LEGISLATIVE COUNCIL

Tuesday 13 February 1979

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

QUESTIONS

PETRO-CHEMICAL WORKS

The Hon. R. C. DeGARIS: I ask the Minister of Health, representing the Premier, whether he can tell the Council when Imperial Chemical Industries or people associated with that company told the Government of their decision to establish petro-chemical works in Victoria.

The Hon. D. H. L. BANFIELD: I think that question would have to go to the Minister of Mines and Energy. However, I will refer the matter to my colleague and bring back a reply.

DENTAL TREATMENT

The Hon. C. M. HILL: I seek leave to make a statement prior to directing a question to the Minister of Health.

Leave granted.

The Hon. C. M. HILL: My question concerns the feature article in the *Sunday Mail* last weekend dealing with problems associated with the Dental Department of the Royal Adelaide Hospital and the long delays that pensioners must suffer when they seek dental treatment at that department. The article was given considerable prominence in the newspaper and it compared the situation in this State to that interstate. On that point, the following paragraph states:

> All other States have relatively effective dental programmes which provide care and dental health advice to those for whom the high cost of dentistry is a barrier.

The report then explains how, in New South Wales, a dental carriage on a train visits remote rural areas so that people there who are of limited means and in urgent need of treatment can be assisted. In condemnation of the Minister and the Government, the report then states:

> What is wrong in South Australia? While everyone agrees an adequate service is not being provided, the blame is shunted back and forth.

I ask the Minister why the Government does not provide a service and facilities in South Australia for pensioners, as is provided interstate. Secondly, what plans has the Government in train to change this policy and help these South Australian pensioners?

The Hon. D. H. L. BANFIELD: I should like to get this matter in its true perspective. The honourable member has many times asked questions regarding the dental treatment of pensioners at the Dental Hospital. Of course, he has been told from time to time that in various areas the Federal Government, through its social welfare funds, accepts the responsibility for the treatment and welfare of pensioners. It also accepts responsibility for the provision of dental treatment to Aborigines, irrespective of whether they have one ounce of Aboriginal blood in them or whether they are full-blood Aborigines. The Federal Government is willing to pay the dental accounts for every Aborigine in Australia: it accepts its responsibilities in that area.

It is also the Federal Government's responsibility to look after pensioners. These people have paid taxation throughout their lives, but when they become pensioners the Federal Government refuses to grant money to pay for their dental treatment. In South Australia, we have a teaching hospital in which dentists are trained and, in the course of that training, service is given to pensioners. As late as October, I wrote to Mr. Hunt, the Federal Minister, who said, "You can give treatment to pensioners in South Australia, but we will not support any extension of services to anyone there." However, this is a Federal responsibility.

The Hon. M. B. Cameron: Come on!

The Hon. D. H. L. BANFIELD: The Federal Government provides hearing aids and other facilities for pensioners, but excludes treatment relating to the mouth. Let honourable members opposite tell me why a pensioner should be denied attention to certain parts of his body merely because he does not conform to certain requirements stipulated by the Federal Government. There is no rhyme or reason for it. It is the Federal Government's responsibility to look after the welfare of pensioners.

The Hon. M. B. Cameron: What happens in New South Wales?

The Hon. D. H. L. BANFIELD: Let me tell the honourable member—

The PRESIDENT: Order!

The Hon. D. H. L. BANFIELD: We are looking after pensioners in this State and, although some dental treatment is given to pensioners in New South Wales and other States, they have a waiting list twice the length of ours.

DRUGS

The Hon. F. T. BLEVINS: I seek leave to make a brief statement before asking the Minister of Health, representing the Chief Secretary, a question regarding drugs.

Leave granted.

The Hon. F. T. BLEVINS: All honourable members have been aware of the allegations made in the last couple of days by a chemist, Mr. Oswald, regarding the availability of drugs and drug trafficking in South Australian schools.

The Hon. R. C. DeGaris: Isn't he the endorsed Liberal candidate?

The Hon. F. T. BLEVINS: The Leader should wait, as I am coming to that. I thought at first that this involved a public-spirited citizen who had taken up the case against the use of drugs and drug trafficking in schools. However, I was horrified, as no doubt the Minister was, to find that this gentleman was the endorsed Liberal Party candidate for the State seat of Morphett. Further, this gentleman will not give the authorities the information necessary to stop this trafficking and drug abuse. It is indeed a terrible situation when a person who aspires to be a member of Parliament will not supply to the police and other authorities the information necessary to stop children being involved in drug trafficking, and that is exactly what this gentleman is doing.

I am sure that the Minister of Health is as concerned as the Chief Secretary is about this problem. Will the Chief Secretary request the police to interview Mr. Oswald with a view to finding out what information he has and with a view to stopping Mr. Oswald from assisting this drug trafficking (in effect, this is what he is doing) among our children through his silence on the matter once he has received publicity as an endorsed Liberal candidate?

The Hon. D. H. L. BANFIELD: It never fails to amaze me that people can raise emotional issues without bringing

forward facts that would enable the issues to be investigated. The honourable member has probably read the editorial in this morning's paper implying that Mr. Oswald should either put up or shut up. The sooner he does that, the better it will be for the community. If he aspires to represent the community in Parliament, surely it is his job to see what he can do to cut out the sort of thing that he claims is going on, but he has not produced any facts. This type of practice is not new to prospective Liberal candidates.

The Hon. Anne Levy: It is not new to Liberal members, too.

The Hon. D. H. L. BANFIELD: Yes. They can create emotional issues and say all sorts of things without bringing forward facts that would enable the issues to be investigated. Because the charges are so serious, I am sure the Chief Secretary will appreciate the honourable member's raising the matter, and I will certainly draw my colleague's attention to the honourable member's suggestion. Surely one is entitled to expect that, if Mr. Oswald has facts, he will bring them forward to enable the matter to be investigated.

The Hon. F. T. Blevins: If he does not do that, he is just as guilty as are the drug traffickers.

The PRESIDENT: Order! The Minister does not need any assistance.

The Hon. D. H. L. BANFIELD: Because Mr. Oswald is just as guilty, I am sure that the electors in his district will pass judgment accordingly.

SHEARERS' STRIKE

The Hon. M. B. DAWKINS: I seek leave to make a brief statement before asking a question of the Minister of Health, representing the Minister of Labour and Industry, about the shearing situation in South Australia.

Leave granted.

The Hon. M. B. DAWKINS: I see by the country edition of the morning paper that the shearers of South Australia have joined in a nationwide strike. They have that right, but I understand that they also have a submission before the Arbitration Court at present. Although the shearing programme is not (to quote the paper) in high gear at present, there is an increasing practice of autumn shearing in this State. In view of these circumstances, will the Minister ask his colleague what steps he is taking in an endeavour to overcome this dispute?

The Hon. D. H. L. BANFIELD: The Minister of Labour and Industry has always been prepared to talk to both sides, to adjudicate, and to offer counsel to the various sides in an industrial dispute, because it is not in anyone's interests to have industrial problems. I am sure that the Minister will tell me what steps he has taken and, when he does, I will inform the honourable member.

EAST END MARKET

The Hon. C. M. HILL: I seek leave to make a short statement before asking a question of the Minister of Agriculture about statements he made concerning the East End Market.

Leave granted.

The Hon. C. M. HILL: A report on 9 February stated that the Minister, in addressing a Labor Party function, I think, made a serious attack upon people involved in the business of merchants at the East End Market. The Minister claimed that the merchants were ripping off some producer-farmers. He said that some of these merchants were acting as both agent and merchant, in that they were purporting to sell on behalf of clients and then were buying the fruit and vegetables themselves.

The people involved, who are members of the South Australian Chamber of Fruit and Vegetable Industries Incorporated (indeed, there are 46 members of the 48 merchants involved in this activity at the East End Market), have taken umbrage at those remarks and, as reported, are very upset. In this morning's paper Mr. Baker, their spokesman and President, said that he viewed with grave concern the inflammatory and completely misleading statements (and they are his words). He said that he was astounded that Mr. Chatterton could made "broad, sweeping and misleading statements". He went on to say that Mr. Chatterton should be asked to explain his statement, because the industry, like any other industry, could ill afford this type of misleading and dangerous propaganda.

I therefore ask the Minister whether he will explain the evidence and facts, which he has reliably at his disposal, upon which he made his attack. Can he give any examples at all of individual complaints from growers where, after complete investigation of such complaints, they have proved to be justified? Finally, can the Minister tell me the authors of the report, on which basis he is reported to have made this attack, and the qualifications within this industry of those people who wrote the report for the Minister?

The Hon. B. A. CHATTERTON: My answer to a resolution of the A.L.P. State Council last week was reported in the press and was the origin of the article that the honourable member has quoted. When I made those particular remarks, I was basing them on the Report on the Marketing of Fresh Fruit and Vegetables in South Australia, which was prepared by a committee set up by the South Australian Government to investigate this problem. The report of the committee was issued by me last year and has been available publicly. It was from that report that I drew the evidence upon which I made the remarks in question. The membership of the committee which was responsible for the report consisted of the Chairman, Mr. T. C. Miller, Chief Horticulturist, Department of Agriculture and Fisheries at the time (he has subsequently retired from the department and as Chairman of the committee); Mr. David Harvey, Market Development Economist, Department of Agriculture and Fisheries; Mr. B. Tugwell, Senior Research Officer, Horticulture, Department of Agriculture and Fisheries; Mr. R. Elleway, Project Officer, South Australian Housing Trust; and Mr. George Lewkowicz, Project Officer, Premier's Department. They are the people involved in that study. Page 37 of the report states, in part:

> In the mail survey of growers, 206 growers answered the question for general comments. Of these, 47 per cent were dissatisfied with the complex question of wholesale attitude, pricing and market controls. The general trend of the answers indicated that growers would favour any alternative marketing arrangements that offered them a "better deal" in terms of increased prices or more stable prices.

The report goes on to state:

> Growers who sold from their own stands in the East End Market were, on the whole, quite satisfied with the present pricing arrangements.

Members will note that the remarks refer only to those growers outside the Adelaide area: people in Port Pirie, the Riverland and the South-East would not be involved in having their own growers' stands. The report continues:

> However, many growers were not satisfied with the present marketing arrangements and there appeared to be a general attitude of distrust of the wholesalers operating in the East End Market. A number of instances were quoted of

> wholesalers apparently taking advantage of the market situation to pay growers' prices well below those actually being paid by retailers, when in fact these goods had been delivered on consignment to be sold on a commission basis.

The report justifies completely my remarks made at the State council meeting. Growers in the Riverland have approached me with detailed statements of accounts showing how they consigned fruit or vegetables to the East End Market and were finally billed for doing so. In other words, the costs of marketing (commissions and various charges made on their goods) amounted to more than the produce returned, and it is an unsatisfactory marketing arrangement when growers actually receive a negative return for their produce.

The Hon. D. H. L. Banfield: Did the consumers benefit from that?

The Hon. B. A. CHATTERTON: I do not think that anyone benefits from such an unsatisfactory situation. I have heard of that happening in several instances, particularly to growers in the Riverland, and I feel completely justified in making the remarks in question.

VEGETABLE QUALITY

The Hon. N. K. FOSTER: I seek leave to make a brief statement prior to directing to the Minister of Health a question concerning the quality of vegetables.

Leave granted.

The Hon. N. K. FOSTER: I refer to the quality of vegetables in supermarket chains. Last Saturday morning at supermarkets in the Campbelltown and Paradise area (I refrain at this stage from naming the company concerned, but I hope it gets the warning) I saw on the semi-frozen shelves vegetables, especially cucumbers, that were six months old and perhaps even 12 months old. Cucumbers are now in season and they are lovely when they are fresh. There were no dates on such produce, although if it is rotated through the chillers it can be kept for up to six months. Certainly, any erstwhile reporter should get out there, buy some of this produce before it is thrown in the trash can, and see for himself. My attention was drawn to this produce only because a woman had purchased some and said that when she cut through the cucumber skin there was virtually nothing inside except a green pulp mass.

I ask the Minister whether he will have inspections made of the so-called fresh vegetable counters in supermarket chains, because, here again, the grower is the victim of these organisations, which set up their own middle-men to purchase fruit and vegetables, and so on. Will the Minister have the matter investigated as one of urgency, and will he request his department to prosecute on every possible occasion that it is considered that such prosecution is warranted? Further, will the Minister try to have his department set down a formula that will enable housewives to know that vegetables have been in a chiller and refrigerated and to know to what season the product belongs?

The Hon. D. H. L. BANFIELD: I am concerned about the statement that the honourable member has made, and I will examine the matter as one of urgency. I will also ask the honourable member to tell me privately of the outlets where he saw this, so that that can be a starting point.

INTERSECTIONS

The Hon. N. K. FOSTER: I seek leave to make a statement prior to asking a question of the Minister of Lands, representing the Minister of Transport, regarding electronically-controlled intersections.

Leave granted.

The Hon. N. K. FOSTER: Last week in the Council I raised this matter, and I now seek information on what is the elevation within, say, 380ft. of the actual intersection of Bridge Road above Montague Road at Pooraka. I seek information also on the height of the elevation of Gorge Road above Darley Road about 400ft. from the intersection, and on the height of the elevation 600ft. back from the intersection along Newton Road. Further, when will a right-hand turn light be placed on the corner of Darley Road and Lower North-East Road to permit right-turning traffic to proceed towards Tea Tree Gully?

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

SCHOOL BUSES

The Hon. R. C. DeGARIS: I seek leave to make a brief statement before asking the Minister representing the Minister of Education a question about school buses.

Leave granted.

The Hon. R. C. DeGARIS: For a long time parents in country areas have been expressing concern about school buses, particularly those travelling on very busy and straight fast roads in those areas. They have asked me to raise the matter of whether school buses can be equipped with flashing indicators for use when the buses are stopped on the road. Will the Minister representing the Minister of Transport ask the Road Traffic Board to investigate the matter so as to find out whether it is possible to equip school buses with a distinctive type of hazard light?

The Hon. B. A. CHATTERTON: I will refer the question to the Minister of Education and bring back a reply as soon as possible.

EAST END MARKET

The Hon. C. M. HILL: I ask a question of the Minister of Agriculture supplementary to my question about fruit and vegetable merchants at the East End Market. The Minister stated that soon he would form a committee to draft amendments to legislation covering both new and old sections of the market. Members of the South Australian Chamber of Fruit and Vegetable Industries Incorporated, and growers who sell at the market, are extremely concerned that the Minister has in mind imposing on them legislation that will mean Government control of the industry. As the Minister has indicated publicly that he proposes to have legislation drafted, can he explain to the Council what form he hopes that legislation to take?

The Hon. B. A. CHATTERTON: The honourable member knows well that my consistent policy has been to consult the industry concerned in all legislation with which I have been involved. I think that industry groups have had ample opportunity to comment on every piece of legislation that has come before this Council, so it is ridiculous to suggest that there is any intention to impose control on them. The form of the legislation would start with the report on fruit and vegetable marketing which I quoted earlier, and which made several recommendations and suggestions to improve the efficiency of marketing in South Australia, to improve the situation at the East End Market, and to improve financial arrangements. That is where the committee would start and, of course, it would consult grower groups and other people in the industry.

Further, as with other legislation that is brought before this Council, the industry would have further opportunity to put its views to me directly, apart from putting them to the committee.

CHILDREN'S PROTECTION AND YOUNG OFFENDERS BILL

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

That the time for bringing up the report of the Select Committee be extended until Tuesday 20 February 1979.

Motion carried.

COMMERCIAL MOTOR VEHICLES (HOURS OF DRIVING) ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

Its principal object is to clarify the intent of the provisions in the Act that relate to the keeping of log books by the drivers of commercial vehicles. The Act presently provides that drivers must forward the duplicate copies of log book pages to their employers every week, and employers are similarly obliged to obtain those duplicate pages from the drivers. The duplicate pages must be kept in chronological order at the premises from which the vehicle operates for at least three months. Doubts have been cast on the wording of these provisions, in that there may be difficulties in establishing at what time the pages must be obtained by employers, and also at what time the three-month period begins to run. The Bill accordingly seeks to clarify this matter by providing that employers must obtain the pages at least once in each month.

Representations have been made by several groups on the difficulties some drivers face in complying with the obligation to forward their duplicate pages to their employers on a weekly basis, particularly when interstate trips are involved. No harm is seen in extending the period to one month, so that both employers and employees operate under the same time constraint. I seek leave to have the explanation of the clauses in the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 makes some minor amendments of a statute revision nature, by substituting the word "mass" for the word "weight" wherever it appears. Clause 3 provides that a driver must send the duplicate pages of his log books to his employer at intervals not exceeding one month.

Clause 4 provides that an employer must obtain the duplicate log book pages from his drivers at intervals not exceeding one month. He must retain those pages for at least three months after the time at which he obtains them. A person who is both the owner and the driver of a commercial vehicle must retain his duplicate pages for at least three months after the time at which he is required by the Act to have completed them.

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

ROAD MAINTENANCE (CONTRIBUTION) ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

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

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

This has prompted the formulation of a scheme whereby a judgment recovered in one State against a company can be enforced in another State, in pursuance of the law of that other State, against the directors of the company. The scheme is substantially reciprocal so that judgments recovered in South Australia can be enforced against directors in other participating States and vice versa. (Reciprocity is not, however, complete because road tax is not imposed in Tasmania and the Northern Territory.) This Bill is designed to form a part of the reciprocal legislative scheme. Legislation has already been enacted in Victoria, Western Australia, Queensland and New South Wales. 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 enacts a definition of "director" in the principal Act. The definition corresponds with the reciprocal provisions of the legislation of other States. Clause 3 repeals and re-enacts the provision imposing criminal liability upon a director of a company where the company is guilty of an offence against the principal Act. Criminal liability can be evaded by a director where he can show that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the company.

Clause 4 deals with the recovery of unpaid contributions. The effect of the amendment is to make clear that an

order can be made against a director convicted of an offence under section 10 (3). Clause 5 enacts the provisions necessary for the purposes of the reciprocal scheme that I have outlined above. Clause 6 is designed to overcome problems that have been experienced with the evidentiary provisions of the principal Act.

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

DANGEROUS SUBSTANCES BILL

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

The Hon. K. T. GRIFFIN: I have a number of matters of concern regarding this Bill. They relate particularly to the powers of inspectors, the liability of the Crown, certain rights of appeal under Part III, certain aspects of the regulation-making power under clause 31, several other general matters regarding the impact of the Bill, and the fact that there is no saving of common law remedies as exists in the two Acts that this Bill seeks to repeal.

The powers of inspectors are more particularly set out in clause 9. Some of the provisions are adaptations of the powers of inspectors already included in the Liquefied Petroleum Gas Act and the Inflammable Liquids Act. Three new provisions are of particular concern. The first relates to clause 9 (1) *(b)*, in which the inspector is given power to direct a vehicle to stop, or to stop a vehicle, for the purpose of determining whether or not any provision of this Act is being or has been complied with.

That is a novel provision with respect to this sort of legislation, and is a very wide power being put in the hands of inspectors, who, in ordinary circumstances, will not be trained to recognise what the rights of individuals may be with respect to this Act or generally.

Clause 9 (1) *(f)* also is broader than one would ordinarily expect, because it requires any person to answer a question put to him, whether the question is put to him directly or through an interpreter, for the purpose of determining whether or not any provision of this Act is being or has been complied with. I recognise that in legislation that comes before us from time to time it is more likely that this sort of provision will be inserted. However, I express my concern about not only this provision specifically but also the general practice that is being adopted, so that persons who are questioned by inspectors do not have any right to refuse to answer questions that may tend to incriminate them. That is, of course, a principle which has been well recognised in the law generally and which is for the protection of persons who may, in these circumstances particularly, be questioned by inspectors.

The other provision regarding the powers of inspectors that causes me concern is clause 9 (1) *(h)*, which provides that an inspector may give such directions that are reasonably necessary for, or incidental to, the effective exercise of his powers under this Act. In that provision, we are departing from what are otherwise specific powers to a much more general power, so that a person confronted by an inspector will not be in a position of knowing with certainty whether the direction given by an inspector is something with which he or she is required to comply or with which he or she may comply. This is, in my view, a wide provision that is not necessary for the purpose of administering this legislation.

When one considers the powers of inspectors in relation to requiring answers to questions, one should also examine them in conjunction with clause 9 (6), because the penalty for refusing to answer a question put by an inspector is the fairly substantial one of $1 000.

The liability of the Crown is referred to particularly in clause 9 (8), as well as there being some reference to it in clause 12. However, clause 9 (8) provides that, where any substance or thing is removed under that provision consistently with the power of the inspector as specified in the Bill, in certain circumstances (and they are if proceedings are not instituted for an offence against the Act in relation to the substance or thing within two months of its removal, or, proceedings having been so instituted, the substance or thing is not ordered to be forfeited to the Crown, or the defendant is not convicted), the person from whom the substance or thing was removed shall be entitled to recover it, or, if it has been destroyed or damaged or has deteriorated, to recover from the Minister, by action in any court of competent jurisdiction, the reasonable value of the substance or thing at the time of its removal.

One can understand the reason for the Government being anxious to limit the amount of its liability to the value at the time of removal, but there are wider implications. At the time of its removal, the substance, standing alone, may be of little value, but the person or company from whom it has been removed may have been supplying it to a customer, who may have been relying on it for incorporation in a process or item of plant or equipment. In that context, the person from whom the substance has been removed may be in breach of contract. He has not, in consequence of the exercise of the inspector's powers, been able to supply the substance and he may therefore be liable to damages for breach of contract.

Under this provision, there is no liability on the Government for any damages arising from that sort of breach of contract—damage suffered as a consequence of the exercise of the inspector's powers. Also, the person from whom the substance has been removed may have been going to process it to supply it in a refined form and, in consequence of not having the substance in his possession and being unable to process it, he may suffer considerable loss. There is no reference in this clause to the Minister being liable for that loss or damage. I believe that that provision needs attention with respect to these sorts of damage which, at first view, do not appear to have been contemplated by the Parliamentary Counsel or the Government.

Clause 12 provides that no personal liability shall attach to the Director or any inspector for any act or omission by him in good faith and in the exercise, performance or discharge of his powers, functions or duties, under this legislation. However, the clause extends also to the "purported exercise, performance or discharge of his powers, functions or duties". The inclusion of those words would allow a Director, or more particularly an inspector, who may exercise his powers in good faith but without the authority of the legislation, to exceed his powers under the legislation. In those circumstances, there ought to be some liability in the Minister and possibly in the inspector in connection with the exercise of powers in excess of the powers given under the legislation.

Part III specifies what may be done with respect to the granting, cancellation, or suspension of a licence. In clause 16, a licence to be granted under the provision shall be subject to such conditions as the Director may specify; those conditions relate to the prescribed dangerous substance, its keeping, the premises in which it may be kept, or any other matter. The Director has the responsibility for granting the licence, and he has the

power to make the licence subject to conditions. They, too, are at his discretion. Under clause 17, the licence remains in effect for such term as the Director may specify. He has a discretion to renew a licence for a term, not being less than one year. There ought to be some more specific provision as to the period for which a licence is granted.

Under clause 20, there is power for the Director, in his discretion, to grant a licence to any person or company to convey any prescribed dangerous substance, and he can make it subject to such conditions as he may specify. In a "one off" situation, there may be unusual circumstances, and the Director ought to have a discretion as to the conditions placed upon a licensee with respect to the conveying of a dangerous substance. However, where a licence is generally given for the purpose of conveying dangerous substances, it seems to me that there ought to be some more specific provision for the attaching of conditions to the licence; or, at least, we ought to have some indication as to what sorts of conditions will be applied. Under clause 21, the Director has discretion to renew a licence. Such renewed licence remains in effect for such term as the Director may specify. Under clause 23, the Director may suspend or cancel a licence if he is satisfied that certain events have occurred.

They are all very wide powers that the Director has with respect to the granting, suspension, or cancellation of the licence. Because of that, there ought to be a wider right of appeal than is provided by clause 24, which provides that a person who is aggrieved by a decision of the Director relating to a licence under Part III may appeal to the Minister against the decision. The Minister may, on hearing an appeal, affirm, vary, or quash the decision appealed against. Because the granting, suspension, or cancellation of a licence is of such consequence to the applicants and the community, the right of appeal ought to be to a court vested with proper judicial authority to consider not only the fact of the granting, suspension, or cancellation but also the conditions that attach to it, including the term of the licence. There ought to be proper provision for an appeal independently of the department and independently of the Minister.

The other difficulties that I see are in the regulation-making power, which has been more specifically dealt with in the Inflammable Liquids Act than in the Liquefied Petroleum Gas Act. The provision deals with the keeping, handling, and conveying of inflammable liquids. We ought to have some indication from the Minister as to what sorts of regulation will be included with regard to the keeping, handling, conveying, use and disposal of any dangerous substance. A matter of greater concern is clause 31(3), which provides:

> Any regulations made under this section may—
>
> *(b)* confer discretionary powers upon an officer or class of officers to grant approvals, give directions or impose requirements;

I submit that that power is too wide to be left to regulations, and ought not to be included in the Government's regulation-making power.

The conferring of such discretionary powers can have very wide implications for persons who apply for licences, who hold licences, and for the community. If there are to be any discretionary powers made, we ought to know about them in the Bill.

The Inflammable Liquids Act and the Liquefied Petroleum Gas Act, in clauses specifically set out (I think it is clause 14 of the Liquefied Petroleum Gas Act and clause 30 of the Inflammable Liquids Act), contain saving provisions that do not take away any rights granted to persons in common law, in nuisance, tort, or otherwise. I am surprised that there are no such saving provisions in this Bill. It may be that there is a reason for that and, if there is a reason, I should be pleased if the Minister could say what the reasons for that exclusion may be. In default of any reasons it seems to me that such a provision ought to be included so that persons who may be affected by any nuisance, for example, as a result of the conveyance or the keeping of dangerous substances ought to have their remedies at common law preserved.

Also, there are several other drafting and not-so-important matters to which I will draw attention at the appropriate stage. Suffice it to say that I have several concerns about the Bill that will need to have attention in Committee. It is a Bill that in principle I support, but subject to certain appropriate amendments. I support the second reading.

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

DOG CONTROL BILL

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

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

That this Bill be now read a second time.

This Bill gives effect to the recommendations of the Select Committee of the House of Assembly on the Report of the Working Party on Containing, Control and Registration of Dogs. The Bill provides for the repeal of the Registration of Dogs Act, 1924-1975. That Act primarily provided for the registration of dogs by councils. This Bill provides for registration of dogs by councils but, in addition, imposes obligations on councils designed to ensure that more effort is devoted to the problems associated with wandering and abandoned dogs and nuisances caused by dogs. The Bill also creates a number of new offences relating to the control of dogs by persons liable for their control and provides more effective remedies for those persons adversely affected by the actions of dogs.

The Bill requires the annual registration of any dog with the local council or, in the case of the north of the State, with the nearest police station. The fee for registration is to be fixed by regulation, but it is intended that it will be $10 for the first registration of a dog by any person and $5 thereafter, with a half fee for working dogs and dogs owned by pensioners. It is proposed that a registered dog will be required to be identified by a registration disc attached to a collar or by tattooing of the ear of the dog. The latter requirement will apply only to dogs that are not fully grown, and it is considered that it can be effected for little expense and without causing undue pain to such dogs.

The Bill proposes that each council be required to individually or jointly with another council establish a pound and appoint an officer who is to be engaged in the enforcement of the Act upon a full-time basis. The Bill provides that a council may, instead of establishing a pound, enter into an arrangement with the Animal Welfare League or the Dogs' Rescue Home for the use of their pounds.

The Bill includes provisions that are designed to ensure that councils apply the revenue earned from the administration of the Act only for that purpose. To this end, the Bill provides for the establishment of a body to be known as the Central Dog Committee whose function will be to receive and distribute a percentage of registration fees received by councils and any surplus of the income of councils over their expenditure. These moneys are to be

distributed by the committee to the Royal Society for the Prevention of Cruelty to Animals and towards the cost of establishing, operating, and maintaining dog pounds. The committee is also to conduct a continuing public education programme in relation to the proper control and keeping of dogs.

As already stated, the Bill creates a number of new offences in relation to the control of dogs. These include permitting a dog to be in a shop or the yard of a school, abandoning a dog, permitting a dog to attack a lawful entrant to premises, failing to remove any faeces dropped by a dog in a public place, permitting a dog to cause a nuisance to neighbours, and failing to properly treat an infected or diseased dog. The Bill provides for the expiation of the penalties for a number of these offences in the same way as applies in the case of parking offences. The Bill also provides for the licensing by councils of kennels within their areas. 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 measure shall come into operation on a day to be fixed by proclamation. Clause 3 sets out the arrangement of the Bill. Clause 4 provides for the repeal of the Registration of Dogs Act and section 5 of the Alsatian Dogs Act which fixes the fee for registration of Alsatian dogs at $4. Clause 5 sets out the definitions of terms used in the Bill.

Clause 6 provides that each council is to enforce the measure within its area and that the measure is to be enforced in the north of the State by the police. Clause 7 requires each council to appoint a dog-control warden or to do so jointly with another council. The clause requires the dog-control warden to be engaged in the enforcement of the measure on a full-time basis. Under this clause a council is also empowered to appoint other authorised persons who may exercise enforcement powers under the measure. Clause 8 provides that an authorised person appointed by a council may exercise the powers of an authorised person in the area of the council, while police officers may enforce the measure anywhere within the State.

Clause 9 protects authorised persons from personal liability for the exercise of their powers in good faith. Clause 10 requires each council to appoint a registrar of dogs. Clause 11 requires each council to individually or jointly establish a dog pound or to enter into an arrangement with the Dogs' Rescue Home, the Animal Welfare League or other body prescribed by regulation for the use of private pounds. Clause 12 requires each council to keep separate accounts of its receipts and payments in relation to the administration of the measure. Under the clause each council is required to pay a percentage of its dog registration fees to the Central Dog Committee and any surplus of its receipts over its payments.

Clause 13 provides for the establishment of the Central Dog Committee which is to be a body corporate. Clause 14 provides that the committee is to be constituted of eight members, three of whom shall be nominees of the Minister, and the remaining members being nominees of the South Australian Canine Association, the Local Government Association, the R.S.P.C.A., the Institute of Municipal Administration, and the Australian Veterinary Association, respectively.

Clause 15 provides for the term of office of members of the committee. Clause 16 provides for the remuneration of members of the committee. Clause 17 regulates the procedure at meetings of the committee. Clause 18 provides for the validity of acts of the committee and protection from personal liability for its members. Clause 19 provides for the due execution of documents by the committee. Clause 20 provides that the functions of the committee are to be to receive and apply moneys in accordance with clauses 21 and 23, to advise the Minister, and to promote and disseminate information as to the proper keeping and control of dogs.

Clause 21 provides for the moneys of the committee. Clause 22 empowers the committee to invest any surplus moneys in a manner approved by the Treasurer. Clause 23 provides that the committee's moneys are to be applied towards its administrative costs, then in payment of a prescribed percentage to the R.S.P.C.A. and lastly in payment towards the operation costs of dog pounds. Clause 24 provides that an arrangement may be entered into with the Local Government Association under which that body would provide the committee with the administrative facilities that it requires. Clause 25 provides for the keeping and audit of the accounts of the committee.

Clause 26 provides that any person liable for the control of a dog shall be guilty of an offence if the dog is unregistered. This provision does not apply in relation to dogs under three months of age or dogs kept by certain bodies or classes or persons. Clause 27 provides for the registration of dogs by councils, or, in the case of dogs to be kept in any part of the State not within the area of a council, by the police.

Clause 28 provides for the issue of registration discs upon the registration of dogs already registered at the commencement of the measure or dogs of a class prescribed by regulation. Any other dogs are required by this clause to be tattooed in a prescribed manner upon their registration. Clause 29 provides that registration shall expire on the thirtieth day of June in any year. Clause 30 provides for the maintenance and public inspection of registers. Clause 31 provides for the replacement of lost registration discs. Clause 32 requires notification of any change of ownership of a registered dog.

Clause 33 requires dogs other than tattooed dogs or dogs engaged in any work or training or sporting exercise to have a collar on and a registration disc attached to the collar. Clause 34 sets out the persons who are liable for the control of a dog both for the purposes of offences against the measure and civil proceeding in relation to any damage or nuisance caused by the dog. Clause 35 provides that where a dog is found wandering at large the person liable for the control of the dog shall be guilty of an offence.

Clause 36 provides that a dog found wandering at large may be seized and either returned to the owner or detained at a pound. The clause requires that public notice must be given of the seizure and detention of a dog and that, if a dog is not claimed or is diseased or infected, it may be destroyed. Clause 37 empowers authorised persons to enter premises either with the consent of the owner or occupier or under a warrant issued by a justice of the peace. Clause 38 empowers an authorised person to require a person to give his name and address. Clause 39 provides that the person liable for the control of a dog shall be guilty of an offence if the dog is in any shop or the grounds of any educational institution without the permission of the principal.

Clause 40 provides that the person liable for the control of a dog shall be guilty of an offence if the dog is in any premises used for the preparation or consumption of food.

Clause 41 provides that the person liable for the control of a dog shall be guilty of an offence if the dog chases any vehicle. Clause 42 provides that any person who abandons a dog shall be guilty of an offence. Clause 43 provides that any person having the control of a dog who fails to remove any faeces dropped by the dog in a public place shall be guilty of an offence.

Clause 44 provides that the person liable for the control of a dog shall be guilty of an offence if the dog attacks any person or other animal. Any person who sets a dog on another person or animal owned by another person is also, under this clause, guilty of an offence. Clause 45 provides that the person liable for the control of a dog shall be guilty of an offence if the dog attacks a lawful entrant to the premises in which the dog is being kept. Clause 46 provides for the destruction of dogs attacking any person's animal or worrying any livestock. The clause also provides for the laying of poisoned baits.

Clause 47 imposes a duty upon any person liable for the control of a dog to take reasonable precautions against the dog becoming infected or diseased, and to cause the dog, if it becomes infected or diseased, to be examined by a veterinary surgeon or stock inspector. Under this clause a veterinary surgeon or stock inspector may direct the destruction of any infected or diseased dog. Clause 48 requires that greyhounds be muzzled if in any public place unless they are being trained for or participating in any race, trial or show.

Clause 49 provides that it shall be an offence for a person to suffer or permit a dog to cause a nuisance to a neighbour. Proceedings for this offence are to be commenced only by the local council and following a complaint that the council believes to be justified. Clause 50 empowers a court to order the destruction of a dog that it finds is unduly mischievous or dangerous. Clause 51 regulates the effect of the measure on other Acts and civil remedies. Clause 52 provides that for the purposes of any civil action in respect of damage caused by a dog it shall not be necessary to prove that the dog had a previous mischievous propensity.

Clause 53 protects persons from any liability for measures taken for the destruction of a dog in accordance with the provisions of this measure. Clause 54 empowers the blind to be lawfully accompanied by a guide dog in public places and vehicles. Clause 55 provides that it shall be an offence to hinder or obstruct an authorised person. Clause 56 provides that it shall be an offence to provide certain false information. Clause 57 empowers councils to make by-laws limiting the number of dogs, or dogs of a specified breed, that may be kept on any premises in any specified area. Subclause (2) provides for exemptions from the requirements of such by-laws.

Clause 58 provides for the grant of licences to keep kennels. Clause 59 provides that it shall be an offence to unlawfully kill or injure a dog or to cause unnecessary pain or suffering to a dog. Clause 60 provides a general defence in respect of offences against the measure. Clause 61 provides for certain evidentiary matters. Clause 62 provides for the summary disposition of proceedings for offences against the measure.

Clause 63 provides that penalties for offences prosecuted by or on behalf of a council be paid to the council. Clause 64 provides for the expiation of certain offences against the measure. Clause 65 provides for continuing offences. Clause 66 empowers the making of regulations.

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

EIGHT MILE CREEK SETTLEMENT (DRAINAGE MAINTENANCE) 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 object of this Bill is to expand the regulation-making power of the Act to enable, first, an advisory board to be set up and, secondly, the drains and drainage works constructed under the Act to be better maintained and protected. The powers relating to the protection of drains that this Bill seeks to provide are similar to powers contained in substantive provisions of the South-Eastern Drainage Act. The provisions of this Bill are in accordance with the terms of the various undertakings given to the Eight Mile Creek landholders last year, and will give rise to a set of regulations that will enable this Act to be better implemented.

The provisions of this Bill are as follows: clause 1 is formal. Clause 2 provides that regulations may be made for the purpose of establishing an advisory board, some members of which will be elected by the landholders. Regulations may be made requiring landholders to fence their properties adequately. Provision may be made for the impounding of straying stock, and the collection of impounding fees. The construction of private drainage works may be regulated or prohibited where such works would affect the operation of the drains constructed by the Minister.

Regulations may be made requiring obstructions and unauthorised constructions to be removed, and empowering the Minister to cause the removal of those things upon default, and to recover the cost of removal from the appropriate person. The Minister may be given the power to grant exemptions from any provisions of the regulations. Fees may be fixed in relation to any applications made under the regulations.

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

CONTRACTS REVIEW BILL

Adjourned debate on second reading.

(Continued from 8 February. Page 2489.)

The Hon. R. C. DeGARIS (Leader of the Opposition): This Bill has had an interesting history in Parliament. It is a classic example of legislation being pressed into Parliament by the Government and the Government not understanding the full effect that the Bill will have on the trading ability of business organisations in South Australia. If the Bill had passed in its original form, it would have had an effect, and I believe a very serious effect, on South Australia's trading ability. South Australians are beginning to understand the damage that has already been done by legislation that has shackled competitiveness in the South Australian business community.

We have been the first cab off the legislative rank with so much of our consumer legislation, while the concept of consumer legislation can be sold in many ways, the Government's method of accusing practically every business enterprise of being dishonest (as the Government has done in the past) means that the real test of the legislation is now telling on business confidence and business activity in South Australia.

Thinking South Australians have just about had enough of such legislation. If this State is to compete, we must

realise that our present position is largely of the Government's making. The quicker we realise that this sort of legislation adds nothing to the ability of the private sector to lift the economy, the better off we will be in this State.

The Bill was first introduced in another place in 1977. It was then referred to a Select Committee, which made a report in which many amendments were recommended and adopted by another place. In the debate on the Bill in this Chamber further anomalies were pointed out. Being unable to analyse the Bill and its effect on existing law, we did not pass the second reading in this Chamber but referred it to the Law Reform Committee, which has now had a go at it and has made a report. The Bill has been introduced again in 1979, two years later.

Although I have forgotten the opening wording of the committee's report, it stated that the general principles of the Bill had not been disagreed to by either House of Parliament. That is an assumption by the committee that I do not think it has the right to make. If it had been left to this Council, the Bill would not have been approved. The committee began its report from that point of view. Also, it was not unanimous in its report, and I believe that the Bill, as it is now drafted, is still a piece of legislation that will damage the confidence of the private sector in South Australia and also our competitive position.

I made the point earlier that, if we want to see some recovery in South Australia, we should not shackle the private sector any more, because there will be no recovery here unless the private sector leads it. Nothing restricts the confidence of investment capital more than over-regulation, over-control and over-restriction.

In not wishing to cover matters already dealt with by the three previous speakers (the Hons. Mr. Griffin, Mr. Burdett and Mr. Laidlaw) who have covered most of the points to which the Council should direct its attention, I am most concerned about the larger exporters. They have expressed concern to me concerning clause 5 (4). The Hon. Mr. Laidlaw referred to this provision and, if the Council accepts the Hon. Mr. Burdett's foreshadowed amendments, there might not be any need to examine this clause. Clause 5 (4) deals with overseas contracts, and provides:

> (4) The parties to a contract may, by agreement, exclude the contract from the operation of this Act where—
>
> *(a)* the contract is a contract for the sale or supply of goods;
>
> *(b)* a party to the contract is domiciled or resident outside Australia;
>
> and
>
> *(c)* the goods are delivered, or are to be delivered—
>
> (i) from a place outside Australia to a place within Australia;
>
> (ii) from a place within Australia to a place outside Australia;
>
> or
>
> (iii) from a place outside Australia to another place outside Australia.

This means that the parties to an overseas contract, with delivery of goods outside Australia or from outside to inside, may exclude themselves from the operation of this provision. To have on every contract a provision that the parties will be excluded from the operation of the Contracts Review Act in South Australia seems to be completely ridiculous.

In the English Act dealing with unfair contracts (they use the word "unfair" and not "unjust") overseas contracts are excluded, anyway. I can imagine the effect on a company such as Elder Smith Goldsbrough Mort Ltd., which is constantly dealing in wool overseas, having to provide on every telex that leaves the place the sentence "We exclude ourselves from the operation of the Contracts Review Act in South Australia."

There seems to be no reason why these types of contract should be caught. Nor should they apply only to goods. Goods and services on an overseas basis should be excluded. The main point that I wish to draw to the Council's attention concerns the difficulty of the requirement that the goods are to be delivered as provided in the legislation. On my analysis of the law in relation to the sale of goods, delivery is complete once the seller has no further responsibility to transport goods: for example, section 32 (1) of the Sale of Goods Act provides that *prima facie* delivery to a carrier is delivery to the buyer. On this analysis, the normal f.o.b. contract will not fall within clause 5 (4) because, wherever "delivery" commences (presumably ex factory), it is complete when the goods pass the ship's rail: thus in the case of a f.o.b. export contract, "delivery" will take place entirely within Australia and the Act cannot be excluded.

The question of delivery assumes much importance because, if the delivery is made inside Australia, it is no longer, as I understand the Bill, an overseas contract. This can be corrected by an amendment, but the best way to do that is to exclude all overseas contracts, whether of goods or services, from the operation of this Bill.

Other matters about which I could speak have already been drawn to the Council's attention by the three previous speakers, as well as in previous debates in this Chamber when the Bill was before it and when these matters were fully explained. However, this one point concerning delivery was not referred to when the Bill was previously in this Council. It is most important to realise that, even if a company wishes to exclude itself and does that, there is still doubt, concerning the point of delivery, whether or not companies are able to exclude themselves from the provisions of this Bill.

I am prepared to support the second reading, but I will support amendments that have been foreshadowed. I again emphasise that, in my opinion, this Bill could have been introduced to cover the areas of concern. We have so much consumer protection legislation that the position is becoming confusing to everyone. If there is to be legislation to allow judicial review of harsh or unconscionable contracts, it should apply to a limited extent so far as this State is concerned.

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

TRADE STANDARDS BILL

Adjourned debate on second reading.

(Continued from 7 February. Page 2427.)

The Hon. D. H. LAIDLAW: The Minister has given a second reading explanation of about 9 000 words in order to persuade this Chamber that the Bill is designed to serve the best interests of manufacturers, wholesalers and retailers, as well as consumers at large. The object of the measure is to repeal six existing statutes, namely, the Sale of Furniture, Goods (Trade Descriptions), Textile Products Description, Packages, Footwear Regulation, and Flammable Clothing Acts, which the Minister says are outmoded. The current Bill will empower the Minister of Prices and Consumer Affairs, by regulation, to impose specific standards of safety, quality, information and packaging with respect to all types of goods and services, other than those which are already controlled by legislation, such as food and drugs, motor vehicles, and some electrical goods.

My colleagues in this Chamber have complained from time to time that the public of South Australia are over-governed, with the result that the administrative expense of providing goods and services has increased to an exorbitant extent. I share their view but I warn them that, if regulations are issued to the breadth made possible by this Bill, their experience to date will have been minimal compared to what is in store for them. Almost every article that we buy or every service that we receive may be affected by this Bill. This will include such minor items as a box of matches or the paper glider clips that are provided for my use in this Chamber, which I use to scratch my ear.

Suppose that I decide to manufacture and sell paper glider clips in South Australia. If this Bill passes, it is likely that I shall have to make them to the safety standards prescribed. It is envisaged that the regulations pursuant to this Bill will prescribe the design, construction, contents, finish and performance of these paper glider clips so that they do not impair the health of those who use them. The penalty for breach is up to $10 000. The Minister may be expected to make regulations also to ensure that the paper glider clips are of a quality reasonably fit for the purpose for which they ordinarily are used. The penalty for breach in this instance is only $2 000.

In addition to meeting the necessary requirements of safety and quality, I should have to ensure that I did not give any inaccurate information regarding my paper glider clips. "Information" is defined in the Bill as covering, *inter alia*, recommended price, model, style, strength, durability, method of manufacture, method of cleaning, and availability of maintenance or repair services. The penalty for giving inaccurate information is $5 000. Finally, I must ensure that my paper glider clips are packaged in a manner fixed by the regulations. These may prescribe the shape, size and thickness of the boxes containing my paper glider clips and ensure also that the containers have no unoccupied space or unseen cavities or recesses by which to trick the unsuspecting public. The penalty for irregular packaging is $5 000.

According to the Minister, this Bill will promote the ideal of uniformity by enabling the Government to adopt the recommendations of the Commonwealth-State Consumer Products Advisory Committee, the Federal Standing Committee on Packaging, or the Standards Association of Australia. I have had no dealings with the two bodies first mentioned but in my experience some of the sections of the S.A.A. seem inept or, at the least, dilatory. One wonders whether Australia is a large enough community to have its own Standards Association or whether it would be preferable to adopt the recommendations of the various international standards bodies.

I am certainly in favour of achieving uniformity Australia-wide in manufacturing standards in order to reduce costs, but the Bill does not stipulate that the Minister must strive for uniformity. If he becomes impatient, he may well choose to set South Australia on the course of pacesetter by making regulations that either do not apply or are more stringent than those elsewhere.

I note with interest that the Crown is not bound by the provisions of this Bill. The Minister says that the consumer must be protected from the hazards of new technology. In particular, manufacturers must build into their products safeguards against all predictable forms of abuse or misuse by child consumers. The forgotten consumers, as the Minister calls them, are aged between seven and 17 years and often have money to spend.

I agree that safeguards must be provided to protect children from buying dangerous goods. However, if the South Australian Overseas Trading Corporation is established as the Government proposes, it would be free to import some dangerous device in the form of children's toys and sell these in this State without fear of penalty.

Likewise, the newly-proposed South Australian Timber Trading Corporation could make and sell its timber products without regard for safety, quality, misleading information, or method of packaging, but woe betide any timber merchant in the private sector who acted in this manner.

Section 13 of the Bill empowers the Governor to appoint standards officers, each of whom will be provided with a certificate of identification. These safety officers are empowered to enter into or upon any premises or stop and enter into or upon any vehicle. The Hon. Trevor Griffin has protested in other debates about the practice of granting to inspectors appointed for special purposes, such as a trade standards officer, powers of entry greater than are granted to the police. I hope that he will add his words of protest in this debate.

I note with amusement that the penalty imposed upon a person who falsely represents that he is a standards officer is only $1 000, compared to penalties up to $10 000 imposed on makers and suppliers of goods that differ from the prescribed regulations. Instances of industrial espionage are common overseas, and imagine the value to be gained from inspecting or acquiring a new invention of a competitor by sending into his works a person posing as a standards officer, realising that the maximum penalty is only $1 000.

Under clause 34 (1) the Minister may grant exemption from the provisions of this Bill of its regulations where goods are to be exported or imported and it is reasonable to do so. Interested persons, who perused the Bill prior to it being introduced in the House of Assembly, inquired about the reasons for this clause. They were advised that it was intended to apply where locally-made goods are to be exported and where international safety standards are lower than apply in Australia, or where goods are imported and the international standards are different from those that apply here. If that is the only intention, why not say so? Giving the Minister power to exempt where it seems reasonable, without defining the grounds, could lead to much recrimination.

Clause 39 provides that, where any body corporate is guilty of an offence, every director and manager shall be guilty of the offence and liable to the same penalty unless he proves that he could not, by the exercise of reasonable diligence, have prevented the commission of that offence. The wording of this clause is an attack on the executives of companies. The term "manager" is not defined in the Bill, and manufacturing, importing and retailing companies often employ many executives with the title of manager of a certain division. Presumably, every executive with the title "manager" would be liable unless he could prove that he could not reasonably have prevented the offence.

If such a clause is necessary, I far prefer the wording in the Packaging Act, which is to be repealed. It provides that every director and member of the governing body, and everyone concerned in the management of the body corporate, who authorised or knowingly permitted the act shall be deemed to have committed an offence. This limits liability *ab initio* to those who had some knowledge of what was happening.

The Minister has said that the setting of standards and making of sanctions for breaching them protects the reputable local manufacturer against competition from a flood of substandard imported goods, and that is true. He also points out that, as in the Food and Drugs Act, it is necessary to set the standards by various regulations, because it would be impracticable to include in the principal Act detailed standards with respect to safety,

quality, misleading information, and packaging. With that comment I also agree, but the powers sought in this Bill are all-embracing. If specific regulations were issued without due regard for the administrative costs imposed on manufacturers, wholesalers and retailers, it could impose an intolerable burden on them, and this could nullify other possible benefits.

The Minister has also pointed out that product safety legislation has been in force for some time in the United States, Canada, the United Kingdom, and, more recently, in New South Wales and Tasmania. The amendments to section 62 of the Federal Trade Practices Act also contain provisions forbidding corporations from supplying goods that do not comply with an existing product safety standard. Since uniformity is the Minister's professed aim, it seems reasonable to legislate for product safety in this State.

Regarding the other three segments of this Bill to which I have referred, other companies and States have packaging legislation, and sections 52, 53 and 63 of the Trade Practices Act also prohibit the giving of misleading information. However, although there is a reference to product quality in section 71 of the Trade Practices Act, the provisions for permitting the making of specific regulations for product quality in clauses 27 and 28 of this Bill are unique so far as I can ascertain. I am therefore reluctant to support them without far deeper consideration of their possible ramifications. However, I will support the second reading so that the Bill can go into Committee, when I shall move amendments to reflect those criticisms of the Bill of which I have spoken today.

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

REAL PROPERTY ACT AMENDMENT BILL (No. 3)

Adjourned debate on second reading.
(Continued from 8 February. Page 2470.)

The PRESIDENT: I point out that in clause 23 (2) on page 5 of the Bill there are certain words which, having been taken from the Bill in another place, should have been removed therefrom before the Bill was introduced in the Council. A correction has been made in pencil, and it is expected that a reprint Bill will be received some time this afternoon.

The Hon. C. M. HILL: The Bill introduces several unrelated changes to the Act. The Minister explained, when introducing the Bill, that the system of registration at the Lands Titles Office is to change from the present one, which many of us know very well indeed, to a new approach in which a large computer will be involved.

A simplified form, known as a panel form, will be the basis for documents that will be lodged for registration. I certainly hope that sufficient research was done by those responsible before this major change was agreed to.

The old arrangements at the Lands Titles Office in Victoria Square were, in my view, very satisfactory indeed, and I know that that view is shared by many of the conveyancing practitioners in this State. I have been told that those views were also shared by the staff at the Lands Titles Office.

The Hon. T. M. Casey: But they have better facilities now.

The Hon. C. M. HILL: I remind the Minister that land brokers who have already visited the new accommodation have told me that they find it most inconvenient, in that they must visit different floors in the new accommodation, whereas previously, in the old accommodation in Victoria Square, most of the operative work was done on the one floor.

Also, a member of the Lands Titles Office staff has told me that the staff there find that the new arrangements of occupying several floors compared, in the main, to the one floor that was occupied in the past is proving inconvenient for them.

The Hon. T. M. Casey: This is just one member of the staff?

The Hon. C. M. HILL: Yes, but a reliable one. One of the problems in recent years in the old accommodation was that not enough staff was employed. The section was under-staffed, and this has been a great pity because traditionally the Lands Titles Office staff has been noted for its high standard of service. Indeed, it has been one of the model Public Service departments in this State, and it is claimed to have an unsurpassed record regarding the manner in which it has dealt with the public and carried out its duties most efficiently, the staff being most cordial and friendly to those who have gone to the counter in that department.

A very warm and friendly association has developed over many years between the public servants who work there and the members of the public who lodge documents and make inquiries there regarding real property work. Now, the department has its new (and, I might add, expensive) accommodation. I fear that the rental to be paid therefor to the City Council must be extremely high.

It costs an enormous sum to establish a new department by way of fittings, strong-room, and other such installations. Of course, the cost of the computer must be enormous, too. I am also informed (and perhaps the Minister can confirm or deny this) that more staff will be required in the department now that the computer is installed under the new arrangements than was the case under the old system. If that is so, it is a remarkable situation.

I am told that more staff will be required because all details and all documents must be checked very carefully prior to such information being fed into the computer. So, as a result of the introduction of the computer and the acceptance by the Government of the change in accommodation, there will be a considerable change affecting the long established principles and practice associated with the Torrens system of land titles. Some of those changes are dealt with in the Bill.

One of the major changes is that instruments, such as transfers, mortgages, and documents of that kind, will in future, if this Bill passes in its present form, have to be in a form approved by the Registrar-General. Previously, instruments had to be in a form in accordance with the Real Property Act. Those forms were given in a schedule to that Act. I am not satisfied that the new system, which allows the Registrar-General to decide which forms shall be used and which shall not be used, is a better system than the old one.

A future Registrar-General may put the whole system at risk and, if he did, he would be acting within the provisions of the new legislation. To pass legislation that could allow that to happen is very bad. I note in clauses 8 and 29 that the Registrar-General shall not register an instrument unless it is in a form that he approves. He is also given the power to reject any instrument that, in his opinion, cannot be registered under the legislation.

Further, fees that have been paid upon an instrument that is not acceptable to him shall be forfeited in total. That point ought to be examined more closely in Committee, because in some circumstances it would be

totally unfair for the total amount of fees to be forfeited. A solicitor or landbroker must know with certainty that, if documents at settlement are in a registrable form, they will be accepted and registered at the Lands Titles Office. If those forms are laid down in the legislation, the conveyancer knows that the conveyancing practice is such that money can change hands, the title can be handed over, and the executed and accepted transfer is registrable. Take that knowledge away from the practitioner, and the whole Torrens title system of land registration is ruptured and in chaos.

The Governor appoints the Registrar-General. Throughout history, these officers have come up through the ranks at the Lands Titles Office. They have been men of great experience, with knowledge gained not only over many years of departmental practice but also through continuous contact with the public. These men have built up an intimate knowledge of conveyancing and settlement practice in the field in Adelaide and throughout the State. Under this Bill in its present form, the Government would have the right to appoint a new boy, so to speak. The Government could appoint a computer expert who might not have had any practical knowledge of the working of the department or of the Torrens title system. Therefore, this new approach of giving the Registrar-General power to lay down the forms to be used and to reject documents is very bad. Another important aspect of the Bill is that it provides that the Registrar-General shall administer the Act in accordance with any direction of the Minister. New section 13 (3) provides:

> The Registrar-General shall administer this Act in accordance with any direction of the Minister.

This is political control of the worst kind. The Registrar-General, of course, should be responsible to his Minister for the administration of the legislation, and the Minister is responsible to Parliament. Political interference could be disastrous to the working of the Torrens title system, and I oppose the clause giving the Minister the right to direct the Registrar-General in any matter relating to the administration of the legislation.

Clauses 6 and 7 allow notices to bring land under the legislation to be served by ordinary post, rather than by registered post. The Minister says that the previous practice has been unnecessarily expensive and that in many cases unnecessary procedures have been involved. Discretion is given to the Registrar-General in this matter. It is important that all who should receive notices do receive them. The best way to guarantee that is to continue with a system of registered mail or certified mail. Certified mail seems to be very reliable. One can raise the question of expense and point out that in some cases it appears to be unnecessary to use certified mail, but short cuts and small savings are not necessarily wise procedures. Honourable members should therefore carefully examine the clauses dealing with these matters. New section 54 (1) provides:

> Subject to this Act, the Registrar-General shall not register any instrument purporting to transfer or otherwise deal with or affect any estate or interest in land under the provisions of this Act unless—
>
> *(a)* the instrument is in a form approved by the Registrar-General;

I referred to this matter a moment ago. One must ask whether the successful introduction of this computer change is more important than the basic Torrens title system itself. That system implies that the Real Property Act provides clearly the form of instruments that are part of it. The conveyancers in the field and the staff at the Lands Title Office, including the Registrar-General, should all work within the clearly understood provisions of that Act. This clause breaks with that principle and allows the Registrar-General to be a law, one could say, unto himself. He, not the Act, can say which forms the conveyancers must use and which forms shall be registered.

The basic Torrens title system principle is that all parties to a transaction at settlement must know with absolute certainty that the documents will be accepted for registration at the Lands Titles Office. If there is not that permanency and finality, and if the Registrar-General has far-reaching arbitrary powers and can change the forms, and advice of that change is not promulgated properly over a reasonable period, then the whole system will break down.

The Torrens title system, as honourable members know, originated here in this State. It was named after Sir Robert Torrens, a former member of this Parliament, indeed, of the Legislative Council, and a former member of the House of Assembly, very soon after responsible government was established here. I have noted with interest that he returned to England and became a Parliamentarian there as a member of the House of Commons. It is a system which spread throughout the world and of which we can be very proud indeed. It is noted for its simplicity and efficiency, and it embodies the principle of indefeasibility of title. Great care, therefore, should be taken when legislation is introduced and considered by this Parliament which may weaken a system which has been accepted by not only the whole of Australia but by many countries throughout the world and which is indeed acclaimed as an excellent system of title.

Clause 19 deletes the need for plans and specifications to be attached to certain instruments and allows the Registrar-General more discretionary power, in this instance, to say whether or not he needs attachment to a mortgage or encumbrance. This is another illustration of uncertainty being introduced into the Lands Titles Office practice. Apart from placing added burdens on the conveyancing profession, it introduces more uncertainty into the new system and, again, I say that that should be criticised. It is moving away from a system that is simple, certain and safe.

Clause 23 concerns dealings by endorsements such as on renewals and extensions of leases. If this Bill passes, the present system of dealings by endorsements in regard to leases will no longer apply. Under the new system, renewals of leases must be lodged by separate instruments, again, in the form approved by the Registrar-General, which form we cannot see at the present time, before the date of expiry of the respective leases. In many cases the new rentals are not agreed upon by the expiry date of the lease. By the new rentals, I mean new rentals applying to the renewed period of the lease. I make this point because quite often, in fact in almost all cases, the rent is reviewed and altered when the question of renewal is considered, and quite often arbitration is involved and agreement cannot be reached quickly between the lessor and lessee as to what the rent shall be for the new lease period. There is a delay and, as I read the Bill, if there is such a delay all sorts of things can happen on the day after the original lease expires.

As I understand the measure, and I would like the Minister to explain this point further in his reply, the registration, or the knowledge that the original lease has been registered on the title, is deleted from the computer programme: it has not been renewed on the day before it has expired. For a reason, such as the arbitration regarding the renewed rent, some delay can occur, and anyone who searches that title the day after the expiry date of the old lease may have no knowledge at all that that title

has been subject to a lease. He may have no knowledge at all that the lease does include a right of renewal (and that, of course, is of great interest to a prospective purchaser of that title) and, indeed, may not have any knowledge at all that certain clauses in the original lease can be of vital concern to a prospective purchaser. One such clause might be the option to purchase the property, given by the lessor to the lessee in the original lease.

If that kind of information is going to be programmed out immediately that lease expires, all sorts of serious troubles are going to occur. A lessee must protect his interests by having caveat in circumstances such as I have explained, but I stress the point that protection by caveat is not an adequate substitute for registration. I believe the Council should have a full explanation in regard to that question of the new system which is going to be necessary because of the introduction of the computer relative to the renewal of leases.

Clause 32 concerns me in regard to the matter of serving notices, and I pose the question to the Minister: what really is meant in this context by a notice having being served personally? Where notices are served by post, some reference is surely needed to the address to which notices are sent, and this is not in the Bill. The repealed section 276 deals with the person's last known address in South Australia, or the address shown in the register book, but no mention is made of that in this new section. Does this provision now relate to defaulting mortgagees or encumbrancees under section 132 or 133 of the Act?

I have some serious concern about this measure. I refer to the need for this legislation to be clear and precise in its provisions which are to be administered by the Registrar-General. I believe the forms of instrument should be introduced by regulations to the Act. Amendments to this Bill could provide for that. Parliament would then approve of the Act and the regulations which would include the forms for instruments such as mortgages and transfers, and I think that is the proper procedure. It most certainly is the procedure now, because, as I said, those forms are embodied within the Act in the schedule. Other suggestions I have made can be tested by amendments in Committee. I am totally opposed to the Ministerial direction which the Government seeks in this Bill and will move at the appropriate time to delete this particular clause. So that the Bill can be further considered at the Committee stage, I intend to vote for the second reading.

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

SECURITIES INDUSTRY BILL

Adjourned debate on second reading.

(Continued from 8 February. Page 2475.)

The Hon. D. H. LAIDLAW: The Minister said that the need for legislation governing the conduct of stockbrokers in the securities industry has been recognised throughout Australia for a number of years.

One might infer from this statement that stockbrokers hitherto have been allowed to carry on business in an unfettered manner, as insurance brokers may do at the present time, but such is not the case. I remind the Minister that the Playford Government introduced the Sharebrokers Act in 1945. This required a stockbroker to maintain a trust account, keep proper financial records, have these audited regularly, and for the auditor to send a return to the Registrar of Companies. One of the objects of this Bill is to repeal that Act.

When the Interstate Corporate Affairs Agreement was concluded in 1975, with the aim of achieving uniform legislation, only New South Wales, Victoria, Queensland, and Western Australia joined. These four States, in addition to introducing new Companies Acts, also passed uniform legislation to govern the securities industry. This was a sequel to the report of the Senate Select Committee on Securities and Exchange in 1974 under the chairmanship of Senator Peter Rae.

South Australia and Tasmania, being the only two States at that time under a Labor Administration, remained aloof, apparently waiting for the Federal Attorney-General of the day (Senator Lionel Murphy) to introduce bigger and better legislation for the Federal Territories that could serve as a model for other States.

This did not happen. As a result, South Australia and Tasmania for the past few years have been without legislation governing the conduct of persons who buy or sell shares on the Stock Exchange, apart from the provisions of the Sharebrokers Act. This Bill is a belated effort, and I was surprised to read a press statement by the Attorney-General a few months ago implying that his initiative will help to promote uniformity. In a sense he will, but he could have done so three years ago.

This Bill is identical with the legislation in the other States except that it deletes references to the Interstate Corporate Affairs Agreement. It limits the amount that may be paid from the fidelity fund to compensate persons who suffer pecuniary loss due to the default of a member of the Stock Exchange to $250 000, whereas the maximum in New South Wales is $500 000. Furthermore, it excuses stockbrokers from contributing to the fidelity fund after it exceeds $1 000 000, whereas in New South Wales $2 000 000 is the upper level.

The Bill provides that a person carrying on business dealing in securities must obtain a dealer's licence and must conform to the rules of conduct set out in the subsequent clauses. A member of a Melbourne firm with branches in each capital city contacted me recently expressing the hope that the regulations introduced pursuant to the South Australian legislation will be identical to those in the other States. He was referring to the forms wherein the dealer presents to the Corporate Affairs Commissioner his annual return, the accounts of the firm, and the auditors report. The adoption of different forms would cause much unnecessary expense and I ask the Attorney-General to take note of this request.

The Minister pointed out in his second reading explanation that the Commonwealth and the States are now negotiating to achieve uniform legislation Australia-wide, and also then to amend somewhat the legislation adopted by the original signatories to the interstate Corporate Affairs Agreement.

Inside trading, that is, the buying of selling or shares in a company by persons with privileged knowledge of some material activity of that company which is not available to the public generally, is restricted by this Bill, but it should be curbed more rigidly in the future. The form of such amendments should be agreed upon by all Governments.

For example, the Victorian Corporate Affairs Commissioner investigated recently the large purchases and sharp rise in the price of Beach Petroleum shares just prior to an announcement that the State Gas and Fuel Corporation and Beach Petroleum had been granted joint leases to prospect for petroleum in Bass Strait adjacent to the BHP-ESSO finds.

The Commissioner referred in his report to purchases of Beach Petroleum shares by an employee in an advertising consultancy firm who, when questioned, admitted that he

had been given a "tip off". The Act empowers the commission to demand the names of persons trading in shares, but the dealer is not required to disclose the reasons for such purchases. The commission must accept the answer of the share purchaser at face value and cannot probe deeper.

Another activity that is restricted by this Bill is short selling, that is, the selling of shares by a person who does not own such shares at the time of sale but expects the price to drop whereupon he will buy the shares that he is obliged to deliver at a lower price. Members will recall that the Government introduced a Bill in the last session to exclude the application of Sir John Barnard's Act. That was an old imperial statute passed in Westminster in 1734 shortly after the bursting of the South Sea Bubble. The Act outlawed short selling of shares and dealing in share options and was incorporated into our law upon the founding of this colony. It was repealed in Westminster in 1860, but has been allowed to remain in force in South Australia until now.

I moved an amendment with regard to short selling in identical terms to the relevant section in this Securities Industry Bill. The Bill to exclude the application of Sir John Barnard's Act as amended had the effect of legalising option dealing but restricting short selling. It was passed by this Chamber but has not as yet been debated by another place. If this present Bill passes, the need to amend Sir John Barnard's Act will be superfluous. As the need for this legislation is overdue, I support the second reading.

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

MEMBERS OF PARLIAMENT (DISCLOSURE OF INTERESTS) BILL

Adjourned debate on second reading.
(Continued from 8 February. Page 2496.)

The Hon. J. A. CARNIE: Most speakers from this side of the Chamber, while pointing out the deficiencies of the Bill, and there are many, have said that they support the principle behind it. However, I intend at the outset to break new ground by saying that I oppose totally the principle behind the Bill. I believe that it is an unwarranted invasion of privacy to which anyone, even members of Parliament, are entitled.

Also, I reject it for the reason that the whole matter is a blatant and cynical exercise. This legislation first saw the light of day in November 1977, after the disclosure of what were normal, proper, and certainly legal business dealings by Mr. Lynch. I am sure that it was quite coincidental that there then happened to be a Federal election only a few weeks away!

The fact that the Bill was introduced for purely political purposes is shown by its treatment. It lay in another place from November until March. It then came here and, after a couple of speeches, it lapsed because of insufficient time. Obviously, the Government was not worried about it at that stage. It obtained the mileage it sought, not that it did it much good at that election. Now we have a similar Bill before us, and the Attorney-General, in introducing it in another place, referred to the need for the public to see that members of Parliament were of the highest principle, and would not do anything to further their own interests.

I would be much more impressed by that if it had been said by someone who himself had a few more principles. We all know the occasion last year when several members, on *This Day Tonight*, voluntarily disclosed their interests, but the Attorney-General happened to forget that he held 2 000 shares in radio station 5AA. One does not forget that one holds 2 000 shares in a successful company.

Another example of the Attorney-General's principles occurred before he was given that portfolio. As a private member, he introduced a Bill to decriminalise homosexuality. In the second reading debate on that Bill he stated that suggestions had been made that homosexuals should go into schools to discuss their attitude and that he did not support that in any way. The Attorney-General stated the same thing to the Hon. Mr. Cameron and to me.

The Hon. F. T. Blevins: You're getting away from the Bill.

The Hon. J. A. CARNIE: The Bill deals with principles.

The Hon. J. E. Dunford: This is character assassination.

The Hon. J. A. CARNIE: There was a large amount of character assassination associated with the introduction of this Bill in the other place. I remember at that time seeking from the Attorney-General an assurance on the matter of schools, and he assured me that he stood by what he had said. On 25 October, at a meeting of the Council of Civil Liberties in Sydney, he said that he did think homosexuals should be allowed into schools and that he had said what he did say so as to ensure the passage of his Bill. That is the person who is getting so high minded now about principles. However, I will now get back to the Bill.

Members on this side are bringing to light so many inconsistencies that surely even the Government can see that the provisions are so uncertain and so completely unsatisfactory that it will allow history to repeat itself and let the Bill lapse.

I should like to deal now with some of the more unsatisfactory and unfair provisions of the Bill. First, if such a measure is considered necessary, then it does not go far enough. The Hon. Mr. Blevins quoted someone who had said that back-benchers run nothing, decide nothing, and usually know nothing worth paying for. I agree that it does nothing for one's ego to have the matter put so bluntly, but it is largely true.

However, what is certainly true is that back-benchers do not make decisions affecting the State to the extent that heads of Government departments and State instrumentalities do. For example, the Electricity Trust of South Australia is a huge organisation. Its income last year was $179 000 000, its costs were $175 000 000, and its capital expenditure was $52 000 000. Decisions made by the General Manager of the trust are far more significant to the State than are any made by back-benchers. The same thing applies to the head of the Housing Trust and to the head of every other Government department and State body.

Surely these people should have to declare their interests to show that there is no conflict. However, why stop at the heads of departments? In the case of the Electricity Trust and the Housing Trust, the boards are involved in decision-making. Should they not have to disclose their interest? In other Government departments, not only the head makes important decisions: decision-making can go a long way down the line. Where does one stop?

The Hon. J. E. Dunford: Where should one stop?

The Hon. J. A. CARNIE: Does the honourable member agree with me? Does he think that public servants should have to disclose their interests? This shows how blatantly political the Bill is. Once this Pandora's box is opened, there is real trouble. Another point where, if we are to have this Bill, it does not go far enough is on the question of liabilities, which the Hon. Mr. Laidlaw raised. If assets and sources of income are to be disclosed, so should

liabilities, because often a man will go much further to protect a debt than assets and income. However, there is no provision in the Bill to cover liabilities. Another matter with which I want to deal is that of spouses. Last week the Hon. Anne Levy said:

> Decisions such as whether to run for public office are not taken by the individual alone but are joint decisions by two people concerned with each other's welfare and happiness . . .

This would apply in some cases, but it is not true to say that it applies in all cases. My wife was strongly opposed to my entering Parliament.

The Hon. N. K. Foster: So are many other people. She wasn't alone!

The Hon. J. A. CARNIE: I want to put on record that, when I won preselection and entered Parliament, she could not be more supportive. I know from speaking to other members and their wives that what the Hon. Miss Levy said was not true. Therefore, her argument as to why wives should declare their interests falls. Again referring to my own case, my wife works as a physiotherapist on four mornings a week, a total of 12 to 14 hours a week. I do not know, nor do I wish to know, how much she earns. I consider that to be entirely her own business, as is what she does with the money. However, if this Bill becomes law, her income will need to be declared and any sticky-beak can walk in off the street and find out something that I have never considered to be even my business. The Hon. Mr. Dunford is prepared to put his nose into this business.

The Hon. J. E. Dunford: I want to find out how crook you are, if you are crook. You may sell shares before the Bill comes into force.

The Hon. J. A. CARNIE: I was coming to that. Recently, the Hon. Mr. Dunford said that he would look at the income of anyone interested in the ANZ bank. I have no interest in that bank, but I hold shares in Western Mining Corporation.

The Hon. J. E. Dunford: Of course you do. That's why you are speaking that way.

The PRESIDENT: Order!

The Hon. J. A. CARNIE: I have no doubt (and the Hon. Mr. Dunford has admitted it recently and again today) that this whole measure will be used for political purposes.

The Hon. J. E. Dunford: You're opposition has a political purpose, the purpose of not disclosing your income. How many shares have you?

The Hon. J. A. CARNIE: I have 140: a big deal!

The Hon. J. E. Dunford: How many has your wife?

The Hon. J. A. CARNIE: She has none.

The Hon. J. E. Dunford: The rest of your family?

The Hon. J. A. CARNIE: None.

The PRESIDENT: That should satisfy the Hon. Mr. Dunford. I would like him to cease interjecting, and would like the Hon. Mr. Carnie to continue the debate.

The Hon. J. A. CARNIE: In the case of spouses, I can see the reasoning behind the provision. If we are to have this measure, it would be possible to put assets and sources of income in the wife's name and so avoid the provisions of the Act. The Hon. Mr. Laidlaw stated by interjection the other day, "That is if anyone is silly enough to do that." The matter also could be covered by a suggestion by the Hon. Mr. Hill that, if anything was put in the wife's name during the period covered by the declaration, then that fact could be declared or else an amount disclosed.

That would cover what the Government intended but, at the same time, protect the privacy of the spouse who earned an income by his or her own effort, quite unrelated to the other spouse's work as a member of Parliament. I do not know why I am making helpful suggestions like this, because I totally oppose the Bill.

The next matter with which I want to deal is that of candidates. It is totally wrong that they should have to declare, and, again, such information could be needed only for political reasons.

If back-benchers have little influence on anything, candidates have none at all. At the most recent election, about 140 candidates stood for election to the House of Assembly, but only 47 of those could succeed. However, all the others would have to make public their financial interests. If this Bill or something like it does come into force, the successful candidate knows that he will have to disclose his interests.

There is no reason to warrant disclosing those interests before that. A candidate is in no position to gain any unfair benefit, nor is it possible to have any conflict of interest with a matter before Parliament, because the candidate is not in Parliament.

Finally, I should like to deal with the matter of the register itself. This Bill requires that the Registrar shall be an officer of the Public Service and that the register shall be printed as a Parliamentary Paper: in other words, it will become public property.

Also, under clause 6 (2) the Registrar shall, at the request of any member of the public, permit him to inspect the register and take a copy of any of its contents. In other words, as I said earlier, anyone could walk in off the street and, for no other reason than curiosity, demand to view the register. This is my main objection to the Bill, and in this regard the Government is departing from practices and recommendations of all other Governments. As the Hon. Mr. Hill has said, no other Parliament has recommended that the Registrar or register should be outside the control of Parliament.

The Hon. R. C. DeGaris: It was not long ago that the Government had before us a Bill protecting the privacy of members.

The Hon. J. A. CARNIE: That is true. The Attorney-General is a great advocate of the right to privacy, except in this one regard. In Canada, for example, where such a measure is not in force, it was recommended that the register be with the Clerk of the House, with the control being in the hands of a Standing Committee. In the United Kingdom, where such a measure is in force, the register is in the control of the Clerk of the House, again under the oversight of a Standing Committee.

The Commonwealth of Australia has brought out a report, which has not yet been acted on but a recommendation contained in which states that a joint standing committee be set up and that the register be in the hands of the Clerk of that standing committee.

The list goes on, but I will not repeat all that the Hon. Mr. Hill has said. The point is that no other Parliament does, or plans to do, what this Government is doing. Further, in most cases inspection of the register is allowed only for people who can show just cause, and the member concerned is then informed that an inquiry is being made.

In my view, the matter is covered adequately, both in the Constitution Act and under this Council's Standing Orders. Sections 49 and 50 of the Constitution Act deal with members having contracts with the Public Service. It is expressly forbidden to have such an interest because of a possible conflict of interest, and section 50 states that, in the case of a member's accepting or holding certain contracts, his seat in the Parliament shall be declared to be void.

Standing Order 225 provides that no member shall be entitled to vote upon any question in which he has a direct pecuniary interest not held in common with the rest of the subjects of the Crown, and the vote of any member so interested may, on motion, be disallowed by the Council;

but this order shall not apply to motions or public Bills that involve questions of State policy.

The subject matter of this Bill is already covered. Members have frequently declared their interest in debates in this Council, and it is then up to you, Sir, as Presiding Officer, to declare whether in fact such a conflict of interest occurs.

I finish as I started, by saying that I totally oppose this Bill. It appears, from what members who have spoken so far have said, that the Bill will pass the second reading. I hope that, if that happens, amendments will be moved in Committee to keep the matter under the control of an officer of Parliament. Even then, although it will be an improvement, it will still not warrant the passage of a Bill such as this. For that reason, I oppose the second reading.

The Hon. JESSIE COOPER: In all Western democracies the recognition that a member of Parliament should make a clear declaration of pecuniary interest or advantage or disadvantage that he or she may personally have in legislation before a House is accepted as desirable.

Generally speaking, it is covered by Standing Orders, and a failure to inform the House of an interest or to misinform the House may be treated as contempt of the House and dealt with under the disciplinary powers available. Generally, this situation has proved satisfactory, although we all know that there have been exceptions. The matter has been considered in most of the Western-style countries in recent years, with a view to clarifying members' responsibilities.

This is not a simple matter on which to make fair and just legislation. This was fairly put in the Green Paper prepared by the Canadian Government in 1973. Paragraph 4 of the guidelines states:

> The rules on conflict of interest should attempt to provide the public with that information which is relevant to the question of conflict of interest, while safeguarding the individual member's right to privacy regarding information which the public does not require.

However, as far as I can see, in all of the Parliaments in which serious attempts have been made to deal with this matter, special committees have been appointed to examine it at length and to bring forward recommendations that would be as fair as possible to all parties.

I have quoted already the general attitude to be adopted in the code of ethics proposed by the Canadian Government's committee. In the United Kingdom, the matter has been under review for five years, and numerous recommendations have been made, none of which has transgressed upon a member's privacy nor proposed to analyse his personal assets or income.

A register was established in which members were made responsible for their entries, but the guidelines laid down by the committee for the establishment of the register and the usage of Parliament relating thereto showed a considerable amount of common sense. I refer to it as follows:

> Under no circumstances should the Registrar and his staff be seen as enforcement officers, with powers to inquire into the circumstances of members. The underlying principle behind the register is that members are responsible for their entries; the House will trust them in this respect, but at the same time such trust involves obligations. As the Clerk of the House pointed out, "The ultimate sanction behind the obligation upon members to register would be the fact that it was imposed by resolution of the House. . .There can be no doubt that the House might consider either a refusal to register as required by its resolutions or the wilful furnishing of misleading or false information to be a contempt. The sanction of possible penal jurisdiction by the House should be sufficient.

The practices of Westminster are somewhat different from ours, but this Council still has its powers to enforce members' observation of Standing Orders. A joint committee of the Commonwealth Parliament examined this matter, and a section of its report is as follows:

> The committee's resultant assessment of the various submissions relating to the central issue was that a non-specific declaration of interests system should be instituted.

I emphasise "non-specific". At paragraph 11, the report states:

> It should be left to the discretion of individual members of Parliament as to whether or not they should register the actual value of any shareholdings.

But the heart of the matter is the recommendation of the committee, as follows:

> Members of Parliament should provide the information required in the form of a statutory declaration to a Parliamentary Registrar who shall be directly responsible to the President of the Senate and the Speaker of the House of Representatives. It is reasonable and proper to allow the public to have access to the information disclosed on establishing to the satisfaction of the Registrar and with the approval of the President or Speaker that a *bona fide* reason exists for such access. These statutory declarations should be in loose-leaf form so as to enable members of the public to inspect any relevant details in the statutory declaration filed by a particular Senator or member. Upon any request for access being received by the Registrar, the Senator or member concerned shall be notified personally and acquainted with the nature of the request and informed of the details of the inquiry before such access is granted. The Senator or member thus notified may, within seven days, submit a case to the Registrar opposing the granting of access. On receipt of such submission the Registrar, with the approval of the President or Speaker, shall make a decision from which no appeal shall lie.

I cannot see much wrong in that. Later in the committee's recommendations reference is made to Ministerial officers, a matter that I believe is very important. In this connection the report states:

> Ministerial staff should make a written declaration to the Minister by whom they are employed of those types of pecuniary interests which it is recommended should be registered by members of Parliament. A copy of the declaration made by each staff member should be given to the Prime Minister. The staff of Opposition Leaders and their appointed spokesmen should be required to declare their pecuniary interests in a manner similar to that required of Ministerial staff.

I underline the necessity for wider thinking on this matter than seems to have been used in the preparation of this Bill. The joint committee went on to deal with public servants and employees of statutory instrumentalities, as follows:

> As a general principle certain servants of the Crown should be under no lesser obligation in respect of declarations of interest than are others located in other key constituent parts of the decision-making process of Parliamentary democracy.

In New South Wales a Joint Parties Committee has been reported as recommending that those interests which should be revealed are those capable of producing financial or material benefit for the member in his role as a politician and any benefit, however received, which could influence the politician in the discharge of his duties or responsibilities. Separate registers for the Assembly and Council are proposed, and a Joint Standing Committee will be responsible for drafting a code of conduct for submission to Parliament. In the United States of America there is a varying range of requirements in different

Parliaments, but the basic principle is as in the House of Representatives, where emphasis is placed upon a member's association with firms and organisations doing "substantial business" with the Federal Government or official agencies. In the Senate, a Senator is required to file more information but, except for specific contributions and honoraria, all this information is kept confidential. I quote:

> As in the House of Representatives, only if a formal inquiry is launched into the conduct of a Senator is the information revealed to the investigating committee.

Honourable members will observe that in all other Western democracies when this matter has been discussed, although emphasis is placed on the demonstration of probity in public matters great emphasis is also placed upon the legitimate right to privacy of members. But what do we find in the Bill before this House? I am appalled that a Bill of this nature should have been introduced without any consultation with members of both Houses and all Parties, and without any special committee to examine the matter or to examine what is being done elsewhere. The preparation of this Bill seems to have been done by stealth, certainly not with the aid of public discussion, so eagerly sought by the Government in other matters.

It is an easy matter to go on to show that the contents of the Bill are radical. It proposes the type of inquisition and public disclosure only previously enforced in totalitarian countries. I now deal with some of the detailed aspects of the Bill. Clause 3, dealing with interpretation, defines "financial benefit" as follows:

> "financial benefit" means any pecuniary sum or other financial benefit but does not include a financial benefit derived from a member of the recipient's family or from public funds:

In some countries, committees have recommended that requirements to reveal a pecuniary interest in bodies dealing with Government contracts should not make it necessary for a member of Parliament to reveal any payments made to him or her from the Government purse. This may be valid when dealing with Bills of much narrower application than this one, but I believe that, in view of the wider application of this Bill, it is not desirable to so restrict the record.

This Parliament makes laws on certain salaries, on the budgetary distribution of funds to various departments and to research and educational projects, on superannuation matters and, indeed, on various outside activities in which its members and their families might or might not have advantageous interests. To follow the reasoning of the Bill, it is evident that the general public is entitled to know equally who is to gain advantage, whether from public or private distribution of funds. In view of the foregoing, I propose in due course to move an amendment to delete from page 1, line 16, the words "or from public funds". I refer now to clause 5, which 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— . . .
>
> *(d)* any interest that he or a member of his family has in any real property;

This is not spelt out. Real property is a very wide term, and it is not made clear just what is meant. Therefore, having considered this matter carefully, I foreshadow an amendment along these lines, adding the words "and where he or a member of his family has advantageous use of any real property which is not purported to be his own, be it by grace or favour or any legal arrangement for a major portion of the period of the return, its current marketable value, and the nature of the arrangement and the parties to the arrangement shall be specified". Moreover, there seems to be a further shortcoming in the Bill: it is lacking in a clear definition with regard to ownership of property outside South Australia.

Clearly, the Government of a State of this size has many dealings with overseas companies and suppliers, and it would be fundamentally necessary to ensure that property held and moneys received in other areas, be it Melbourne, Queensland, Malaysia or elsewhere in the world, should be required to be included in the member's return. Throughout the Bill one finds the word "prescribed" used, with the prescription clearly left to a later regulation. It occurs in the interpretation clause, which states:

> "the prescribed amount" means two hundred dollars or such amount as may be prescribed:

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—

Paragraph *(e)* of that clause refers to "any prescribed matter". In no circumstances would I vote for a Bill which left it open to the Government to prescribe under regulation such matters as this. This Bill is so dangerous that a member's rights and responsibilities should be clearly set out by Parliament and a right to modify should not be in the hands of anyone except Parliament. Clause 6 makes interesting reading. Subclauses (1) to (5) show a crescendo of wild enthusiasm. It starts quietly enough, for example:

> (1) The Registrar shall keep a register of the information furnished in pursuance of this Act.
>
> (2) The Registrar shall, at the request of any member of the public, permit him to inpect the register and to take a copy of any of its contents.

It is getting a little louder. Subclause (3) provides:

> The Registrar shall, on or before the thirtieth day of September in every year, furnish the Minister with an extract from the register containing all the information furnished in pursuance of this Act in respect of the period of twelve months ending on the preceding thirtieth day of June.

In subclause (4) we are getting to a real crescendo, namely:

> The Minister shall cause a copy of the extract furnished by the Registrar under subsection (3) of this section to be laid before each House of Parliament within fourteen days of his receipt thereof if Parliament is then in session or if Parliament is not then in session within fourteen days of the commencement of the next session of Parliament.

If that is not enough, subclause (5) provides:

> All information laid before a House of Parliament pursuant to this section shall be printed as a Parliamentary Paper.

Honourable members might think at first glance that these provisions are normal enough, but to me their intent seems to be the destruction of members' privacy and the widest distribution of prying information far beyond the necessity of Parliamentary rectitude. I reiterate that these powers of wide distribution and publication are not in any sense necessary to enable the President, Speaker and, by virtue of their probity, the public to be kept well informed that their members of Parliament are acting with propriety. Clause 7 provides that failure to furnish information carries a penalty of $5 000, which seems a strange thing. Is it devised to make everyone so scared of being in default that they will make a declaration on matters not properly required by the Bill? Is the net making a much wider sweep for many more fish than for which it was purportedly cast?

Clearly the penalty of deliberately misleading Parliament should be suspension from Parliamentary sittings for whatever period the House considers appropriate, subject to the strictures and suspensions available to the House. The pretence that this Bill is in the public interest is a disgraceful sham; it is planned, in my opinion, for one or more of the following three reasons: first, for the purpose of unearthing material for political campaigning; secondly, for the known delight of prying into other people's affairs; and, thirdly, for flaunting wealth in a degree that normal ethical behaviour would otherwise prevent. For those who like publicity and who like display of wealth, this Bill might be acceptable but, for those who believe that they are entitled to some sort of privacy and entitled to invest their own money in whatever sort of property they care to choose, these regulations are obnoxious. They are, I believe, simply intended to be a crucifixion and destruction of all privacy for members of Parliament.

Whilst I believe very seriously in the pursuit of ethics and truth by any person in a position of public responsibility or leadership, I shall not be able to give any support to this Bill in its present form. I trust that the various amendments forecast will modify it to such a degree that I will be able to appreciate it as a Bill for public good, not as a Bill to do damage to the respect for our legislative institution. I would expect that this Council would send this Bill, born out of inquisitorial persecution and totalitarian radicalism, to a committee sympathetic to the dignity of Parliament and the fair rights of its members.

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

MINORS CONTRACTS (MISCELLANEOUS PROVISIONS) BILL

Adjourned debate on second reading.
(Continued from 8 February. Page 2484.)

The Hon. K. T. GRIFFIN: The law relating to infants or minors is a complex area of the law. The Law Reform Committee has presented in its forty-first report relating to the contractual capacity of infants a report dealing with the general law and making specific recommendations for amendment of specific difficulties in applying the law relating to minors' or infants' contracts. The Minister has indicated that this Bill implements those recommendations.

While the Law Reform Committee was unable to reach unanimous agreement on the general approach that should be the basis of the law governing contractual capacity of infants, the majority view is that there should be no change in the present general approach. Page 6 of the Law Reform Committee's report states:

> A majority of the committee believes that there should be no change in the general approach to the law and that, in consequence, contracts should continue to be unenforceable against infants, that the exceptions in favour of contracts for necessaries and beneficial contracts of service should continue to exist, and that the existing rules as to restitution should remain substantially unaltered.

The minority, however, preferred the general approach that all contracts by infants should be unenforceable. Their approach was derived from proposals of the United Kingdom Committee on the Age of Majority, the Latey Committee, whose report was tabled in the House of Commons in 1967.

The Bill does not purport to amend the general approach but seeks to implement six recommendations of the Law Reform Committee. The present law with respect to infants' contracts is reviewed on pages 1 and 2 of the Law Reform Committee report, and that review is most helpful. I do not intend to deal with that specifically. Changes to the law made or recommended in other States or countries have been canvassed on pages 4 to 6 of the report. Suffice it to say that there is no common denominator in those changes and/or recommendations.

Clause 4 implements the first and second recommendations of the committee. Interestingly, there is no time within which a particular contract, which is the subject of clause 4, must be ratified by a minor. Notwithstanding that, it should be recognised that there is presently no provision within the general law within which a minor must affirm or repudiate a contract into which he entered during his minority. There are some arguments in favour of a time limit, but I am yet to be convinced of the overriding benefit of a time limit placed upon the ratification of contracts by minors when they have attained their majority.

Clause 5 deals with contracts of guarantee. It implements the committee's third recommendation. The general principle in the law is that, if an adult has guaranteed the contractual obligations entered into by an infant, the guarantor is generally not bound by the guarantee because there is no valid primary obligation to which a secondary obligation may attach.

Some devices have been used to get over the difficulties presented by that general principle. One is for the person who would otherwise be a guarantor to give an indemnity to the contracting party; another is to have that person who would otherwise be guarantor enter into the arrangement with the other party as a co-contractor with the infant. The committee refers to those two devices and states:

> It is nevertheless unsatisfactory that the conjoint effect of the technicalities of the common law of infancy and of guarantee renders the undertaking of the adult guarantor nugatory, and the committee recommends that the infancy of the principal contracting party should not of itself protect an adult guarantor.

My only other comment on this clause relates to its drafting. I question whether a contract of guarantee entered into in the circumstances foreseen by clause 5, which would not be enforceable for reasons other than the guarantee of performance by an infant of his obligations under the contract, becomes enforceable by virtue of clause 5 notwithstanding other possible defects.

I can give some illustrations, but one should suffice. Under the general law a contract of guarantee is required to be in writing to be enforceable. If an infant enters into a contract and the guarantor gives an oral guarantee, does clause 5, in consequence of the way in which it is drafted, mean that the contract of guarantee becomes enforceable, notwithstanding both the infancy of the minor, whose obligations are guaranteed, and the defect which occurs in the guarantee because it is not in writing? At the appropriate time I will want to discuss this aspect further so that the recommendations of the Committee are fully implemented.

Clause 6 implements recommendations 4 and 6. This wide provision seeks to ensure that a contract with an infant or minor can have effect as if the minor had, before entering into the contract, attained his majority if before it was entered into its terms were approved by a court. That is an extension of a practice that presently applies where there is dealing by a minor with interests in land under the Real Property Act. The general practice is that a minor may by his guardian apply to a court for approval of any dealing with land, whether it is freehold or Crown

leasehold, or held otherwise, and the court has then got the power to approve or disapprove of a particular dealing.

It is used particularly in the case of minors who seek to take a lease of Crown land, or to mortgage that land. The committee makes an observation that the jurisdiction to make such orders is doubtful, but it sees advantage in making it possible, by virtue of Statute, to facilitate desirable activities by minors.

It is interesting to note that the court to which this provision refers jurisdiction is either the Supreme Court or a local court of full or limited jurisdiction. Clause 8 deals with the appointment of an agent to act on behalf of an infant or minor and refers to the court as either the Supreme Court or a local court of full jurisdiction. Under clause 7, which deals with restitution, there is reference to the Supreme Court, to a local court of full jurisdiction or a local court of limited jurisdiction in more specific terms specified as the court which will have jurisdiction to grant restitution. I draw the Council's attention to the discrepancies in the description of the courts that will have jurisdiction.

I also draw attention to the fact that, in clauses 6 and 8, it appears that a party who is interested in obtaining approval of the court may go court shopping; that is, the jurisdiction of a local court is not limited. It has commensurate jurisdiction with the Supreme Court regardless of the amount that may be involved in any particular contract. It will be appropriate to clarify that in Committee.

Clause 7 implements the fifth recommendation of the committee and deals with restitution. The present position with respect to restitution, which is somewhat complex, is set out succinctly by the committee, which states:

> Where an infant avoids a contract, he cannot recover back money paid or property transferred pursuant to the contract unless there has been a total failure of consideration. The infant is not required to restore benefits received by him under the avoided contract except that in certain instances of fraud, equitable principles may be invoked to compel the infant to restore property received under the contract which is still in his possession.

However, in respect of the minority view, the report states:

> The minority further believes that the existing rules governing restitution of benefits provided by the infant are inadequate, and that those which preclude restitution of benefits received by the infant except in the case of fraud are unjust and have provoked much of the criticism of the present law.

It should be pointed out that the expansion of the law with respect to restitution, as contained in clause 7, gives the court a discretion. It is admitted that it is one way, namely, in favour of the infant, but I support the recommendation of the majority of the Law Reform Committee, based on the reason that the majority regard it as necessary to protect the infant rather than the person dealing with the infant.

As I have said, clause 8 deals with the power of the court, upon application by a minor or a parent or a guardian of a minor, to appoint a person to transact any specified business, or business of a specified class, or to execute any documents on behalf of the minor. I support that proposal, although I raise the question whether the person appointed to do the business attracts any personal liability. I would suggest that the person so appointed does attract liability in excess of the liability that that person, if otherwise appointed as agent, would attract. The Attorney indicated that he regarded the person appointed as an agent as a person who would attract total liability. That is not an entirely correct position. If he is an agent his liability is not as extensive as is provided in this clause.

In the other place, there was much debate about whether the measure should be entitled Minors Contracts (Miscellaneous Provisions) Bill or Infants Contracts (Miscellaneous Provisions) Bill. In the general practice of the law, it is more common to refer to infants, but it is not unusual to use the term "minor" in substitution for "infant". The first part of the Law Reform Committee report refers to these two terms as being interchangeable. Therefore, I support the concept of referring to this Bill as the Minors Contracts (Miscellaneous Provisions) Bill, and I support the second reading.

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

SOUTH AUSTRALIAN INSTITUTE OF TECHNOLOGY ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 February. Page 2468.)

The Hon. JESSIE COOPER: I support this Bill, which amends the South Australian Institute of Technology Act, 1972. As the Minister states in his second reading explanation, the Bill does several things. It contains matters concerning the council and alters the constitution of the council by increasing the number of members by one, making the total 22. The additional position is to be filled by the appointment of a third student, as provided in clause 4 *(b)*. Subclause *(c)* is interesting, in that it declares that a student is not eligible to be so elected if he is also on the staff of the institute.

Clause 3, by amending section 6 of the principal Act, enables the institute to hold its property on behalf of the Crown, thus making the principal Act consistent with the Acts relating to colleges of advanced education. Clause 7 adds two new subsections to section 15 of the principal Act. New subsection (2a) gives the institute power to lease Crown land that has been placed under its care, control and management. In his second reading explanation, the Minister states:

> 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*.

The case referred to was heard in the Supreme Court on 10 and 11 February 1975 and revolved around the question whether the Institute of Technology, by leasing part of its land to the Standard Book Company for a bookshop, selling chiefly text and reference books, was in fact exempt from rating. The judgment is worth reading, not only reading to understand the reason for the proposed amendment. The remaining clauses deal with that ubiquitous problem, namely, the motor car, and these clauses are quite straightforward. I support the Bill.

Bill read a second time and taken through Committee without amendment. Committee's report adopted.

ADJOURNMENT

At 5.17 p.m. the Council adjourned until Wednesday 14 February at 2.15 p.m.