the section as if his services with the company had been terminated by the company on the relevant date. The new subsection (1c) provides that where, for the purposes of the winding up of a company, a liquidator employs a person whose services with the company had been terminated by reason of the winding up, that person shall, for the purpose of calculating any leave entitlement, be deemed to be employed by the company while the liquidator employs him in relation to the winding up. The new subsection (1d) provides that where, after the relevant date, an amount in respect of long service leave or extended leave becomes due to a person referred to an subsection (1c) and in respect of the employment referred to in that section, that amount shall be regarded as a cost of the winding up.

The new subsection (1e) provides that where at the relevant date the length of qualifying service of a person employed by a company which is being wound up is insufficient to entitle him to any amount in respect of long service or extended leave but, by the operation of subsection (1c) that person becomes entitled to such an amount after that date, that amount shall be regarded as a cost of the winding up to the extent of an amount that bears to that amount the same proportion as the length of his qualifying service after that relevant date bears to the total length of his qualifying service, and shall, to the extent of the balance, be deemed to be an amount referred to in paragraph *(d)* of subsection (1) of the section. The substitued subsections (2), (3) and (4) incorporate material consequential on the insertion of the new subsections just discussed and are thus in uniformity with their interstate counterparts.

Clause 206 also removes the existing subsections (8), (9) and (10) and substitutes new subsections numbered (8), (9), (10), (11) and (12). Once again, this modification is designed to bring the section into uniformity with its interstate counterparts. The subsections (8), (10) and (12) are substantially equivalent to the existing subsections (8), (9) and (10). The new subsection (9) provides that where an amount due in respect of workers' compensation under any law relating to workers' compensation is a weekly payment, that amount shall, for the purposes of subsection (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if an application were made for that purpose under that law. The new subsection (11) provides that within one month of the relevant date the liquidator shall call a meeting of creditors entitled to certain priorities pursuant to the section to inform them of their rights and to advise them, as far as is possible, the time at which payments are likely to be made.

Clause 207 amends section 293 of the principal Act by deleting reference to the presentation of the petition, and substituting reference to the commencement of proceedings. Clause 208 amends section 296 of the principal Act. The amendment substitutes a new subsection (6) for the

existing subsection, to bring the terminology of the provision into conformity with its interstate counterpart.

Clause 209 amends section 306 of the principal Act. The amendment substitutes reference to the commission for the existing reference to both the Minister and the Registrar. It also deletes the existing subsections (4), (5), (6), (7) and (8) and substitutes new subsections numbered (4), (5), (6), (6a), (7), (8) and (8a). The purpose of this substitution is to ensure uniformity both of terminology and numbering of subsections, with the interstate counterparts of those subsections. Although the total number of subsections has been increased, the overall content remains much the same, as the new subsections (6) and (6a) are substantially equivalent to the old subsection (6), and the new subsections (8) and (8a) are substantially equivalent to the old subsection (8).

Clause 210 amends section 307 of the principal Act by substituting reference to the commission for the existing reference to the Registrar. Clause 211 repeals and re-enacts section 308 of the principal Act. The provisions of the new section are substantially the same as those of the old; the amendment has been made to ensure uniformity of terminology and to substitute reference to the commission for existing reference to the Registrar.

Clauses 212, 213, 214 and 215 amend sections 309, 310, 311 and 312, respectively, of the principal Act. In each case the amendment substitutes reference to the commission for existing reference to the Registrar. Clause 216 amends section 313 of the principal Act so that reference to the commission is substituted for existing reference to the Registrar. Clause 217 amends section 314 of the principal Act by removing a short superfluous phrase and thereby brings the section into conformity with its interstate counterpart. Clause 218 provides for a similar amendment to section 315 of the principal Act.

Clause 219 repeals and re-enacts section 334 of the principal Act. The amendment substitutes Ministerial responsibility for that of the Governor in relation to declarations that corporations are investment companies for the purposes of Division II of Part IX of the principal Act. This amendment brings the section into uniformity with the corresponding interstate provisions. Clause 220 provides for consequential changes to section 339 of the principal Act.

Clause 221 amends section 346 of the principal Act. As well as substituting reference to the commission for existing reference to the Registrar, this amendment deletes the existing subsections (1), (4), (9) and (10) and substitutes new subsections, including a subsection numbered (1a), which follow the terminology of the corresponding interstate provision.

Clause 222 amends section 347 of the principal Act. The amendment substitutes reference to the commission for the existing reference to the Registrar and deletes subsection (1), and substitutes new subsections numbered (1) and (1a). These new subsections are in conformity with the corresponding interstate provisions. The new subsection (1a) sets out a minor administrative provision consequential on the amendments to section 346. Clause 223 amends section 348 of the principal Act. The amendment substitutes reference to the commission for the existing reference to the Registrar, and deletes the existing subsection (5) and substitutes a new subsection, also numbered (5). The purpose of this substitution is to bring the terminology of the subsection into conformity with the corresponding interstate provision.

Clause 224 repeals section 349 of the principal Act, which provided for the suspension of certain fees in cases where a foreign company opened a share registration office but did not actually carry on a business. Clause 225 amends section 352 of the principal Act. Reference to the commission is substituted for the existing reference to the Registrar, a new subsection (2a) is inserted and a new paragraph *(c)* to subsection (3) is substituted for the present provision. All these modifications bring the section into conformity with its interstate counterpart. The new subsection (2a) provides that if a foreign company is placed under official management in its place of incorporation, notice of that fact shall be lodged with the commission.

Clause 226 repeals section 352a of the principal Act. This section is now unnecessary in view of the new subsection (2a) to section 352. Clause 227 amends section 353 of the principal Act, by substituting reference to the commission for existing reference to the Registrar.

Clause 228 amends section 354 of the principal Act, which provides for the maintenance of branch registers for foreign companies. The amendment substitutes reference to the commission for the existing reference to the Registrar and deletes the existing subsections (6) and (8) and substitutes new subsections, and in addition, inserts a new subsection (9). These modifications bring the section into conformity with the equivalent interstate provision. The new subsection (9) provides that a reference to shares in the section, and in sections 355 to 360 of the principal Act shall be construed as including a reference to debentures.

Clause 229 repeals and re-enacts section 362 of the principal Act. The new section expands the existing provisions somewhat, and is in conformity with its interstate counterpart. Clause 230 amends section 363 of the principal Act. The amendment strikes out subsection (2), which relates to court procedure, and is considered unnecessary. It has been deleted from the corresponding interstate section.

Clause 231 repeals and re-enacts section 364 of the principal Act. The new section expands the existing provisions and corresponds with the equivalent interstate provisions.

Clause 232 strikes out subsection (3) of section 365 of the principal Act which empowers the court to grant relief in certain proceedings. Subsection (2) provided that a person who had reason to believe that a claim might be made against him in respect of any negligence, default, breach of duty or trust, could apply to the court for relief as if those proceedings had already been instituted. It is felt that this provision is unnecessary. Clause 233 amends section 367a of the principal Act. The amendment substitutes reference to the commission for existing reference to the Attorney-General, and effects other minor amendments which bring it into substantial uniformity with the corresponding interstate provision. Subsection (8), which deals with court procedure, has also been deleted, as it is considered unnecessary.

Clause 234 repeals and re-enacts section 367b of the principal Act. The amendment expands the section somewhat and brings it into uniformity with its interstate counterpart. Reference to the commission is substituted for existing reference to the Attorney-General. Clause 235 repeals and re-enacts section 367c of the principal Act. This amendment is consequential on the amendments to the previous two sections.

Clause 236 repeals and re-enacts section 368 of the principal Act. The new section, which is in conformity with its interstate counterpart substitutes reference to the commission for the existing reference to the Minister. Clause 237 amends section 370 of the principal Act which is concerned with the inspection of registers. A new subsection (2) is substituted for the existing provisions to bring the section into conformity with its interstate

counterparts.

Clauses 238 and 239 amend sections 371 and 372 of the principal Act, respectively, by substituting reference to the commission for the existing reference to the Registrar. Clause 240 amends section 374 of the principal Act which imposes restrictions on the offering of shares and debentures for subscription or purchase. The amendment substitutes a new subsection (2), a new paragraph *(a)* in subsection (4) and a new subparagraph (ii) in paragraph *(c)* of subsection (4), to bring the provision into uniformity with its interstate counterparts. An addition to paragraph *(b)* of subsection (14) provides that the section does not apply to shares in credit unions registered under the Credit Unions Act, 1976. This also corresponds with interstate legislation.

Clause 241 repeals and re-enacts section 374b of the principal Act, to bring the terminology of the section into uniformity with corresponding interstate provisions. Clause 242 amends section 374c of the principal Act. A new subsection (3) is inserted specifying a time limit during which proceedings under the section may be brought, thus bringing the section into conformity with its interstate counterpart. Clause 243 amends section 374d of the principal Act. The amendment substitutes reference to the commission for the existing reference to the Attorney-General and inserts a new subsection numbered (1a), as well as modifying the terminology of subsection (5). These amendments are all designed to bring this section into conformity with interstate provisions.

Clause 244 amends section 374e of the principal Act to bring the section into uniformity with interstate provisions. The changes are essentially consequential on the earlier amendments to sections 374b, 374c and 374d. Clause 245 amends section 374h of the principal Act. The amendment substitutes reference to the Commissioner for existing reference to the Registrar and substitutes new subsections (2) and (5) for the existing provisions. The substituted subsections bring the section into uniformity with corresponding interstate provisions.

Clause 246 amends section 375 of the principal Act substituting a new subsection (2) for the existing provision in order to bring the section into uniformity with the corresponding interstate section.

Clause 247 amends section 378a of the principal Act, bringing it into uniformity with interstate provisions by the substitution of a new subsection (1).

Clause 248 amends section 382 of the principal Act bringing it into uniformity with the corresponding interstate provisions by the substitution of a new subsection (1). Clause 249 amends section 390 of the principal Act which provides for discovery in aid of execution against a company. The amendment increases the maximum judgment to which the section applies from $400 to a more realistic figure of $2000.

Clause 250 repeals and re-enacts section 396 of the principal Act, which sets out the Governor's regulation making power. This amendment is necessary because of other amendments to the principal Act in this Bill.

Clause 251 repeals the existing Part XIII of the principal Act, which sets out special provisions relating to local proprietary and private companies. As the notion of these companies is to disappear under the uniform legislation, this Part is no longer required. It is replaced by a new Part XIII which establishes the Corporate Affairs Commission. The new Part XIII consists of sections numbered 397 to 406, inclusive. The new section 397 establishes the commission as a body corporate and provides that it shall consist of the Commissioner or a Deputy Commissioner. Section 398 provides for the delegation of the commission's powers and section 399 makes it clear that all property, powers, authorities, immunities, rights, privileges, functions, obligations and duties which before the commencement of the section were vested or imposed upon the Registrar of Companies shall be vested in the commission. Section 400 provides that the commission shall carry out any direction given by the Minister on a matter of policy and section 401 sets out certain financial provisions relating to the commission.

Under section 401 all moneys payable to the commission shall be paid into the general revenue of the State, and the Auditor-General is required to audit the accounts of the commission at least once a year. Section 402 requires the commission to submit a report to the Minister each year, and further provides that the Minister shall cause a copy of the report to be laid before each House of Parliament. Section 403 provides for the appointment of the Commissioner by the Governor. It is proposed that the Commissioner be appointed for a term expiring on the day on which he attains the age of 65 years, and on other terms and conditions determined by the Governor. The Commissioner is not to be subject to the Public Service Act, 1967-1978. Sections 404 and 405 provide for the appointment of a Deputy Commissioner for Corporate Affairs and an Assistant Commissioner for Corporate Affairs, respectively. These officers are to be appointed pursuant to the Public Service Act, 1967-1978. Section 406 enables the commission to have such officers as are necessary to carry out its functions. These officers will also be appointed pursuant to the Public Service Act, 1967-1978.

Clauses 252 to 259 inclusive, amend, substitute or repeal the various schedules to the principal Act. These modifications are consequential on the amendment to the main body of the Act, and bring the schedules into uniformity with the schedules to the corresponding interstate Acts.

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

MINORS CONTRACTS (MISCELLANEOUS PROVISIONS) BILL

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

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

That this Bill be now read a second time.

It implements the recommendations of the Law Reform Committee of South Australia in its Forty-first Report, relating to the contractual capacity of infants. The committee was unable to reach agreement as to any change in general approach to the law but confined itself to certain specific matters, all of which are dealt with in the Bill. The report points out that problems in this area have become less frequent since the reduction in 1971 of the age of majority.

The general principle of the law governing the contractual capacity of minors is that contracts are not enforceable against minors, as the law needs to protect them against exploitation and their own immaturity. There are, however, situations in which contracts may be enforced against minors; a contract of service that is beneficial to the minor is enforceable.

A minor is bound to pay a reasonable price, although not necessarily the contract price, for things which are necessary to him in his position in life and which have been delivered to him. Although a minor is not bound by his contracts, he can generally enforce them against the other party. A contract which is not enforceable against a minor

is said to be "voidable" by him at his option.

After a person has attained his majority, a voidable contract may become enforceable against him if he ratifies it, or, in the case of certain contracts, unless he avoids it within a reasonable time. The exact scope of the second class is uncertain but it is generally confined to contracts relating to land, the acquisition of shares in companies, and partnership agreements. There seems to be no convincing reason for treating these contracts as different from those contracts that are not enforceable unless there is a positive act of ratification.

In some jurisdictions the Legislature has sought to protect minors, or rather ex-minors, by prohibiting ratification altogether. There is no doubt that unreasonable pressure will be sometimes brought to bear on persons who have recently attained their majority to ratify contracts made during minority but they should require no greater protection than other young adults who are subjected to pressure to enter into contracts. It would in any case be difficult to prevent the parties from entering into a new contract that was substantially the same as the contract made during minority. Possibly the provisions of the proposed contracts review legislation would be useful in these cases.

The committee saw no reason to preserve the distinction between those contracts which are unenforceable unless ratified on or after attaining majority and those which are enforceable unless disaffirmed. It recommended that ratification should be essential in all cases. By section 5 of the Imperial Act 9 Geo. IVc 14 (Lord Tenterden's Act), which is in force in South Australia, ratification of a minor's contract must be in writing. The section provides:

> No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

The language is rather archaic, and the section was no doubt drafted with the complexities of the old system of pleading in mind. In the Bill, the requirement that ratification be in writing is included in the clause relating to ratification generally.

Under the present law, a person who has guaranteed that a minor will carry out his obligations under a contract may escape liability on the ground that the minor has no obligations under the contract, since it is unenforceable against him. An experienced business man would avoid this unjust result by asking for an indemnity rather than a guarantee, or by making the adult a co-contractor, but private persons may be caught. The committee has recommended that a guarantor should be liable as though the minor were of full age.

A proposed contract may be in the interests of a minor but the other party may hesitate because he cannot be sure that, if a dispute arises, a court will find that the contract is one which should be enforced against the minor. The committee recommends the enactment of a provision enabling a proposed contract to be approved by a court. In such a case the contract will be binding on the minor.

Where a person avoids a contract on the ground of his minority he cannot recover any money or other property which he has previously transferred under the contract to the other party, unless he has received no benefit at all and the other party has not begun to perform his obligations. While this rule may be appropriate in some cases, it may work injustice where a minor who has quite properly avoided a contract must suffer the loss of valuable property because he has received some trivial benefit.

The Bill follows the committee's recommendation in providing that a court may exercise its discretion in ordering the return of property to a minor. The rules relating to restitution of property by minors who have avoided contracts are not affected.

The last recommendation related to the position of minors who have a proprietary interest in land. The law relating to minors' property was summed up by Mr. Justice Napier (as he was then) in the case of *in re Coombe 1941 S.A.S.R. 197* as follows:

> Apart from statutory authority the real estate of an infant cannot be bound by contract, nor settled by his parent or guardian or by the court, under its general powers in reference to infants, unless it is a case of salvage, although the court does assume to deal with the interests of an infant in personal estate when it would be for his benefit.

Section 244 of the Real Property Act, 1886-1975, provides that a guardian may represent a minor for the purposes of the Act, and section 245 of the Act provides that, where there is no guardian, the court may appoint one for this specific purpose. Although, as was pointed out in Coombe's case, the point is not free from doubt, it is probable that the effect of these provisions is merely to confer indefeasibility of title on, for instance, a transferee and to authorise the Registrar-General to register the relevant documents. They do not give a purchaser a right to enforce the contract against the land, nor do they prevent the infant from subsequently taking action against the guardian.

The Bill provides that a court may appoint a person to transact any specific business, or business of a specified class, and thereby to incur liabilities on behalf of a minor. This will apply to transactions involving any property, whether real or personal. Thus, where a particular transaction is clearly for a minor's benefit, the court will have a certain means of ensuring that the transaction is effectually carried out, whether or not the transaction involves some dealing in real property.

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 come into operation on a day to be fixed by proclamation. Clause 3 is the interpretation section. Clause 4 provides that a contract which is unenforceable against a person because of his minority shall remain enforceable unless it is ratified in writing by him on or after the day on which he attains his majority.

Clause 5 provides that a contract of guarantee in relation to a minor's contract is enforceable against the guarantor as though the minor were of full age. Clause 6 provides for approval by a court of a proposed contract. Clause 7 provides that, where a minor has avoided a contract on the ground of minority, a court may order restitution to the minor of any property that has passed from the minor under the contract. Clause 8 provides for the appointment by a court of an agent to transact business on behalf of a minor.

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

COMMERCIAL MOTOR VEHICLES (HOURS OF DRIVING) ACT AMENDMENT BILL

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

ROAD MAINTENANCE (CONTRIBUTION) ACT AMENDMENT BILL

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

DANGEROUS SUBSTANCES BILL

Adjourned debate on second reading.
(Continued from 6 February. Page 2328.)

The Hon. J. A. CARNIE: This Bill repeals the Inflammable Liquids Act and the Liquefied Petroleum Gas Act and is designed to control dangerous substances covered by those Acts and, in addition, to bring into its ambit substances such as acids, ammonia, chlorine, etc., which at the moment are not covered. The substances to be covered are to be prescribed by regulation, although when the Bill was originally introduced in the other place it provided for them to be prescribed by proclamation. The Opposition generally does not approve of declaration by proclamation and, where possible, prefers regulations, so that they can come under the scrutiny of Parliament. The Government wisely accepted the Opposition's amendments in another place, changing the proclamation provision to one involving regulations.

The need for such an amendment is more important in this case than in many others, because this Bill does break new ground and in the early stages of operation of the Act mistakes are bound to be made. I do not say this critically, but with something new such as this measure there are bound to be some troubles that occur and mistakes made, and it is much better that the relevant matters come under the scrutiny of Parliament by way of regulations. One of the most important aspects of this Bill is that it provides for the setting up of an inspectorate.

In comparing this Bill with the Acts that are to be repealed, the powers of the inspectorate are much wider than presently applied. Are the powers too wide? Not only can an inspector inspect premises: he can stop vehicles, he can examine and confiscate substances, and he can confiscate without any recompense being made to the owner of those substances. All that can be done without a warrant. The powers in clause 29 are wide; they are almost harsh, and the clause provides:

> (1) Where a person is convicted of an offence against this Act, the court may order that any dangerous substance in relation to which the offence was committed and that is the property of that person be forfeited to the Crown.
>
> (2) Any dangerous substance forfeited to the Crown shall be disposed of in such manner as the Minister may direct and, where any dangerous substance is disposed of by way of sale, the proceeds of the sale shall be paid into the general revenue of the State.

In effect, this means that whatever fine may be imposed by a court upon conviction of an offence, this provision amounts to a further fine against the offender through the confiscation of his goods. Also, when the goods are sold, the revenue income goes to the State. Clause 27 provides:

> Where a body corporate is guilty of an offence against this Act, every member of the governing body and every manager of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for that offence unless he proves that he could not by the exercise of reasonable diligence have prevented the commission of that offence.

To make every member of the governing body corporate liable for the same penalty seems unduly harsh. Both clauses 27 and 29 seem to be more severe than is necessary but, beyond making that comment, I do not intend to try to amend those provisions.

In regard to licensing, Division II deals with licences to keep dangerous substances, and Division III deals with licences to convey such substances. In most cases it means dual licences will be involved, because most people conveying dangerous substances also store them and will need two licences, presumably for both of which they will have to pay a fee. True, it is good that this matter is placed under the scrutiny of Parliament by way of regulations, because we will also have some say about the fees that are set, and perhaps people seeking dual licences might obtain a reduction in the fee. I hope the Government looks at this matter.

One matter dealt with in the Bill could concern everyone in South Australia. The Bill provides that it will be necessary to have a licence to convey a dangerous substance. Obviously, petrol will be declared a dangerous substance, as it is one of the few substances covered by an Act. Does it mean that to carry petrol in the tank of one's motor car (that is conveying petrol) it will be necessary to have a licence? The matter of swimming pool chemicals is raised. Such chemicals are becoming more common household items and in most cases they are dangerous. In his second reading explanation the Minister specifically referred to such chemicals and rightly stated:

> . . . all of which are highly dangerous if not kept, handled, conveyed, used or disposed of in a safe manner.

Do the provisions in this Bill mean (as they are and before we see the regulations) that anyone buying swimming pool chemicals and conveying them or storing them in a garage, etc., will need a licence unless such people are exempted? Even if buyers are exempted from the payment of a fee or the necessity to obtain a licence, they will fall under the provisions concerning the storage of such chemicals.

Again, I refer to the wide powers of the inspectorate. Will inspectors now be able to enter a person's premises to see that swimming pool chemicals are correctly stored? Inspectors can enter premises without a warrant. They have wide powers. That is another matter upon which I hope the Minister will comment in his reply or in Committee. We should be told what sort of regulations the Government intends to introduce, not specifically, but generally what is intended.

Regarding primary producers, there is no doubt that some stock dips and crop sprays need to be declared dangerous substances because, in many cases, they are extremely dangerous, especially when not handled correctly. Primary producers both convey and store sometimes large quantities of stock dips and crop sprays. Does the Government intend that they should obtain licences to do this, or is it intended to exempt them? Again, these questions should be answered before this Bill is finally passed.

Finally, there is no doubt that, in view of accidents that have occurred throughout Australia (some shocking accidents), such legislation is needed. It is unfortunate that all dangerous substances cannot be brought under the one Act, as in Tasmania or New South Wales. Some poisons will still be controlled under the Food and Drugs Act; explosives will still be controlled under the Explosives Act; and other substances will remain under the control of other leglislation. I can accept the Minister's explanation that this presents an administrative problem. Obviously, the Government has looked at the possiblity of bringing all these substances under the one Act. Therefore, with the reservations that I have expressed, I support the second reading.

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

the debate.

LAND AND BUSINESS AGENTS ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 6 February. Page 2328.)

The Hon. C. M. HILL: When the Land and Business Agents Act was passed in 1973, section 89 abolished what was known as instalment contracts. These were contracts under which a purchaser agreed to acquire land and pay the vendor by instalment and, when ultimately the total purchase price was paid, a transfer was then executed and accepted, and the purchaser then received title to the land in his name.

That form of contract has given rise to some problems, not so much regarding house sales but in regard to land sales. It occurred because in some instances vendors had sold land on terms, had mortgaged the land at a later date and, when the purchaser came to seek title after having paid the full purchase price to the vendor, the vendor was unable to provide title to the land.

What had happened was that the vendor had got into trouble with his mortgagee, who had foreclosed, and all sorts of unfortunate repercussions occurred in those situations. I think that the public and all persons connected with real estate were pleased when terms contracts were abolished at that time.

It seems that the Housing Trust has some doubt about whether it can continue to sell houses on terms. It may well be in conflict with the existing section 89 unless an amendment is made to the Land and Business Agents Act. I support the change. I do not, of course, agree with the principle that the State or any of its instrumentalities should have powers that are not available to private citizens. However, in this case one must accept that the trust could, at all times, provide title to its purchasers.

Further, in this particular section of the trust's activities, it usually is dealing with people of very limited means and, if this kind of transaction can be made, those purchasers are not put to the expense of preparing a mortgage document, or the expense of stamp duty on that mortgage.

Also, whilst the purchaser eventually will have to pay the costs of the transfer and the stamp duty thereon, it is more convenient for these people in most instances to find that extra expense at the conclusion of their contract rather than at the beginning of it, when they have not much money. Because the trust is involved and because I and, I am sure, all other members have people of limited means in mind when we make amendments of this kind, I support the second reading.

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

CONTRACTS REVIEW BILL

Adjourned debate on second reading.
(Continued from 6 February. Page 2330.)

The Hon. K. T. GRIFFIN: The Bill has been referred to the Law Reform Committee and, before I deal with the substance of the measure, I think it important to make some observations on the report of that committee. The resolution pursuant to which the Bill was referred to the committee was:

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

In referring to that resolution, the Law Reform Committee stated in its report:

> The passing of the Bill by the House of Assembly following the report of a Select Committee of the House and the terms of the resolution of the Legislative Council indicate, we suppose, that the objects of the Bill were acceptable to both Houses of Parliament. Certainly the committee takes the view that the law should be altered to enable the courts to reform contracts which are unjust and to modify the application to particular situations of unjust contractual terms so as to avoid the injustice which would otherwise ensue. Judges in the past have done their best to avoid, or at any rate mitigate, the harsh consequences of unjust contracts and have resorted to interpretations and distinctions which, we fear, at times have been little better than subterfuges in order to avert injustice. That judges should feel impelled to resort to such devices is no credit to the law. All too often, in spite of all efforts, courts have been compelled by existing law to enforce contracts in the knowledge that the result was manifest injustice. In our view this is a reproach to the law and ought to be remedied. We have considered the difficulties and arguments which have been raised against legislation of this kind. The acceptance of the objects of the Bill by both Houses of Parliament makes it unnecessary for us to canvass the arguments.

Therefore, the Law Reform Committee proceeded on what I would suggest was a somewhat inaccurate presumption of the attitude of this Council in particular to the objects of the Bill. That caused it not to canvass, in the detail that I think we expected, what sorts of objective the Bill sought to implement and the difficulties of implementing them. If one reads in *Hansard* the debates at the time, it is clear that the objects of the Bill were not necessarily acceptable to this Council. It is possible to glean from one interpretation of the resolution that they were acceptable, but reference to the debate suggests otherwise. In fact, the Hon. Mr. Burdett specifically spoke against the objects of the Bill having such broad application as they did.

I have two major concerns with the measure. One is its breadth and the fact that it is a blanket cover applying to contracts over a wide field. My second concern is about the uncertainty of the legislation, particularly in the context of the criterion of unjustness, which is the basis on which it proceeds. As far as I am aware, no other legislation uses that criterion of unjustness.

I will deal first with the breadth of the legislation. It covers, in blanket provisions, all except a small group of contracts. It covers real property transactions, transfers, leases, mortgages, consumer-type contracts, rental agreements on houses and other rental agreements, commercial contracts, building contracts, agency agreements, and many other types of contract. Some, in fact, are already covered by specific legislation.

I refer in particular to the Residential Tenancies Act, contracts under section 46 of the Consumer Credit Act, and real property transactions that are subject to scrutiny under the Land and Business Agents Act. The contracts covered by the Bill are also covered by the Misrepresentation Act and the Door to Door Sales Act. They are some instances of legislation that already covers contracts that are contemplated to be covered by this legislation.

I suggest that the problem of blanket legislation is that, by its very application, it may create injustices because of

unforeseen circumstances. I am always wary of this sort of blanket provision making significant changes in legal principles that have been established for a long time. I can see, however, that the better course is to deal with selective groups of contract, group by group, patiently identifying the specific criterion by which injustices can be determined.

For example, the United Kingdom's Unfair Contract Terms Act, 1977, deals with specific contracts. Some are unreasonable indemnity clauses, some are guarantees of consumer goods, and some are sale and hire-purchase agreements. A section is included in that Act dealing with miscellaneous contracts under which goods pass, and the first schedule of that Act is more specific with inclusions and exclusions.

I turn now to the significant problem of uncertainty. The minority report of Mr. D. F. Wicks of the Law Reform Committee refers to this matter at length. The following appears on page 13 of that report:

> It may be said that the judges will in time develop a set of general principles within which to explain and confine the doctrine which the Bill seeks to establish. Many doctrines which are very broad in terms are developed in this way. But the extent to which a general principle laid down by Parliament should be left to the courts to develop is a matter of degree. It is a most far-reaching development for Parliament simply to give a mandate to the courts to alleviate injustice and one which I believe goes too far.
>
> Moreover, if South Australia pursues this reform alone, it is difficult to see that sufficient cases will reach appellate courts in the foreseeable future in order to establish a useful body of case law. If I am right in this respect, a very wide diversity of legal opinion on the subject will readily develop devoid of the essential guidance which is needed from courts of high authority. It is this measure of uncertainty which I think should mitigate strongly against the proposal.
>
> If the proposed reform were to follow a similar reform in the United Kingdom or even in the more populous Australian States, as has often happened in the past, then at least we would have a suitable base from which a reasonable volume of case law could be expected to develop.

A number of submissions were made to the House of Assembly Select Committee on the Contracts Review Bill in 1977. Although some measure of support was expressed by some persons for the general objects of the Bill, a considerable number of people expressed concern about the uncertainty that this would bring to the administration of the law, and in commercial and business dealings, not only between persons carrying on business but also between consumers.

The greatest uncertainty arises from the use of the criterion "unjust". If one looks at the definition of "unjust" in clause 3, one sees that it means "in relation to a contract, harsh or unconscionable, oppressive or otherwise unjust". I submit that the words "otherwise unjust" create a problem in respect of this Bill.

What is unjust is a subjective assessment. No rules have yet been developed as to the way in which it will be construed. No legislation in other places uses this concept of a contract's being unjust. "Harsh", "unconscionable" and "oppressive" are terms and concepts that are well known in the law, and guidelines for their interpretation and application are well established.

However, as I said, in considering contracts the concept of injustice is not well developed. The concept of reasonableness is, however, well developed. One should note that the United Kingdom's Unfair Contract Terms Act relies on the concept of reasonableness as the criterion by which contracts will be scrutinised by the courts. In the United States, under its Uniform Commercial Code, there is a reliance on the concept of "unconscionable", which is a different concept from that of "unjust".

I should like to draw attention to specific provisions of the Bill. As I have said, this is a broad piece of legislation that is not limited to consumer-type contracts. It extends to commercial contracts, real property transactions, and a variety of other contracts.

The Hon. Mr. Burdett has indicated his desire to see the Bill covering consumer-type contracts, and I agree with that concept. The inclusion of real property transactions, such as mortgages, transfers, and leases, would give me some specific concern. There is the well known principle of indefeasibility of real property title, which I would see as being seriously undermined by the wide nature of the provisions of this Bill.

Clause 6 (6)*(c)* raises a considerable difficulty and opens the way for the prospect of considerable litigation. That provision refers to the courts in which proceedings may be taken with respect to a contract. In that subclause four courts are so defined. They are the Supreme Court, the Local Court (either of full or limited jurisdiction), the Industrial Court, and the Credit Tribunal, which, by the definition in this legislation, is deemed to be a court for the purposes of the Bill.

I give one instance. If a contract relates, although not specifically, to an industrial matter but deals specifically with other matters, it is possible, if an action is taken in the Industrial Court under the provisions of this clause, that argument will be advanced about the appropriate forum in which contracts can be reviewed.

It has been suggested to me that under this clause not only will that problem arise but also, if an action is taken in the Supreme Court (which action may relate to matters other than an industrial matter but incidently to an industrial matter), the same question of the appropriate forum for relief under this legislation will be raised.

The description, therefore, of "industrial matter", which is defined as being an industrial matter as defined in the Industrial Conciliation and Arbitration Act, is to my way of thinking too wide for the purposes of the application of this legislation.

Similarly, where proceedings relate to the terms on which credit has been or is to be provided, the Credit Tribunal has jurisdiction. However, this is in a somewhat different context because a number of other areas of credit are not subject to the jurisdiction of the Credit Tribunal. For example, one is the lending arrangement of banks and other financial institutions such as building societies.

The suggestion in this clause is that, if there is a dispute with respect to a contract that involves credit of the kind to which I have just referred, the Credit Tribunal would not ordinarily have jurisdiction over it. Those two areas, therefore, need specific attention in Committee.

The criteria in clause 8 raise a number of difficulties. They are particularly wide, and in some cases have no application. One in particular is that which relates to infancy or infirmity of mind, going to the question of the capacity of a person to make a contract if that person is an infant or a person of infirmed mind.

Ordinarily, such a contract that is so made by a person who is an infant, except in accordance with very limited exceptions, or by a person who is infirm, would be voidable in view of the incapacity of that party to make a valid contract. The criteria that are to be applied in considering whether a contract is unjust have the ability to upset the normal stability of retail trade and commerce. For example, property that may be available on a uniform basis to all persons who may be potential customers could, I suppose, be affected where one applies the criteria to different consumers. If I instance only one example I hope

we will then see what the difficulties could be. In the case of a motor vehicle purchase, where there is a dealer selling new cars, there may be a customer who is a business man and another who is a pensioner. The motor vehicle is available at the same price to each yet, if one applies the criteria, it is possible to argue that, for the business man, the contract made for the purchase of the vehicle is just (or not unjust), whilst the contract with the pensioner is unjust. The differences in economic circumstances that must be taken into account will indicate that the pensioner is in an unequal bargaining position. In those circumstances, is it unjust? I submit that the answer is "No".

One of the other disturbing factors is that, with the criteria referred to in clause 8 (1) (vi), the conduct of either party in relation to other similar contracts or transactions, if any, to which he has been a party is to be taken into account. One asks: is this to be established by supposition or hearsay or on the ordinary rules of evidence? Presumably, it is established on the ordinary rules of evidence, but what this does is open up a considerably wider field than one might envisage because it would bring into question all the contracts and transactions to which either party has been a party in the past that would be relevant in determining whether or not a specific contract was, in the circumstances in which it was entered into, unjust. Some criteria will be satisfied in most contracts, and others will not. However, that does not necessarily make a contract unjust. I draw attention particularly to clause 9, which provides:

> Where the Supreme Court is satisfied, on the application of the Attorney-General, that a person has embarked, or is likely to embark, on a course of conduct leading, or likely to lead, to the formation of unjust contracts it may, by order, prescribe or restrict, the terms upon which that person may enter into contracts of a stipulated class.

The principal objection is to the reference "likely to embark on a course of conduct leading, or likely to lead, to the formation of unjust contracts". It will be impossible for that to be established if one applies the provisions of clause 8 to the dealings of any particular person. Clause 8 refers to specific contracts. Clause 9 deals with conduct. I suggest it is unjust for the clause to be so wide as to presume what may happen and what the consequences of what may occur may be. I shall, therefore, seek to amend that clause at the appropriate time.

Clause 14 also needs amending, particularly subclause (3). It deals with appeals from the Industrial Court where it exercises jurisdiction under this legislation. It limits the appeal to matters pertinent to the exercise of powers conferred by the legislation and consequential or related matters. If this Bill is to have wide coverage over all contracts or even to consumer contracts, and if there is to be an appeal from any tribunal, it ought to be on all aspects considered by the court or tribunal. It is unusual, in relation to any appeal, particularly in this context, that the appeal should be limited in this way. It can be seen that I have a number of concerns to which I will give attention at the appropriate stage. For the present, I support the second reading.

The Hon. D. H. LAIDLAW: This is the second time on which the Attorney-General has introduced a Bill to provide relief against unjust contractual terms. In March, 1978, when the matter was first debated, I expressed concern that, if international contracts relating to commodities and currency obligations were subject to variation, overseas companies may be deterred from doing business with South Australians. Since South Australia sends more than 80 per cent of its products to other States or overseas, such a reaction would be disastrous.

I referred, first, to contracts for the supply of minerals or concentrates to overseas smelters and refineries; secondly, to contracts to manufacture equipment in South Australia under licences granted by overseas designers; thirdly, to contracts for the sale of wool from Adelaide to a foreign buyer; and, fourthly, to contracts to purchase foreign currency from an Adelaide-based trading bank acting as agent for the Reserve Bank.

This Chamber resolved last March to refer the Bill to the South Australian Law Reform Committee seeking its recommendations regarding implementation of the object of the Bill and to have it redrafted to allow for its interrelationship with other Acts and to take into account its effect on international and currency contracts. The Law Reform Committee considered the matter, as requested, and submitted a majority report and a minority report, which have been tabled in this Chamber. The Bill before us is in the form recommended by the committee. The majority could not see sufficient reason for any special provision in relation to currency contracts, as I suggested.

The Hon. C. J. Sumner: How many were in the majority?

The Hon. D. H. LAIDLAW: Four or five.

The Hon. C. J. Sumner: How many were in the minority?

The Hon. D. H. LAIDLAW: One. The majority could not see sufficient reason. I accept their view. I am not making any point of this.

With regard to the international sale of goods, the majority considered, with reservations, that special provisions should be enacted enabling parties to contract out of the proposed legislation. The majority followed substantially the corresponding provisions in the United Kingdom Unfair Contract Terms Act, 1977. But, whereas clause 5 (4) of this Bill enables parties to exclude the operation of the Act by agreement, under section 26 of the Unfair Contract Terms Act, such contracts are excluded unconditionally.

Clause 5 (4) of the Bill provides that the parties may, by agreement, exclude the contract from the operation of the Act where the contract is for the sale or supply of goods. Since the term "goods" is not defined in the Bill, it would, I take it, cover most personal chattels, but not money. It applies where a party to the contract is domiciled or resident outside Australia and where the goods are delivered or are to be delivered from a place outside Australia to a place within Australia or vice versa or between two places outside Australia.

Broken Hill Associated Smelters at Port Pirie has been most concerned about the effects of this proposed legislation. The company made a submission to the Law Reform Committee in which it stressed that it exports about 75 per cent of its lead and zinc products, with an annual value of more than $100 000 000.

It is vitally concerned that its contracts for the export of goods can continue to be enforced according to the terms fixed by the parties. I believe that such international contracts for the sale or supply of goods should be excluded unconditionally from the operation of this legislation, as has been enacted in the United Kingdom, instead of by agreement. Consider the Adelaide-based company which sells wool overseas and conducts its transactions by telex. The company would want the terms to be binding. How tedious it would be to insert in every such telex message a condition that the South Australian Contracts Review Act shall not apply. Unless the customer in Bucharest or Tokyo has a copy of the South Australian Statute on his bookshelf he would not know what the Adelaide exporter was concerned about. I have placed an amendment on file excluding such contracts

unconditionally.

Broken Hill Associated Smelters pointed out in a later submission to the Attorney-General that most goods are sold for export on a free-on-board or a cost insurance freight basis. Under the Sale of Goods Act delivery is complete once the seller has no further responsibility to transport the goods, and section 32 (1) enacts that delivery to a carrier *prima facie* is delivery to the buyer. Therefore, its contracts for the export of lead and zinc are between two parties in Australia and, as section 5 (4) is drafted at present, these contracts usually would not be excluded from the provisions of the Contracts Review Bill.

I have therefore added in my amendment a provision that where goods are to be delivered or transported upon delivery from a place inside Australia to a place outside Australia or vice versa, or between two places outside Australia the Act shall not apply.

I wish to refer also to clause 5 (1) of the Bill which enacts that the Act shall apply to all contracts, either where South Australian law is the proper law of the contract or would apply if the parties had not specified that the law of some other place is the law of the contract, or where it is specified that disputes will be heard by the courts of the law of some other place which implies that the law of that other place shall be the proper law of the contract.

The Law Reform Committee has stated that parties to a contract should not be able to adopt the law of some other place by which to judge the contract, otherwise the legislation will be ineffective. In my experience, if parties specify the law by which a contract is to be interpreted, it is generally to achieve a degree of certainty rather than to avoid some obnoxious piece of legislation in one of the places associated with the contract.

If section 5 (1) is passed it will add uncertainty to contracts because, even when the parties have chosen, say, the law of Japan, a local court could still determine that the law of South Australia must apply and proceed to vary the terms of the contract according to the provisions of this proposed Act. However, if my amendment is passed and international contracts for the sale or supply of goods are excluded, the uncertainty created by section 5 (1) would be unlikely to affect many contracts.

The Hon. John Burdett has moved an amendment to confine the application of this Bill to the purchase or hire of goods or services of a value of not more than $15 000 by a private individual. I shall support his amendment. If it passes, my concern regarding overseas contracts for the sale or supply of goods largely will be overcome. However, I shall still proceed with my amendment to clause 5 (4). I shall support the second reading of this Bill so that it can move to the Committee stage when these amendments can be considered.

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

MEMBERS OF PARLIAMENT (DISCLOSURE OF INTERESTS) BILL

Adjourned debate on second reading.

(Continued from 6 February. Page 2334.)

The Hon. C. M. HILL: If a Government wished to introduce the principle of disclosure of pecuniary interests it could not have gone about its task in a more amateurish way than the present Government has done in this Bill. When one reads the Bill one cannot but accept that the Government's approach is a thoughtless one and, in my view, a hastily determined one. It is a pity that the whole matter was not instituted by the Government by appointing a committee, preferably a joint committee of the Houses of this Parliament, so that such a committee could examine and report on this whole question of pecuniary interests. Indeed, that has been the procedure adopted, as far as I can ascertain, wherever this subject has been investigated or wherever it has been legislated on.

The initial process in other places is that Parliament considers this question and makes recommendations. At that stage members can make their contributions and give evidence to that committee. In Canada the matter was initiated by means of a Green Paper produced in 1973. This is, in effect, a discussion paper. In the U.K. in 1969 a Select Committee was formed and that committee reported on the issue. Later, in 1974 Parliamentary debate flowed from that and the controls were instituted by a motion. That was moved in Parliament, based on findings after that long period. However, the move was initiated originally through the machinery of a Select Committee. In the Commonwealth Parliament in Canberra in 1975 a joint committee on pecuniary interests was set up to investigate this matter. In New South Wales the Labor Government, in 1977, set up a joint Parliamentary committee to study this question, and I understand that the Premier there has indicated that legislation will result because of that initial inquiry.

Indeed, in the Federal Parliament now I understand a second committee is also considering the subject. I have been unable to ascertain the full history of the initial move in the United States Congress, because legislation on this subject dates back to the 19th century, but the only other western Parliament that was mentioned by the Minister when introducing the Bill was the Republic of Sri Lanka. I understand that in that country there were years of public discussion and agitation before the actual Act, namely, the Declaration of Assets and Liabilities, No. 1, 1975, was passed.

Therefore, because members in this Parliament were not able to contribute to a committee debate, it is apparent that there will be in the second reading stage and in Committee, if the Bill passes the second reading, a wide range of suggestions and proposals about this subject.

I hope that this Council and the Government will give full and every possible consideration to all the points that will be raised. If that occurs, Parliament will be able to achieve some consensus of opinion, and that could be the basis of the ultimate legislation. Also, because there has not been a committee investigation into this whole area, there is this serious deficiency that no-one is looking at our Standing Orders, which involve this same subject, and no-one is looking into the Constitution of this State, which also involves this subject.

Had there been an investigation by a committee, those areas would have been covered and a proper and comprehensive recommendation would have come down. If that report had been accepted by the Government, it could have proceeded and introduced its Bill. I stress that, in my view, the Government has erred in not initiating that kind of machinery based on precedent and obviously the best possible course to adopt in its approach to this measure.

Apart from that amateurish approach, I see that this is the worst possible way for a Government to prepare a Bill on this matter. This Bill reeks of political motives of the worst kind. The Government has one principal objective in mind: that is, to obtain and use information on pecuniary interests of Opposition members for purposes of character assassination and cheap political gain. I

substantiate that—

The Hon. J. E. Dunford: Have you read the report of the joint committee in Canberra? Some members of the Liberal Party were on it and agreed that certain private matters should be excluded, but they agreed unanimously that assets and pecuniary interests should be disclosed to the public. Why oppose that?

The Hon. C. M. HILL: My point is that we have not had a committee inquiry here.

The Hon. J. E. Dunford: We don't need one; politicians are the same all over the world.

The Hon. C. M. HILL: Then why did they have one in New South Wales? Why did they have one in the Commonwealth? Why did they have a second one in the Commonwealth?

The Hon. J. E. Dunford: You're trying to hide the fact that you have an interest in 37 companies, and the public should know.

The Hon. C. M. HILL: I am not trying to hide anything. I will deal with that in a minute, and I will deal with the Hon. Mr. Dunford, too. The point which I made and which was missed by the Hon. Mr. Dunford was that this whole matter should have been debated by a committee of our Parliament. A report should have been brought down and legislation should have flowed from that. The second point is that this Bill is prepared with the one objective in mind of the Government's trying to obtain information about Opposition members so that it can use that information for character assassination and cheap political gain.

The Hon. D. H. L. Banfield: Wouldn't the same information be available in respect of Government members?

The Hon. C. M. HILL: True, but it is one thing to be interested in such information and it is another thing to use it for cheap political gain.

The Hon. D. H. L. Banfield: You were the first one to use that method!

The Hon. C. M. HILL: The Minister can make his contribution to the debate. The Commonwealth committee did not recommend a public register, but that is what the Hon. Mr. Dunford wants, and I would like him to tell me where a public register has been recommended in any of the reports from the countries to which I have referred. They do not even have a public register in Sri Lanka.

The Government wants this information to be lodged with a public servant and for that list to be available to the public. The Government is not satisfied with that and wants a registrar to report all that information to the Minister. Obviously, the Minister would discuss it with Trades Hall, in Cabinet and then—

The Hon. J. E. Dunford: That's a reflection on the Minister.

The Hon. C. M. HILL: I will reflect on the Minister, because the Minister has the power to have the report tabled in Parliament. In addition, the Bill requires that the register be printed as a Government paper and the Printing Committee, controlled by the Government, would see that thousands of copies were printed and made available to the public and to members. Copies by their thousands would be sent out all over the State by Labor members from this Council.

The Hon. J. E. Dunford: You're making some shocking allegations.

The Hon. C. M. HILL: Why do you want those lists printed?

The Hon. J. E. Dunford: The public should know. This is open government.

The Hon. C. M. HILL: Why can it not be open government if the list remains with the registrar and the public goes to look at it? How far does the honourable member want to go? Obviously he is not satisfied with its just being public. The Government is not satisfied with its being available for perusal on the registrar's desk. It wants to go the whole hog and have it printed here as a public paper and then issue it to the public at large, but that is going too far.

As a result of this Bill it is obvious that members opposite must want to know not merely whether there is a conflict of interest about how a member votes or what he has got: they want to display the extent of a member's assets and interests.

The Hon. J. E. Dunford: That's not true.

The Hon. C. M. HILL: I said that I would deal with the honourable member, and I will do so now. Yesterday, he said that he was looking forward to seeing this register and that he was going to determine whether or not any member had a bank account with the A.N.Z. Bank.

The Hon. J. E. Dunford: I referred to an interest in mining. I believe members opposite have substantial interests in mining in this State.

The Hon. C. M. HILL: He went further than that and referred to the A.N.Z. Bank, claiming that, through its subsidiaries and as a nominee, it had thousands of shares in uranium companies. The honourable member said he intended to condemn a member of Parliament who displayed as a pecuniary interest a bank account with the A.N.Z. Bank.

The Hon. J. E. Dunford: No, not condemn. I would like to know, because—

The PRESIDENT: Order!

The Hon. C. M. HILL: I am stating what the honourable member said yesterday, and he said it almost with glee. He said, "I am waiting for this list."

The Hon. J. E. Dunford: I am, too. I can't wait.

The Hon. C. M. HILL: That is for this very purpose, in regard to the bank. If I happen to bank with the A.N.Z. Bank and have interest coming to me in that account in excess of $200 (that is in terms of the provision about the register), I would have to lodge the name "A.N.Z. Bank" in my return. I may have banked with that bank for 30 years and my father may have been a customer before me. I may have no idea of a tie-up by the A.N.Z. Bank in uranium, but the honourable member condemns me for having a conflict of interests on the question of uranium.

The Hon. J. E. Dunford: No. I say that the public ought to know what your interests are.

The Hon. C. M. HILL: Are you saying that you would not condemn me in those circumstances? You will not answer me. Are you saying you would condemn me because I had that A.N.Z. Bank account?

The Hon. J. E. Dunford: I am not.

The Hon. C. M. HILL: I hope that that statement is read in conjunction with yesterday's *Hansard* so that we can see the problems we are confronted with in legislation of this kind.

The Hon. D. H. Laidlaw: The A.N.Z. Bank would hold those shares only on behalf of people like the Broken Hill employees' superannuation fund.

The Hon. C. M. HILL: Of course. The A.N.Z. Bank need not have one cent of its capital or reserves invested in uranium. It is money belonging to other people. They invest on account of common funds and clients.

Members interjecting:

The Hon. C. M. HILL: I am not pursuing this point with the Hon. Mr. Dunford—

The PRESIDENT: Order! There was some question between the Hon. Mr. Dunford and the Hon. Mr. Hill, and that seems to have been satisfied. It is not necessary to

conduct a debate on it.

The Hon. C. M. HILL: With respect, I want to conclude, if I may, by saying that I am not bringing the Hon. Mr. Dunford into this debate as a means particularly of criticising him, but I want to highlight one of the many problems that Parliament is confronted with about this Bill. Having said that, I want to make my position clear. I, as a member of Parliament, do not object to disclosing my pecuniary interests. Members hold office at a time when considerable change in public attitudes towards Parliament and its members has occurred. The media and the public scrutinise our actions and our conduct as Parliamentarians far more today than was the case in the past. There is now much more awareness of Parliament and the activities of its members.

There are continuing demands for government that is more open, which involves more and more public disclosures. I make such demands myself. As a civil libertarian, I have very strong views on a citizen's right to privacy, but as a person in my public office I recognise and accept that I cannot enjoy, or expect to enjoy, the same privacy as does a private citizen. Other Parliaments have investigated the question of pecuniary interests, some having already introduced change, and others are considering measures relating to those interests.

Having said that, I stress that I have very strong objections to some other parts of this Bill. I object to the inclusion of candidates among those to whom the Bill refers. I do this on the grounds that all citizens should enjoy the maximum right to privacy. One point that can be made is that, if the candidate is not successful, the public at large will know his affairs, while the affairs of other citizens are private matters.

More importantly, why has the architect of this Bill included candidates? As candidates, they are in no position to gain any unfair benefit, nor can they be accused, in justice, of having any conflict of interest, because they are not members of Parliament. One candidate may disclose, under the provisions of this Bill, the he has money in the Commonwealth Bank. Another may disclose that he has shares in Broken Hill Pty. Company Ltd., and another may disclose that he works for a certain union.

A woman who is a candidate may disclose that she works as a secretary for a certain company and that her husband is employed by so and so, that he has a bank account with a certain bank, and that he is a trustee under a trust for his children, who may have been the children of a former marriage. What have the following facts to do with a candidate's ability as a potential member of Parliament: first, that he has money in the Commonwealth Bank; secondly, that he has shares in B.H.P.; thirdly, that a spouse works for a certain company and banks with a certain bank; and, fourthly, that he is a trustee under a trust deed for the benefit of his spouse's children.

Just how far does this Government want to go to probe the private affairs of people who are not members of Parliament? I hasten to point out that, if there is legislation on pecuniary interests, all candidates will know that, if they are elected, they will come within the provisions in due course. I strongly oppose the inclusion of candidates among those covered by the measure.

The Hon. J. E. Dunford: Have you ever thought of what G.M.H. wants to know about an employee when he applies for a job, such as what his religion is, where he went to church, and where he went to school?

The Hon. C. M. HILL: I do not agree that that company would ask the religion of an applicant for a job at Elizabeth.

The Hon. J. E. Dunford: They ask everything else.

The Hon. C. M. HILL: You said they did ask for the religion.

The PRESIDENT: I have asked honourable members to cease interjecting and let the Hon. Mr. Hill continue.

The Hon. C. M. HILL: I am dealing with the question of a spouse. I recall that, when the former Bill was before the Council, discussion took place about whether spouses should be included. This is a serious matter, because our wives, and husbands in the case of women members, become involved in our concerns, worries and work as members of Parliament. In many instances, they cannot escape involvement when constituents contact our houses either personally or by telephone. They are entitled to the optimum degree of privacy, as are other spouses, and it is only fair and just that Parliament should consider very carefully, in any legislation, their situations.

The question therefore arises: can they be in a position where they can be ensnared in a conflict of interest situation? I will give three examples. Wife A works for a supermarket chain, wife B for a road and bridge contractor, and wife C for a motor vehicle distributor. In the case of a candidate, I fail to see how, if wife A, B or C is the spouse of a candidate, a compulsory disclosure of her employer's name is necessary under the law. In the instance of a back-bench member again, I fail to see that disclosure is really necessary. In the case of a Minister of the Crown, a different picture emerges. It may appear to the public that, if Ministers recommend to Cabinet matters on town planning affecting zoning for supermarkets, contracts for road and bridge buildings, or contracts to acquire vehicles for departmental purposes, those Ministers may be influenced, or may appear to be influenced, perhaps only to a small degree, by their wives having those interests.

If the Government wishes to take those circumstances into account, it will hold firm on the relevant provisions of the Bill or possibly restrict the measure to Ministers of the Crown. However, I have grave doubts whether, as a result of those examples, it would even be necessary in relation to Ministers.

I could give another example regarding one's spouse and the necessity for a disclosure to be made. One's spouse might have an interest in, say, B.H.P. A member's wife might have worked for years and might have been given the opportunity by her husband to invest her net income in those shares.

The Hon. Anne Levy: What is that? What has a husband got to do with it if his wife has earned her own income?

The Hon. C. M. HILL: If the honourable member would let me finish—

The Hon. Anne Levy: She could invest it wherever she liked.

The Hon. C. M. HILL: The member could be prepared to meet the household expenses incurred by both of them. Does the honourable member follow my point? The husband could be prepared to meet all the household and private living expenses for both of them, and to say to his wife, "You can invest the net money that you bring home as a nest egg for you in case I die or for your retirement."

The Hon. Anne Levy: You put it badly. It sounded as though she needed her husband's permission.

The Hon. C. M. HILL: I know that in this sort of area one has to be careful how one expresses oneself when the Hon. Miss Levy is listening.

The Hon. R. C. DeGaris: Taking the Hon. Miss Levy's point a step further, does a husband have to ask his wife's permission to quote her holdings?

The Hon. C. M. HILL: The husband must show his spouse's interest in his return. Surely, that holding or interest, which might be considerable when the wife has

worked for several years, is a private matter.

Also, if that member became a Minister and the then Government was involved with B.H.P. in relation to contracts or was dealing with its indenture at Whyalla, I am sure that the Minister would either disclose his wife's interest, and be perfectly pleased to do so, or would see to it that his wife divested herself of the investment and purchased shares in some other company. I do not think, even in the case of a Minister, that it is necessary to have legislation to cover this matter.

The Hon. Anne Levy: Mr. Fraser said that there was.

The Hon. C. M. HILL: The honourable member is talking about examples in other States and in the Commonwealth Parliament. However, we are dealing with this matter here, and we must review it carefully and make our own decision on it.

If a spouse has an interest in a block of land, no matter how small that interest may be or where the block of land may be situated, or indeed if she has an interest in an old shack on, say, the Murray River or anywhere else, that interest would have to be made public. Again, I ask whether that is really necessary. Any reasonable member of Parliament would have to answer that question in the negative.

The Hon. M. B. Dawkins: It is an invasion of privacy.

The Hon. C. M. HILL: Of course it is. The only example which has been brought to my attention and which might raise some query is that members of Parliament with suspicious minds might think that some other member held shares and suddenly transferred them into his wife's name, when a conflict of interest might be apparent.

The Hon. Anne Levy: That's why Mr. Fraser said that spouses had to be included.

The Hon. C. M. HILL: In that case, why do we not make the member of Parliament sign a declaration that, during the term of the register under review, he has not transferred any pecuniary interests into his wife's name or provide that, if he has done so, he must disclose it?

The Hon. D. H. Laidlaw: That is, if he is silly enough to put them in his wife's name.

The Hon. C. M. HILL: That is not a bad point. That completely rounds off this matter of spouses and, in view of what I have said, I strongly oppose the principle of spouses being brought within the provisions of this Bill, on the overall ground of its being completely unfair.

My next point is that it is necessary, in my view, to provide for Parliament to be in control of this whole matter. I am surprised that the Government wants to take charge of it and to bring its own Public Service into the matter. Again, I challenge the Government to produce one example where this matter has either been recommended to be outside of Paliamentary control or when legislation has passed anywhere putting it outside of Parliamentary control.

The proposal in the Canadian Green Paper was that the register be held by the Clerk of the House, and control was to be in the hands of the Standing Committee on Privileges and Elections.

In England, the Register of Members' Interests is under the control of the Clerk of the House, who is responsible not to some public servant but to a Committee on Members' Interests. In the Commonwealth sphere, recommendations have already been made public. The Registrar should be the Clerk of the Joint Standing Committee, and a Joint Standing Committee of the Australian Parliament was to be empowered to supervise generally the operations of the register. In New South Wales, there were to be separate registers for the House of Assembly and the Legislative Council, and a Joint Committee on Pecuniary Interests was to be responsible for the overall supervision.

In America, the Congress has created a Standing Committee on Conduct to supervise the administration of rules that comprise a code of conduct. There are separate codes for each House, and it is controlled entirely within Congress by committee staff. In Sri Lanka, which was referred to by the Government when it introduced the Bill, these disclosures must be filed with the Speaker, who retains them absolutely and, as far as I can see, acts as registrar as well as the person in control. So, where else is the matter taken into the Public Service area, and where else has a Government ever sought to control this matter? It has happened nowhere else at all! The register should be kept within this Council and should be under the control of either you, Sir, or the Speaker in another place, or perhaps it could be controlled by both of you jointly or by a committee that might be established.

I also oppose the tabling and printing of these registers as Parliamentary papers. Having already referred to this matter, I do not intend to expand further on it. This is a most dastardly plan, as it is contemplated, because I know what is the intention behind it. I also oppose the six-monthly term. I think that an annual term would surely be more reasonable. In Sri Lanka, the term happens to be five years, a fact that might be of interest to some people, especially members of the Government.

For members to have to go to this trouble every six months is quite unnecessary. I also strongly oppose the regulatory powers in this Bill. I challenge anyone to inform me with certainty as to what members, if this Bill passes, really have to say in their returns. The Government knows what it intends, but the Government wants to bring down regulations to provide Parliament with those details. The all-important clause 5 provides:

> Every person to whom this Act applies shall, on or before each relevant day furnish the Registrar with a return in the prescribed form containing prescribed information relating to—

Then, there are four general areas dealing with income source, interest in bodies, official positions held, and interest in real property. Then, the list finishes with "or any prescribed matter". From that, it is clear that, by regulation, this Parliament will find out what is in the Government's mind. There should not be any regulatory power in this Bill whatsoever. Let us spell out exactly what we can agree to and what the Government insists on as regards the details of these disclosures. Let us know what we are voting on. In future, particularly on the recommendation of you, Mr. President, or the Speaker of another place or a committee, the Government of the day can bring down an amending Bill if that is considered necessary.

The Hon. Anne Levy: Regulations can be disallowed.

The Hon. C. M. HILL: Yes, and they can be reintroduced the next day. In connection with one of the regulations on our Notice Paper at present I have been threatened by the responsible Minister that, if it is disallowed, he will have it gazetted the next day. I therefore believe that the Government should agree to improve this Bill to such an extent that there is no need for regulations. A prescribed form as to how the details should be set out could be attached to this Bill in the form of a schedule, and the specific items could be clearly described in the body of the Bill, so that all members would know. At present it is most unfair.

I do not intend to support the Bill if these regulatory clauses remain in it. This Bill must not be part of a political inquisition: it must be fair and just. It must be an endeavour to achieve the purpose for which it should have been introduced; that is, wherever a conflict of interest in

the real sense exists, a member should disclose that fact. I will oppose those issues in the Bill to which I have referred, to prevent its being used for the purposes that its architects want it to achieve—cheap and distasteful politics. I support the second reading so that further debate can take place in Committee to improve the Bill.

The Hon. F. T. BLEVINS: I am bitterly disappointed with the speech of the Hon. Murray Hill. I expected, on a matter as serious and as important as this, that he would curb his normal style of presentation and take the whole thing a little more seriously. I cannot really believe he was serious when he suggested that this Bill was some kind of dastardly plan. I object to his assumption that the purpose is to distribute details of members' interests to Trades Hall and elsewhere for cheap Party political gain. It is unworthy of him to suggest that, and it is wrong to approach the debate in that manner. If he is serious, he should reconsider his attitude. I hope other Opposition members will take a far more responsible attitude to the Bill.

The aim of the Bill is two-fold: first, to discourage a member of Parliament from voting on any matter in which he has a pecuniary interest; and, secondly, to reassure the public that members of Parliament are approaching legislation with minds untainted by thoughts of personal gain. Regarding the first aim, it is a matter of fact that some members of Parliament have been indulging in questionable business practices. I will not list the practices, the members of Parliament, or the indiscretions. I know that everyone listening here knows the instances to which I refer and to which the Hon. Miss Levy referred. I am sure that everyone here feels the same sense of shame as I do that members of Parliament should act in that way and abuse their office. That is very regrettable.

It has been suggested by some Opposition members that the aim of this Bill, that is, to "keep members of Parliament honest", cannot be achieved as the Bill is at present drafted, because it would be possible for members of Parliament to find loopholes in the Bill. One gentleman in the other place suggested that it would be possible to drive a bullock dray through the Bill; thus, because of the loopholes, the Bill would be ineffective. I find that type of argument disturbing and a reflection on us. It implies that some members of Parliament are somewhat less than completely honest and will not enter into the spirit of the legislation. There may be loopholes in the Bill, and there are loopholes in most Acts. The remedy in this case, if there are loopholes, is simple; members of Parliament should act in the spirit as well as the letter of the legislation. Members should not look for loopholes; they should not deliberately evade the spirit of legislation. It will then be effective. I believe that all members of Parliament will act in this way, because—

The Hon. C. M. Hill: What is your attitude to spouses on this question?

The Hon. F. T. BLEVINS: I will come to the question of spouses later. I am demonstrating my faith in the integrity of my fellow members of Parliament, a faith that some members of Parliament seem not to have. I may even be having too much faith in my fellow members of Parliament in assuming that they will be completely honest, or maybe I do not know members opposite as well as their colleagues know them.

The Hon. M. B. Cameron: When has there been a problem in South Australia?

The Hon. F. T. BLEVINS: There is a problem in South Australia, and I will come to that later. Secondly, it is intended under this Bill that members of the public should have complete faith in the integrity of members of Parliament; they do not have that faith now, and that is something we must try to remedy. Listening to the Hon. Mr. DeGaris yesterday, I found it incredible that he should adopt the attitude that this whole issue was solely the business of Parliament and not the public's affair.

That attitude is arrogant, to say the least. Of course, it is the public's affair. It is the public we are supposed to be representing and they have the right to know that their representatives are acting in the public interest and not in their own interests. The Hon. Mr. DeGaris said yesterday, and it has been referred to by the Hon. Mr. Hill, that the present Standing Orders are sufficient, but this is obviously not the case because, if Standing Orders were sufficient, there would not be this feeling in the public's mind that all is not right in the area of members' pecuniary interests.

The general public have little knowledge of Standing Orders and they are not expected to have that knowledge but, if we pass a law and publish it, that is something that will be generally understood. I am sure that, if we do so, the public will be reassured that their members of Parliament are not using their position for their own personal gain. I refer to some clauses of the Bill that have been criticised by members of the Opposition, both here and in the House of Assembly. The clause relating to spouses and children is one such clause, and is a clause that the Opposition does not like. Quite frankly, I do not like it either but, if the legislation is to be effective, spouses and children of members have to be included.

We all know of the way in which assets and income can be disguised by the use of family trusts and other devices by the wealthier section of this community to avoid taxes and death duties. We all know of people who have gone into bankruptcy and whose wives, for example, have suddenly acquired large amounts of wealth. They are the kind of devices that are open to the wealthier sections of the community, and they use them.

If this provision was not in the legislation it would be a farce. The Prime Minister has recognised that, and every other Parliament in Australia that is contemplating introducing this sort of legislation has agreed that, however distasteful this may be, it is absolutely necessary to include this provision if the legislation is to be effective. No-one on this side finds the matter other than distasteful.

The Hon. M. B. Cameron: You are not allowed to do anything.

The Hon. F. T. BLEVINS: What else can we do? The public has a right to see the legislation presented in a manner that is completely honest and open. It is not just people in the Labor Party who see the necessity for including spouses and children. Mr. Fraser does, Sir Charles Court does, and Mr. Hamer does although he probably will not have a chance to introduce it. All these people see the necessity because we have no option. If honourable members are to be honest with the public, then that is the kind of thing that we will be stuck with.

The Hon. R. C. DeGaris: What do the civil liberties people think about it?

The Hon. F. T. BLEVINS: Write and ask them and I will consider the letter. Another matter that has given the Opposition some concern is the question of having the register of M.P's interests freely available to the public.

The Hon. M. B. Cameron: What happens if the separated wife refuses to disclose her assets?

The Hon. F. T. BLEVINS: If the Hon. Mr. Cameron had read the Bill, then he would not ask questions like that; so I suggest that he hide his ignorance and be quiet. Surely members opposite must realise that to keep the register private is just not on: it is as simple as that. If we did that, we would be held up to public ridicule, and rightly so. On this issue we have to be completely honest

and open, and anything less than that (any backtracking at all) will give the impression to the public that the whole legislation is just a public relations exercise. I cannot accept that anything less than a completely open register with the members' interests and the interests of their immediate family recorded will be acceptable, and I hope that the Opposition realises that.

If they do so and accept totally the legislation it will be to the benefit of members of Parliament by reducing the cynicism and mistrust that the general public has of us all. It is surprising that the Hon. Mr. DeGaris suggested that the register should be kept private, because in that register will be some details of his financial affairs. Concerning the Debts Repayment Bill, discussed before the Christmas break, the Hon. Mr. DeGaris wanted to make completely open to the public a list of people who had debts, although members of the public generally could have had no interest or association with the persons on the list. It was at the conference that the Hon. Mr. DeGaris finally saw the error of his ways and was persuaded by my constant argument.

This is how people see it: when it concerns someone else's financial affairs the Opposition wants the matter left completely open, but concerning their own affairs they want the matter closed and do not want the public to know. That is why I am certain, as in the Debts Repayment Bill, that the Opposition will be persuaded by my argument. When all the machinery of Parliament has been used, I am sure that the Hon. Mr. DeGaris will see the strength of my argument and will vote with the Government to ensure that the register will be open.

Yesterday, the Hon. Mr. DeGaris also referred to people other than members of Parliament being included in the legislation; for example, senior public servants. In other words, if everyone is to know what I have got, I want to know what they have got. Perhaps it is a case of, "I'll show you mine, if you'll show me yours." We should put our own house in order first and then consider other people in positions where there might be a conflict of interest in dealing with the public or public funds.

In the debate in another place it was also suggested by Opposition members that perhaps the press should come under such legislation. All these suggestions have some merit and should be considered in future but, as I have said, let us set the example and do so with as much good grace as we can muster. Opposition members are not showing much at present.

Another interesting point was made by the Hon. Mr. DeGaris about public servants. It seems extraordinary that Opposition members to varying degrees, are opposing this measure, yet on the principle of people's right to privacy, if they held those principles strongly enough, they would hold them for public servants, too, and for members of the press.

It is members of the Opposition who have made the suggestion concerning senior public servants and members of the press; it was not made by members of the Labor Party. If such a situation is an invasion of privacy for themselves, then it is an invasion for people across the board. If it is wrong for members of Parliament to disclose their pecuniary interests, it is equally wrong for public servants and members of the press to disclose their interests. It seems that the principles held by the Opposition are not so strong: it seems that there are principles for the Opposition that do not apply elsewhere. Indeed, it seems that members opposite want to apply the principles selectively only to themselves. For that reason, the Opposition's argument loses force.

Another interesting point made by the Hon. Mr. DeGaris was that if this legislation was needed at all then perhaps the need was not so great for back-bench members as it was for Cabinet Ministers. When looking through my file on this subject I came across an article in the *Parliamentarian* (page 230, 4 October 1975). The article was written by Willy Hamilton, M.P., a member of the British Parliament, but he was quoting Dick Crossman, M.P., who wrote this comment a couple of years ago about back-bench members and pecuniary interests. The article stated:

> "Of the 625 (now 635) members of the House of Commons it is only the Ministers who take part in decisions and carry departmental responsibilities which render them open to corruption. As Ministers they are required to obey an elaborate written code of behaviour. Up to now the back bench M.P. has been exempt largely because he runs nothing, decides nothing, and usually knows nothing worth paying for."
>
> Crossman was right—up to a point. He was an M.P., and a Minister. He knew. But outsiders do not know. Business firms and foreign Governments still think it is worth paying M.P's—if only to make it easier to gain access to Ministers, to ask questions and make speeches on their behalf.

Whilst I suppose that we all know that that is the position of back-benchers in all Parliaments in the Westminster System, I found that it did nothing for my ego to have it stated so brutally. I reject any suggestion that back-bench members should not have to declare their pecuniary interests, not only because it is right that we should do so but also to restore my bruised ego after reading Dick Crossman's comments about us. Surely, we have to be seen to be a little more important than that.

The whole conflict arising from this legislation is an age-old one of a person's civil liberties *versus* society's rights to protection from abuse by public figures in the name of civil liberties and the right to personal privacy. It is a problem that I debate endlessly both with myself and anyone else with whom I can promote a discussion. When there is any doubt at all about whether or not the civil liberties or right to privacy of a person is being violated unreasonably, then I will come down on the side of the person's right to do as he pleases without interference from anyone.

However, in this instance I think that the invasion of the M.P's privacy is more than justified and has been made so by the actions of the few M.P's over the years who have abused their positions and brought us all into disrepute. Members of Parliament are not "ordinary people": we are people in a very special public occupation that requires a special standard of behaviour and a consequent loss of the right to financial privacy. To use the old expression, we must be like Caesar's wife, "above suspicion".

People entering public life have to accept that they are going to have their privacy invaded constantly, that their families, too, will suffer in some ways because of their occupation. That is something that has to be taken into account when one stands for Parliament. I sympathise with members who adopt the attitude that what they own and earn is their business and no-one else's.

It is a natural reaction and one that ordinarily I would applaud. I certainly do not take the attitude that, because a person does not want to answer personal questions, he necessarily has something to hide. That assumption is offensive in the extreme, and I reject it. What I do accept is that, by becoming a member of Parliament I am not now entitled to tell people to mind their own business when questioned about my financial affairs, however much I may want to. Rather than have people questioning my integrity the best solution is legislation of this nature.

Such legislation is one of those things that can be described as "an idea whose time has come". Governments throughout Australia and the world, of all political

persuasions, are finding it necessary to introduce such legislation, and South Australia cannot be an exception. I hope that, for the reasons I have outlined, all members of this Council will support the measure in total as I do, and support it with good grace. To do otherwise will certainly create an impression in the public's mind, however unjust, that we are not prepared to be completely open and frank regarding possible conflict of interest.

The Hon. D. H. LAIDLAW: This is the second time that the Attorney-General has introduced a Bill to cover disclosure of financial interests of Parliamentarians. I must admit that it is some improvement on the first Bill that was introduced originally in another place in November 1977.

The media have suggested that the first Bill lapsed because of opposition by the Liberals in this Chamber but that is not true. In fact, the Bill languished in the Lower House from November until March and, when it reached this Chamber, only a few hours remained to debate it before the end of the session. Several of my colleagues had the opportunity to speak and pointed out inconsistencies, but no vote was taken.

The Attorney-General has made several significant changes to this second Bill. For example, a member is no longer called upon to give details of any holiday or travel outside this State undertaken by himself, his spouse, or children under 18 where any part was not paid for by the member or his family. The previous provision was ludicrous, because it meant that, if I accepted a lift from Tullamarine to Melbourne when I went to a meeting each month, this had to be shown on the return.

Under the first Bill, a member was required to report the receipt of payment for any activity in addition to other financial benefit that he may receive. It could cover such items as repayment of an interest-free loan from a parent or brother or money won from gambling. This provision has now been removed from the definition of "income sources". Perhaps some members have been reluctant to disclose details of their gambling transactions.

Despite these deletions the Bill still is beset with inconsistency and uncertainty and contains other unsatisfactory features. To be fair to the Attorney-General, this is not surprising, because the subject is complex and has bedevilled Parliaments throughout the Western world. The Attorney-General claims that the introduction of this measure rests on the Government's belief that members of Parliament, as trustees of the public confidence, should disclose details of assets and sources of income in order to demonstrate to their colleagues and the electorate at large that they have not been influenced in the execution of their duties by considerations of private personal gain. It is based on the premise that legislators should place their public responsibilities above their private responsibilities.

I accept this as a broad statement of principle, but let us consider the problems of single-member districts in the Lower House where farmers will be chosen to represent farming communities, and trade unionists will be chosen to represent predominately industrial communities. They will act as their constituents wish and this will probably coincide with their own private interests, but in doing so they may act counter to the good of the public at large.

This conflict between public and private interests can be avoided in one of two ways. First, under the principle of avoidance, it is argued that a Parliamentarian should divest himself of all assets that may prejudice his public duties. Alternatively, under the principle of disclosure, it is claimed that so long as he discloses the nature of his private interests, this is deemed sufficient. The Attorney-General has opted for the principle of disclosure in this Bill but he has drawn no distinction between Ministers and back-benchers.

There are cogent reasons for maintaining this distinction and for insisting that Ministers should divest themselves of outside directorships and other sources of income. Ministers are involved in the day-to-day administration of government and in particular deal with tenders from the private sector. They must be wary not to be associated in any business venture which tenders for Government contracts.

On the other hand, I think it is acceptable, or even desirable, for back-bench members, especially in a House of Review, to retain contact with their own fields of specialisation so that they can speak with an up-to-date knowledge. Perhaps there should be some disclosure, but members, other than Ministers, should not be expected to divest themselves of such interests.

In support of this view, the New Zealand Parliament adopted as long ago as 1956, as a principle of propriety rather than a rule of law, that Ministers should resign as directors of companies. Any of their shareholdings with potential conflict should be sold. Ministers should cease professional practice or active interest in a business. In contrast with the guidelines for Ministers, no guidelines are set in New Zealand for back-benchers.

Although it is claimed that the public has the right to know what may influence the behaviour of a Parliamentarian, he and his family still have some right to privacy. Furthermore, the widest range of people should be encouraged to enter Parliament and, if too many details are to be disclosed, some people may be discouraged. A few days ago, the Hon. Anne Levy said that, since the Parliamentary salaries of members were disclosed, why not show their earnings from private capital, also? Surely, there is a distinction in that in the first case, the money is paid from the public purse, whereas in the second case it is not.

The Hon. Ren DeGaris has argued that the disclosure of pecuniary interests is a matter for Parliament and should be controlled by Parliament. He believes that the register of members' interests should be maintained by the President, in regard to this Council and by the Speaker, in regard to the Lower House. These Presiding Officers would decide in any issue whether a conflict existed. They would remind the member involved of an apparent conflict during a debate and this fact presumably would be recorded in *Hansard*.

Such procedure would be similar to that adopted at Westminster in 1975, where a permanent Select Committee was set up to oversee the register of members' interests. Each member is required to list his assets but not the size of the holding or the actual income derived. In this way the members at Westminster reached a compromise between the need for disclosure and the right to privacy. They recognised that, if details are made available to the public, members' interests probably would be blazoned across the pages of the popular press, to the embarrassment of that member and his family.

It was also pointed out in regard to Westminster (and I think this is a valid point) that full disclosure would make the member more vulnerable to household burglary or to being molested by the lunatic fringe in our society.

I have said that this second attempt by the Attorney-General to devise a suitable Bill still contains inconsistencies; for example under clause 5 a member is obliged each half year to supply details of any income source; any interest in a company, unincorporated body, or trust; any official position that he, or his spouse or children hold in those bodies; any interest in real property; and any prescribed matter.

This means that lists of assets are to be divulged, but

what about liabilities? I can think of many instances where a liability could produce a conflict of interest. Consider the member who is threatened by a creditor with a foreclosure against his home mortgage. The existence of that liability might well change the direction of a member's vote if a measure is introduced affecting that creditor. The Attorney-General wants members to divulge assets, sources of income, and positions held, but not their debts. I wonder why.

I have said also that the drafting of parts of this Bill is unclear. For instance, it provides that sources of income of a spouse and any children under the age of 18 years normally living at home must also be included, and the Attorney-General in a recent public comment, said that, without including them, the Bill would have no teeth. On the other hand, it can be argued that, since only the member has a public position, he should not have to include the assets of his family, who are not in such a position.

Consider the example of a wife who objects strongly about the need to disclose her assets because her husband, quite apart from the public, would become aware of them. Clause 7 provides that a member must furnish the information demanded, under penalty of $5 000. If a wife objects to divulging her assets and sources of income, is that sufficient reason for honourable members to refuse to comply with the Act? It was suggested by the Hon. Miss Levy earlier that this is sufficient reason.

The meaning of clause 5 *(b)* is also unclear. It provides that a member must disclose any interest in any unincorporated body formed for the purpose of receiving profit. Is "any unincorporated body" intended to include a partnership, or are partnerships excluded from this Bill?

The Bill also requires disclosure of any trust. Is this intended to include trusts where the member is a trustee but receives no emolument, or where he is a beneficiary, or both? I doubt whether the Attorney-General intended to include the former.

The Hon. C. J. Sumner: Are you saying that partnerships should be included?

The Hon. D. H. LAIDLAW: Yes, I am saying that, if these other things are put in, partnerships should be included.

The Hon. F. T. Blevins: Move an amendment!

The Hon. D. H. LAIDLAW: This is a Government Bill, and it has had two goes at it. It should do better than this. The Opposition has not been reluctant to introduce amendments.

At the end of clause 5 is added the words "and any prescribed matter". This Bill is too serious for members to be left in doubt as to whether the Attorney-General might at some later stage see fit to demand disclosure of any further items that suit his fancy. Members should know with certainty the extent of the proposed legislation.

I also object to the broad powers contained in clause 9, whereby the Governor may make such regulations as are contemplated by this legislation or as are necessary or expedient for the purposes thereof. As the Bill is drawn, a member is required to list sources from which he derives income of more than $200 each half year, but not the actual amount nor the number of shares held in certain companies, as is the case in Westminster. However, as the Bill is drafted, the Government could regulate at any time for full disclosure.

Under the Bill, some regulatory powers may be necessary, but they should be restricted to procedural and not substantive matters. The Bill is riddled with inconsistency and uncertainty, and it should be amended drastically.

The Hon. J. A. CARNIE secured the adjournment of the debate.

LEVI PARK ACT AMENDMENT BILL

Consideration in Committee of the House of Assembly's message that it had disagreed to the Legislative Council's amendments.

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

That the Council do not insist on its amendments.

We had a lengthy debate on this Bill, the history of which I do not intend to repeat now. The bone of contention is that the Government wants Levi Park to be constituted in such a way that it is in the best interests of the people of the district. However, Opposition members think that the park should be under the control of Walkerville council. The Government is adamant in its stand on this matter. The scheme has worked well in the past, and the Government has no intention of changing its stand.

The Hon. R. C. DeGARIS (Leader of the Opposition): I am always concerned when the Minister says that something has worked well in the past. If that is so, why is the Government now changing course, because that is exactly what the Bill does?

The Minister also said that he wanted to ensure that the people in the district could maintain the park as they wished. The Opposition has, with its amendments, tried to maintain the position so that the people living close to this area would have a majority on the committee of management. I can see no reason why the Government should wish to take control of a park that has been established in a council area, particularly when the council involved has done a good job in relation to it. I therefore ask honourable members to insist on the amendments.

Motion negatived.

EIGHT MILE CREEK SETTLEMENT (DRAINAGE MAINTENANCE) ACT AMENDMENT BILL

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

ROAD TRAFFIC ACT REGULATIONS

Order of the Day, Private Business, No. 16: **The Hon. C. J. Sumner** to move:

That the regulations made on 29 June 1978 under the Road Traffic Act, 1961-1976, in respect of aggregation of the mass on individual axles, and laid on the table of this Council on 13 July 1978, be disallowed.

The Hon. C. J. SUMNER: As these regulations have been disallowed, I move:

That this Order of the Day be read and discharged.

Order of the Day read and discharged.

ADJOURNMENT

At 4.52 p.m. the Council adjourned until Tuesday 13 February at 2.15 p.m.