LEGISLATIVE COUNCIL

Thursday 28 August 1980

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

PERSONAL EXPLANATION: OVERSEAS VISIT

The Hon. B. A. CHATTERTON: I seek leave to make a personal explanation.

Leave granted.

The Hon. B. A. CHATTERTON: Yesterday, in the House of Assembly, the Premier made a reprehensible attack on me. The event that he was no doubt referring to when he made that attack was my private visit to Tunisia, Algeria and Morocco during December 1979 and January 1980. The initial planning for the trip was done when I was Minister of Agriculture, but at the end of October 1979 I wrote to the Minister of Agriculture in the three countries that I have mentioned to inform them of the change of Government. I will quote from the English translation of the letter that was sent to those three Ministers. Of course, since they are French-speaking countries, the letter sent was in French. It states:

> At the same time you would have been informed of the defeat of the Labor Government in South Australia and the election of a Conservative Government for a three-year term. Clearly I am no longer the Minister of Agriculture, but I am charged with rural and agricultural affairs from the point of view of the Labor Party while we are in Opposition.

The letters were received by the Ministers concerned and were clearly understood, which is confirmed by the heading of the programme given to me when I was in Algeria. Again, I quote from the English translation of the programme, which was in French, as follows:

> The programme of the visit (private) of Mr. Brian Chatterton, member of the Legislative Council, former Minister of Agriculture, of Forests and Fisheries of the Government of the State of South Australia, January 1980.

The Ministers concerned were pleased to see me, and I enjoyed meeting them. The Premier was well aware of the fact that I was going overseas on a private journey, as I wrote to him on 14 December 1979 seeking the release of some technical information. I quote from the letter to the Premier, as follows:

> On Monday 17 December my wife and I are leaving on a private holiday to North Africa. However, during that journey we will be meeting Ministers of Agriculture and senior officials in the various countries we will be travelling in. It is therefore with great surprise that I discovered that the Minister of Agriculture in this State had gone to some trouble to ensure that we were not able to take with us technical material prepared by the Department of Agriculture to promote South Australian farming technology.
>
> Officers of your Department of State Development will have informed you of the significant trade potential that has developed in this region from the adoption of the South Australian system of dry land farming. I am surprised and disappointed that the Minister of Agriculture should take active steps to impound all this technical information until my wife and I have left Australia. Naturally, it would not be appropriate for me to negotiate or act in any way for the South Australian Liberal Government, but I am shocked that the Minister should allow his pettiness and spitefulness to impede the promotion of a technological system that has put South Australia on the map. While this action of the Minister will cause undoubted embarrassment to the South Australian Government when I explain why the technical material I promised to bring them is not available, I am not prepared to cover up for the ineptness of your Minister.

The Premier replied to me in a spiteful and venomous letter not worthy of someone holding that high office, and I will not embarrass him by reading it all. However, I will quote the following part of it, because it shows that he received and read my letter:

> I also note and concur with your view that it would not be appropriate for you to negotiate or act in any way for the Government.

It can be seen very clearly from this correspondence that not only were the Premier's attacks on me completely without foundation but also he made them in the full knowledge that they were a fabrication.

SUPPLY BILL (No. 2)

His Excellency the Governor, by message, intimated his assent to the Bill.

QUESTIONS

LETTER TRANSLATION

The Hon. R. C. DeGARIS: Will the Attorney-General say whether he considers that the translation from the French to the English, which was a translation from the English to the French in the first place, is rather misleading to the Governments of Morocco, Tunisia and Algeria in describing the present Government as a conservative Government?

The Hon. K. T. GRIFFIN: I will have to take that matter into consideration.

WARNER THEATRE

The Hon. J. R. CORNWALL: I seek leave to make a brief statement before asking the Minister of Community Welfare, representing the Minister of Environment, a question regarding the Warner Theatre.

Leave granted.

The Hon. J. R. CORNWALL: I must say that I am feeling rather lonely at this time because of the present Government's total lack of commitment, or apparent total lack of commitment, to retaining significant parts of our built heritage. I seem in recent weeks to have become rather a patron of lost causes.

Members interjecting:

The Hon. J. R. CORNWALL: Indeed, I am a friend of Mr. Owens, and I am proud to admit that publicly. In the past week, I have had occasion several times in this place to raise the matter of Portus House, which is apparently to be demolished, despite the wishes of the majority of the community.

Members interjecting:

The PRESIDENT: Order!

The Hon. J. R. CORNWALL: I have also had to raise the matter of "Dimora", where apparently developers are to be allowed to vandalise the amenity and surrounding environment of one of Adelaide's fine mansions. Now, it is my sad duty to have to bring to the Council's attention the fact that the destruction of the Warner Theatre is apparently imminent.

You would be aware, Mr. President, as one concerned about environmental matters, that the plan to demolish the Warner Theatre after an interesting 124-year history

was first made public about 12 months ago. At that time a committee was formed with the specific intention of mobilising public opinion to save the theatre. Members of that committee were successful in having the theatre put on the interim list of the National Estate by the Australian Heritage Commission in the middle of June this year, which seemed to them at the time to be cause for considerable rejoicing, because it looked as though the Warner Theatre was going to be saved. However, I have been told that in the past 24 hours a meeting of the Heritage Commission removed the Warner Theatre from that interim list.

The Hon. L. H. Davis interjecting:

The Hon. J. R. CORNWALL: Do not display your gross ignorance and crass attitude to environmental matters generally. This morning I was approached by members of the committee to try and obtain a copy of the report that was prepared by the State Heritage Unit, so that we might be able to discover whether, in fact, that body considered the theatre to be of significant heritage value to the State. Unfortunately, the Minister at the time we commenced Question Time had refused to release that report. It now seems that there is a real possibility, as I said earlier, that the Warner Theatre will be demolished within a week unless the most urgent action is taken.

The Save the Warner Theatre Committee is rapidly becoming exhausted and running out of resources. The Builders Labourers Union, as the Hon. Mr. Cameron has rightly observed, still has a green ban on the demolition work but, of course, the position is that it is rapidly being left as virtually the sole defender, and I am sure that any reasonable person would agree that it is certainly unfair that that organisation should be left to carry the entire burden. Will the Minister release the report of the Heritage Unit on the Warner Theatre as a matter of urgency? Further, does the Government intend to take any action to stop the demoliton which, as I have explained to the Council, is apparently imminent?

The Hon. J. C. BURDETT: I can hardly speak because of the lump in my throat, but I will refer the honourable member's question to my colleague and bring down a reply.

WEIGHBRIDGES

The Hon. M. B. CAMERON: I seek leave to ask a question of the Attorney-General, representing the Minister of Transport, on the matter of weighbridges.

Leave granted.

The Hon. M. B. CAMERON: Early last year a member of another place—the present Minister of Agriculture—and I attended a weighbridge near Murray Bridge one evening to seek some technical information on the operation of the weighbridge. Certainly, it was not a planned visit at that time; we were passing that weighbridge by chance. As a result of that visit by Mr. Chapman and myself, a regulation that would have created great problems for transport operators in South Australia was withdrawn and redrafted so as to operate in a fair manner. When information was given to the then Minister of Transport (Mr. Virgo) about our visit, Mr. Virgo made a rather strange statement in another place and indicated that the two employees operating the weighbridge, who had dared to allow two members of Parliament (one from that area and one who was the shadow Minister of Transport) to go into the weighbridge and observe its operation, were facing suspension as employees of the Highways Department. He also indicated that we had been grossly improper in seeking technical information on the operations of the weighbridge and that in future all members of Parliament would be banned from such activities.

Is the ban on members of Parliament going into weighbridges to observe the operation still in force? Are the two employees who were threatened at that time by the Minister (a matter on which we obtained no further information) still employed by the Highways Department? Was any action taken against those officers and, if so, could that situation now be rectified?

The Hon. K. T. GRIFFIN: I will refer the honourable member's question to the Minister of Transport and bring down a reply.

PUBLIC SERVICE GUIDELINES

The Hon. C. J. SUMNER: I seek leave to make a brief explanation before asking the Attorney-General a question about the Public Service guidelines?

Leave granted.

The Hon. C. J. SUMNER: On 6 August this year a set of guidelines for public servants appearing before committees of this Parliament was tabled in the Council. Two days after those guidelines were tabled, on 8 August, I wrote to the Premier with certain suggestions about them. The essence of my suggestions was that the guidelines should be withdrawn and reconsidered. I believed that those guidelines were unnecessary, in any event, and I particularly believed that the proposal for a compulsory adviser to accompany all public servants was unnecessary and impracticable, and there should be no mistake about the fact that the guidelines, as originally tabled, compelled the attendance of such an adviser from the Public Service Board.

I put to the Premier that these guidelines would hamper the work of Parliamentary committees and, finally, I pointed out to him that his justification for the guidelines involved the question of Ministerial responsibility. I therefore put to the Premier that, if that was his justification, and as it had been the practice for Ministers not to attend Parliamentary committees to give evidence, and if the public servants were now restricted in the types of questions that they could answer, then Ministers themselves should consider attending the committees. I asked the Premier the following three questions:

> (1) Will the Government agree to Ministers attending before all committees of the Parliament if requested to do so?
> (2) Will the Government facilitate any changes to the procedures of the Parliament or to Standing Orders to enable Ministers to freely attend to answer questions?
> (3) Will you agree to the Standing Orders of Parliament being amended to give committees the power to compel the attendance of a Minister before them, should he refuse?

The justification for that was quite simply that, with the restrictions on public servants answering questions and the Ministers being responsible, the committees should have the power to require the attendance of the Ministers. On 12 August a Ministerial statement was made in this Chamber and in another place on behalf of the Government. On the same date I asked the Attorney-General the three questions that were contained in my letter to the Premier of 8 August. At that time, the Attorney said:

> The Leader has raised several matters that have not yet been considered by the Government.

On 21 August the Premier replied to my letter of 8 August and stated:

> The Government's position in relation to the matters you raise and its willingness to consider balanced and reasonable

> responses to the guidelines proposed are both contained in a Ministerial statement announced to the Legislative Council on Tuesday last by the honourable Attorney-General.

The simple fact is that, in the Ministerial statement of 12 August, there was no reference to my questions regarding the attendance of Ministers before committees, and on that same day the Attorney-General said that the Government had not yet considered those question. Despite that, the Premier wrote on 21 August and said that my questions had been answered in the Ministerial statement. That was quite clearly a lie. No answers had been given to those questions in that Ministerial statement, and at the present time no answers have been given to me about the proposition that Ministers, if those guidelines are to be maintained, ought to appear before committees to answer questions from the Parliament on their own behalf. Will the Leader of the Government in the Council say, first, why the Premier said my questions had been answered in the Ministerial statement on 12 August, when that was just blatantly untrue, and yet the Attorney-General said on that day that those matters had not yet been considered by the Government? Secondly, when will the Government provide an answer to my questions regarding the appearance of Ministers before Parliamentary committees?

The Hon. K. T. GRIFFIN: The Premier was quite correct when he said in the Ministerial statement which he made in the House of Assembly and which I made in this Council that there were in the guidelines matters that had been fully canvassed concerning the appearance of public servants. One has to remember that the Premier has indicated publicly that he and the Government are prepared to consider any reasonable and balanced proposition with respect to the guidelines and that that would be considered in any review of the guidelines.

However, the Leader of the Opposition, far from putting any reasonable and balanced propositions, made some carping criticism of the guidelines, taking what he would regard as political points but not making any substantive suggestions as to how those guidelines should be amended if he felt so strongly about that. He sought to avoid the question whether there should be guidelines for the appearance of public servants before Parliamentary committees and tried to jump over that question in an attempt to gain some information about Ministers appearing before such committees.

The principal question that is still being considered is the question of the guidelines, and I should indicate that representatives of the Public Service Association have met the Premier and there have been some fruitful discussions. Those discussions and consultations will continue in an attempt to resolve the question of the Public Service guidelines. I have also indicated on a previous occasion that the Government's intention is that this Council will be asked to allow its three Ministers to appear before the Budget Estimates Committees in the House of Assembly because of the special nature of those committees, and for the time being that is as far as we are going to go.

The Hon. C. J. SUMNER: I ask a supplementary question. Why does the Leader of the Government in this Chamber consider it unreasonable that Ministers of the Crown should appear before committees of this Parliament to answer questions, particularly in view of the guidelines relating to public servants appearing that have now been tabled?

The Hon. K. T. GRIFFIN: I am not prepared to say whether I think it is reasonable or unreasonable. I have said that the Public Service guidelines have been laid on the table and that anyone who wants to make reasonable, balanced and sensible suggestions with respect to the guidelines has an open invitation to do so.

The Hon. C. J. SUMNER: I wish to ask a supplementary question. Why does the Minister feel that the suggestions that I have put to the Government about the appearance of Ministers before Parliamentary committees are not sensible or reasonable?

The Hon. K. T. GRIFFIN: I did not say that. I said that the Leader had not made any sensible, constructive and reasonable suggestions with respect to the guidelines. He has attempted to overlook the fact that invitations have been given for consideration of those guidelines and any suggestions with respect to them. The questions that the Leader has asked with respect to Ministers are irrelevant to those guidelines.

The Hon. C. J. SUMNER: I ask a further supplementary question. I ask whether the Premier, in justification of those guidelines, made the following statement:

> The whole question of Ministerial responsibility is that the Minister takes responsibility for what happens in this area, not the public servants. Public servants should not be required to take responsibilities for the actions of the Minister.

If the Premier made that statement in justification of the guidelines, surely that places the question of Ministerial appearance before committees clearly as a relevant factor in discussions of the guidelines. Why has the Government not responded to the suggestion I made that Ministers ought to appear before committees if these guidelines and this justification are maintained by the Government?

The Hon. K. T. GRIFFIN: The Premier has indicated that one of the reasons for providing some guidelines was that there had been some concern expressed, largely arising out of an experience by a public servant appearing before the Public Accounts Committee during the term of the previous Government, an experience that the previous Government criticised, and so that public servants and Parliamentary committees had a clear indication of the respective responsibilities of both committees and public servants when public servants were appearing before those committees.

What the Premier has said is that, in areas beyond the experience or competence of a public servant, when there are areas of a politically sensitive or likely controversial nature, there ought to be guidelines that prevent any public servant from being intimidated, if ever there were that suggestion, by questions from Parliamentary committees.

The Hon. C. J. SUMNER: Will the Government now agree to the attendance of Ministers before committees of this Parliament in the terms already suggested?

The Hon. K. T. GRIFFIN: I am not prepared to agree or disagree with the proposition.

The Hon. N. K. FOSTER: Will the Attorney-General have consideration given to Ministerial staff, some of whom are members of the Public Service and others of whom work in a voluntary capacity, appearing before a committee without any form of restriction?

The Hon. K. T. GRIFFIN: I am not prepared to consider that.

The Hon. C. J. SUMNER: If the Attorney-General will not disclose to the Council whether the Government agrees with Ministers attending before committees of the Parliament, will he please explain to the Council why he is not prepared to disclose the Government's policy on this matter, which I put to the Premier in a perfectly reasonable way on 8 August, two days after the guidelines were tabled? Why will the Minister not now tell the Council what the Government's approach to those three questions is?

The Hon. K. T. GRIFFIN: I have indicated that the Government's proposition with respect to Budget Estimates Committees is in accordance with the Standing Orders that govern the attendance of Ministers from one House before the committees of another House. I would expect that there would be a request to this Council for Ministers to be able to attend before the Budget Estimates Committees of the House of Assembly. Adequate procedures are available if Select Committees or other committees of Parliament want Ministers to attend. They have every opportunity to follow their intention through the Standing Orders of Parliament.

The Hon. N. K. FOSTER: In view of the answer just given by the learned gentleman, the Leader of the Council, will he inform the Council whether or not, if such a request is made to a Minister, that Minister, as a paid servant of the Crown and an elected member, has an obligation to attend before such a committee?

The Hon. K. T. GRIFFIN: No.

The Hon. N. K. FOSTER: Now that the answer has been given by the Minister in the negative, that a Minister does not have to attend before such a committee—

The Hon. L. H. Davis: According to Standing Orders.

The Hon. N. K. FOSTER: Thank you very much, but shut up. Will the Attorney-General now request the Premier that the Government be not permitted, by seeking a change to the Standing Orders, to hide behind the files of a public servant or the election of members to this Parliament?

The Hon. K. T. GRIFFIN: I am not prepared to ask the Premier that.

The Hon. N. K. Foster: No, of course you are not. You should resign and get out and stay out.

The PRESIDENT: Order!

AMALGAMATION OF DEPARTMENTS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Minister of Local Government, representing the Minister of Education, a question on the amalgamation of the departments.

Leave granted.

The Hon. ANNE LEVY: There has been a degree of speculation that the present Government may be contemplating the amalgamation of the Education Department and the Department of Further Education. No doubt such speculation has been enhanced by the fact that there are currently, I understand, two vacancies for two Deputy Directors-General in the Department of Further Education. One of the positions has been filled on a temporary basis and the other one apparently is being filled by four different people in rotation. Each of these four people has a very responsible senior position within the department. I am sure that we all remember that when the Department of Further Education was set up as a separate department from the Education Department, it was hailed as a very forward looking step and was supported by all members of Parliament at the time, including those who are now Government members.

In other States a similar pattern has been followed, particularly in New South Wales. I understand that a report in Western Australia has suggested a similar separation there between the education and further education areas, and even Victoria may be making moves in this direction. In the light of this, one can see that any reversal to put education and further education back under the same administration would be a retrograde step and one which, I am sure, many people in this State would deplore. Will the Minister put an end to the speculation by saying whether or not such amalgamation is being contemplated? If it is under consideration, can he tell us when a decision will be made and with whom consultations are occurring with regard to such reorganisation? Alternatively, can he tell us that no such retrograde step is being contemplated?

The Hon. C. M. HILL: I will obtain a report on the matter from the Minister of Education.

PUBLIC SERVICE GUIDELINES

The Hon. C. J. SUMNER: Will the Minister of Community Welfare say whether, if he receives a request from a Parliamentary committee (not an Estimates Committee) to attend before that committee, he will agree to such a request?

The Hon. J. C. BURDETT: As I think the Leader of the Council has indicated, I am not prepared to answer that question at this time.

ESTIMATES COMMITTEES

The Hon. R. C. DeGARIS: I seek leave to make a brief explanation prior to asking the Attorney-General a question about a division vote in the House of Assembly.

Leave granted.

The Hon. R. C. DeGARIS: This morning's *Advertiser* carried an article on a division vote. The Attorney-General has answered a question on the subject that I asked about a week ago. The article states:

> The Government lost the division 22-21 on a minor amendment moved by Mr. McRae (A.L.P., Playford).
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> But after the motion was passed, the Liberals claimed their own victory.
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> Liberal sources said Mr. McRae's amendment had revealed a lack of communication in A.L.P. ranks on the Budget committee issue.
>
> They said the Leader of the Opposition, Mr. Bannon, had consulted the Premier, Mr. Tonkin, before the Budget committee motion was introduced.
>
> They said Mr. McRae's amendment was in embarrassing conflict with Mr. Bannon's acceptance of the motion during those consultations.
>
> The two-committee system will have the same powers as other Parliamentary Select Committees and will hold public hearings to hear evidence from Ministers and public servants about Government expenditure.

In relation to the last part of that quote, will the Attorney-General say whether that is the position?

The Hon. K. T. GRIFFIN: The Budget Estimates Committees will be open. They will really be an extension of the ordinary practice of the House of Assembly in considering the Budget papers line by line. As I have already indicated, it is intended that Ministers will appear before the Budget Estimates Committees, and they will be the persons of whom questions are asked and who will answer those questions. They will, of course, be able to have advisers with them to assist them in answering questions but, from the viewpoint of procedure of the Budget Estimates Committees, it will be the Minister who will be answering the questions asked of him in respect of those areas which are his responsibility.

The Hon. C. J. SUMNER: Will the Attorney-General say why, as the Government is prepared to allow Ministers to attend before the Budget Estimates Committees, it will not agree to Ministers of the Crown attending before other committees of this Parliament if so requested?

The Hon. K. T. GRIFFIN: I have indicated that there

are procedures laid down by which Ministers of the Crown in one House can be requested by the other House to appear before committees of Parliament. Whilst they have the opportunity to agree or not agree, it is a matter which must be assessed at the time of such request and in the circumstances in respect of which the request is made.

PERSONAL EXPLANATION: WHYALLA REGIONAL CULTURAL CENTRE

The Hon. FRANK BLEVINS: I seek leave to make a personal explanation.

Leave granted.

The Hon. FRANK BLEVINS: Yesterday, in response to a question that I asked on the Whyalla Regional Cultural Centre, the Hon. Mr. Hill said:

> I would very much like to know how the leaders of that community, namely, the two members of Parliament who reside in that town, feel about this matter. If they tell me how they feel, it must be on one condition that I can make their views public.

I have never been one to refuse a challenge, and I assure the Council and the Hon. Mr. Hill that I support completely the results of the recent household poll taken in regard to the siting of the Whyalla Regional Cultural Centre.

This poll showed clearly that the people of Whyalla overwhelmingly want the Whyalla Regional Cultural Centre built on the Nicholson Avenue site. I urge the Minister, as I did yesterday, to abide by the democratic decision of the people of Whyalla to get on with the job of building a centre.

TIME BOOKS

The Hon. G. L. BRUCE: Has the Minister of Community Welfare a reply to the question I asked regarding time books?

The Hon. J. C. BURDETT: In 1978, the amount of arrears of wages collected by investigation officers as a result of investigations of complaints amounted to $234 055. The amount collected during the same year as a result of routine checking was $84 621, and the figures for 1979 were $263 290 and $84 544 respectively.

OCCUPATIONAL HEALTH AND SAFETY

The Hon. J. E. DUNFORD: I seek leave to make a short statement before asking the Minister of Community Welfare, representing the Minister of Industrial Affairs, a question regarding occupational health and safety.

Leave granted.

The Hon. J. E. DUNFORD: For some considerable time, there has been much discussion in the trade union movement on occupational health and safety matters. One wellknown union, the Miscellaneous Workers Union, has taken an active part in this matter and has given some startling figures on it. It started off by quoting Dr. Donald MacPhee, a geneticist from Latrobe University, who said that one-third of cancers were work-related. Cancer deaths in America for 1975 totalled 1 000 a day, higher than the total battle deaths in World War II, Korea, and Vietnam. Nearly 1 000 000 new cases of cancer occur every year caused by man-made chemicals. The 1980's in America and Australia could, he said, see an epidemic of cancers from industry unless they can be prevented. Already, members of the union are dying from cancers caused by certain jobs engaged in 20 years ago.

Jack Wright, the Deputy Leader of the Opposition in another place, is also quoted as saying that on previous years' figures Australia could expect more than 300 000 people to be injured and more than 1 000 to be killed at the work place in 1980. One worker in New South Wales, he said, is injured every two minutes, and the loss in production is enormous and the social costs are incalculable.

According to figures released by the International Labor Organisation, Australia's industrial safety costs are now about 40 times higher than the costs of industrial disputes and strikes. In seeking a national approach between Governments, unions and employers, Jack Wright argues that, if accidents and accident costs could be cut by one-fifth, one billion dollars would be saved that could be reinvested in industry.

Mr. Matt Peacock, an A.B.C. journalist and author of *Asbestos, Work as a Health Hazard,* painted a grim picture of employer and Government neglect in dealing with work-related cancers. Australian occupational health authorities have failed to give unions and the public information. Over 2 000 carcinogenic substances banned by the American Government are exported to Australia and are widely used in industry. Mr. Peacock further said:

> The extent of cancer deaths related to jobs is not known in Australia. No accurate statistics are kept. Health records of workers are not kept and, if they are, they are not made available. They are certainly not kept on a wide enough scale, or for long enough for relationships between exposure to something at work and the development of increased incidence of cancer to become obvious. The unions suspect lies, frauds and cover-ups.

Will the Minister of Community Welfare ask the Minister of Industrial Affairs whether he agrees with the A.C.T.U. Charter on Occupational Health and Safety? I have no doubt that the Minister has a copy of that charter but, if he has not, I will make one available to him. Secondly, what action is the Minister of Industrial Affairs taking to implement the A.C.T.U. policy? Thirdly, will the Minister give details of carcinogenic substances now being used by industry in South Australia? Fourthly, will the Minister say what number of industries have been visited by the Government department safety inspectorate in the past 12 months? Fifthly, what were the results of such inspections? Sixthly, what industries and work places use the substances in the following list, which I seek leave to have inserted in *Hansard* without my reading it?

Leave granted.

Cancer-Producing Substances

1. Aflatoxins
2. 4-Aminobiphenyl
3. Arsenic compounds
4. Asbestos
5. Auramine (manufacture of)
6. Benzene
7. Benzidine
8. Bischloro-methylether
9. Cadmium-using industries (possibly cadmium oxide)
10. Chloromethyl-Methylether (possibly associated with Bis-chloro-methylether)
11. Chromium (chromate-producing industries)
12. Tetrachloro-ethylene
13. Mustard Gas
14. 2-Naphthylamine
15. Nickel (nickel refining)
16. Soot, tars and oils
17. Vinyl chloride
18. Trichloroethylene
19. Carbon tetrachloride

20. Organochlorine pesticides, including: Chlorobenzilate (acaraben), Dieldrin, Endrin, Kepone (chlordecone), Methoxychlor, Ovex (chlorfenson), Benzene Hexachloride (BHC), DDT, Lindane (Gamma BHC), Pentachloronitro-benzene (Quintozene), Perthane, Aldrin, Chlordane, Ethylene dichloride-(Dichloroethane), Heptachlor, Mirex (dechlorane), Strobane, Toxaphene.

The Hon. J. E. DUNFORD: Finally, will the Minister support the establishment of a workers health centre and a workers health resource centre, I suggest at Trades Hall because there is such a centre at Trades Hall in Sydney?

I have noticed that in South Australia attempts are being made to establish a similar workers health centre at Port Adelaide, which is supported by the trade union movement. Also, the South Australian Liberal Minister of Health (Hon. Jennifer Adamson) has already attacked the Women's Community Health Centre at Hindmarsh. Therefore, you, Mr. President, can see the importance of my question, to which I seek a speedy answer.

The Hon. J. C. BURDETT: I will refer the honourable member's question to my colleague and bring back a reply.

WOMEN'S SHELTERS

The Hon. BARBARA WIESE: I seek leave to make a brief statement before asking the Minister of Community Welfare a question about women's shelters.

Leave granted.

The Hon. BARBARA WIESE: Honourable members who have read the article in this morning's *Advertiser* regarding the Naomi Women's Shelter report on cases of child abuse will agree with me that it was deeply disturbing.

The report has detailed accounts of physical, mental and sexual abuse by parents of their children. The report states that bashing is the most obvious form of child abuse and it gives detailed information about children being hit with broken bottles, burnt with cigarettes and whipped with canes and electric cords.

The Naomi Report states that most of the women and children who come to the shelter are fleeing violent men. Clearly, Naomi and the other shelters in South Australia are meeting a very real and urgent need in our community. Therefore, I was concerned to read that the shelter had experienced problems with funding from the Federal and State Governments. The first problem referred to care at the centre of children, who comprise the largest group of residents. Apparently there is only one child care worker, who is responsible for up to 20 children at any one time, and there is no specific provision made for children in the funding arrangements.

The second complaint related to the late arrival of money under the quarterly advancement system. This means that forward planning and security of tenure for staff is impossible to achieve. Will the Minister comment on the problems that have been raised in the report? If he is unaware of the financial difficulties outlined, will he investigate the matter and take action to ensure that the suffering of women and children who seek refuge in shelters such as Naomi is not compounded through a lack of adequate care due to poor financial arrangements at Government level?

The Hon. J. C. BURDETT: The article in this morning's *Advertiser* was deeply disturbing. I have not seen the Naomi Report. A copy of that report has not been sent to me. It may be in the process of transmission, but I have not seen it yet. This morning I gave instructions to ask for a copy to be obtained for me, if that is possible. If a copy is given to me I will read it carefully and consider the matters raised, but a copy of that report has not been sent to me yet.

The first I knew about it, and the first that officers of my department knew about it, was when they read the article in this morning's paper. This morning I gave instructions to my Director-General, because I take the matter most seriously, to make an immediate departmental investigation and to report to me on the matters referred to in the newspaper article and the matters arising from the report, if we can get a copy of it.

WASTE MANAGEMENT COMMISSION

The Hon. N. K. FOSTER: Has the Minister of Local Government replies to my recent questions concerning the Waste Management Commission?

The Hon. C. M. HILL: First, the honourable member asked about the handling of hazardous and industrial waste generally. The Waste Management Commission at this stage does not have any accurate knowledge of the extent to which or localities at which indiscriminate dumping of solid and liquid hazardous and industrial wastes might be taking place. However, it is expected that the licensing provisions, set down in the South Australian Waste Management Commission Act and the Waste Management Regulations, which provide for the control of producers of prescribed wastes (which generally speaking cover those materials of a hazardous nature), the transporters of waste and the waste disposal depots, will enable the commission to control indiscriminate dumping and other undesirable practices in relation to the storage, transport and disposal of hazardous waste.

At the present time, commission staff are consulting with industry within metropolitan Adelaide to establish the amount and locality of stored wastes and annual waste production rates for the various cyanide compounds and polychlorinated biphenyls (P.C.Bs.) used in industry. Likewise, other hazardous substances entering the waste stream will be surveyed and monitored as time and staff permit and the necessary controls implemented as soon as is practicable. In the meantime those depots already established to receive and treat liquid and solid wastes in an approved manner are keeping records of wastes received, and their activities are being monitored by the commission's staff. The commission is aware of those transporters and disposal depot operators whose operations leave much to be desired and therefore will be giving urgent attention to bringing such operations under satisfactory control, particularly where hazardous wastes are involved.

Secondly, he asked about the disposal of hazardous and industrial wastes at Mount Gambier and other provincial centres. Mount Gambier does have problems with the production and adequate disposal of certain industrial wastes. Sawmilling activities produce large quantities of sawdust, bark and offcuts, some of which are used as fuel and the remainder either burnt at the mill or taken to limestone quarries for burial or burning. The burning of such waste has started bush fires in scrub surrounding the mills and quarries.

Timber preservation treatment, using copper, chromium and arsenic compounds, is carried out in Mount Gambier or surrounding areas and does produce waste contaminated with the treatment compound. The proper disposal of these wastes is currently under investigation by the commission. Particle board manufacture uses resins and glues which may be toxic, or produce toxic substances when burnt. The local government disposal depots in most provincial areas do not accept solid or liquid industrial

wastes for treatment or disposal and therefore such waste management functions are left to the industries concerned. The commission will be acting to ensure that undesirable practices do not occur or continue. Other provincial centres do produce a range of industrial wastes which may be hazardous or cause serious environmental problems. For example, disposal of grain dust in Port Lincoln, cyanide residues and containers in Whyalla, arsenic and cyanide compounds in Port Pirie, winery wastes in the Riverland and Barossa Valley, tannery waste in Mount Barker—

The Hon. FRANK BLEVINS: On a point of order, Mr. President, is it appropriate for me to move that the rest of the reply be inserted in *Hansard* without the Minister's reading it?

Members interjecting:

The PRESIDENT: Order! The honourable Minister will continue.

The Hon. C. M. HILL: —concentrated waste from agriculture-based industries such as intensive pig and poultry production, abattoirs and dairy product manufacture, presents problems which, in most cases, are not satisfactorily resolved. In due course the commission will be acting to prevent indiscriminate or unsatisfactory disposal of such wastes, the total extent of which is unknown at present.

NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) BILL

The Hon. K. T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to make provision for the operation of the National Companies and Securities Commission in the State. Read a first time.

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

That this Bill be now read a second time.

Today I am introducing the first of a number of Bills to give effect to this State's obligations under the formal agreement for co-operative companies and securities regulation. The legislation is the culmination of work which commenced in 1976. A major aim of the scheme is to provide Australia with a uniform system of companies and securities regulation. The four Bills which comprise this package of legislation are:

1. The National Companies and Securities Commission (State Provisions) Bill, 1980.
2. The Companies (Acquisition of Shares) (Application of Laws) Bill, 1980.
3. The Securities Industry (Application of Laws) Bill, 1980.
4. The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Bill, 1980.

Before dealing with each of the Bills in turn, I will make some general remarks. Most members of this Council will be aware of the undesirable practices in the securities market which became apparent during the mining boom in the late sixties and early seventies.

Many of these practices were documented in the Report of the Senate Select Committee on Securities and Exchange on "Australian Securities Markets and their Regulation". This committee, which was chaired by Senator Peter Rae, concluded that a national approach was necessary for the effective regulation of the securities market. This Government would endorse that conclusion. The response of the Federal Government of the day was to introduce a national Corporations and Securities Industry Bill. Amongst other things, the Bill provided for the establishment of a National Companies and Securities Commission supported by Commonwealth legislation and Commonwealth administration.

After the change of Federal Government in 1975, the basic approach to the problem altered. In 1976, negotiations commenced with a view to the establishment of a co-operative scheme for the regulation of companies and the securities market. The concept underlying the scheme was that the Commonwealth and the States would co-operate in the establishment of a comprehensive Australia-wide scheme. On 22 December 1978 the formal agreement was concluded by the Commonwealth and the States of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania. The agreement contains the outline of a national scheme of regulation in the companies and securities area.

The scheme has four significant features: first, a Ministerial Council, comprising the Commonwealth Minister for Business and Consumer Affairs and each of the six State Ministers responsible for Corporate Affairs. The Ministerial Council is to oversee and supervise companies and securities law throughout the area of the scheme's operation; secondly, a national Companies and Securities Commission established by the Commonwealth Parliament to administer companies and securities legislation in all participating States and Territories; thirdly, a continuation of the existing role of State administrations. This role is to be maintained through delegation on the part of the N.C.S.C. In exercising its powers the National Commission shall have regard to the principle of the maximum development of a decentralised capacity to interpret and promulgate the uniform policy and administration of the scheme. Thus, most of the functions of the N.C.S.C. under South Australian law will be delegated to the South Australian Corporate Affairs Commission; and fourthly, a system of uniform legislation dealing with companies and securities extending throughout the entire area of the scheme's operation.

For some years representatives of the Commonwealth and each State Government have been meeting on a regular basis to settle the form of the scheme legislation. Discussion has centred around the substantive legislation which is required to be passed by the Commonwealth Parliament to apply in the Australian Capital Territory. The agreement provides that once the Commonwealth has passed scheme legislation to apply in the Australian Capital Territory, then each participating State will introduce legislation into their own Parliaments to apply the substantive provisions of the law applicable to the Australian Capital Territory. Under the terms of the agreement, the Commonwealth is not free to amend its A.C.T. legislation without the approval of the Ministerial Council.

The National Companies and Securities Commission has been constituted under the Commonwealth National Companies and Securities Commission Act, 1979. The five members are: Mr. Leigh Masel (Chairman), formerly a prominent Melbourne commercial solicitor; Mr. John Coleman (Deputy Chairman), formerly the Bursar of the Australian National University; Mr. Antony Greenwood, formerly an Assistant Commissioner with the New South Wales Corporate Affairs Commission; Mr. John Nosworthy, a prominent commercial solicitor from Brisbane; and Mr. John Uhrig, the Managing Director of Simpson Pope Limited. Messrs. Masel, Coleman and Greenwood are full-time Commissioners; Messrs. Nosworthy and Uhrig are part-time Commissioners.

The National Companies and Securities Commission is preparing to assume responsibility for the scheme

legislation in all six States and the Australian Capital Territory. Whilst the National Commission is designed to be the paramount administrative body in the area, two significant points should be made. First, the N.C.S.C. is responsible to the Ministerial Council. The Ministerial Council will perform a function which is broadly equivalent to the function which is now performed by the Minister of Corporate Affairs in relation to the Corporate Affairs Commission. Secondly, most of the functions of the N.C.S.C. (particularly day-to-day functions) will be delegated by the N.C.S.C. to the State and Territory administrations.

The scheme legislation is being introduced in two phases. Most of the legislation will be introduced as part of this first phase. The companies legislation will come in the second phase. The reason for the split is that there has been widespread demand for early introduction of legislation to regulate company takeovers. The Companies (Acquisition of Shares) Act, 1980, is a response to this demand. The other pieces of scheme legislation which are being introduced in this first phase are necessary and desirable for the effective operation of the takeovers legislation.

The introduction of this first package of companies and securities legislation is significant for a number of reasons. First, it represents the most ambitious co-operative scheme ever undertaken as a joint enterprise between the Commonwealth and the States. Secondly, I make the point that it is the increasing maturity and sophistication of the Australian economy as a whole and the Australian securities market in particular which has given rise to the demand for this legislation. Henceforth, we will see a national approach to the regulation of the Australian securities market. The legislation is designed to create a more equitable business environment and to promote investor confidence.

These four Bills have been approved by the Ministerial Council for Companies and Securities for introduction into the South Australian Parliament. Similar legislation has been approved for introduction into each of the other five State Parliaments. I commend the four Bills to the House and I will deal specifically with each Bill. First, the National Companies and Securities Commission (State Provisions) Bill, 1980. Essentially, the purpose of this Bill, is to enable the N.C.S.C. to function in South Australia.

As I previously indicated, the N.C.S.C. is to be entrusted with the administration of the law governing the acquisition of company shares and the securities industry. In addition, the considerable expertise and experience which has been established within the State offices will be utilised. It has never been intended that the N.C.S.C. should carry out day-to-day functions. The role of the N.C.S.C. is seen as the central co-ordinating body of practices and procedure throughout all participating corporate affairs offices and the co-ordination of action where a national response to a particular problem is appropriate. The N.C.S.C. is based in Melbourne. It is hoped that it will be a relatively small and efficient organisation. This is the intention of the parties to the scheme.

Turning to the provisions of the legislation before the Council, detailed notes explaining each clause will follow but I now propose to highlight some of the most significant provisions in this Bill. First, the provisions which empower the National Companies and Securities Commission to delegate any of its functions or powers to State authorities or officers are important. These provisions appear in clause 12. Clause 13 empowers State authorities or officers to perform or exercise any such functions or powers. I reiterate that the formal agreement requires the commission to ensure that its functions under South Australian law are carried out to the maximum extent practicable by the South Australian Corporate Affairs Commission. Therefore, most of the administration of the South Australian legislation will be carried out in Adelaide.

The second important category of provisions which I wish to discuss are those which impose rigid controls upon the staff of both the N.C.S.C. and the South Australian Corporate Affairs Commission in the course of administering the legislation. Clause 15 of the Bill provides that an officer of the N.C.S.C. or the South Australian Corporate Affairs Commission shall not (except to the extent necessary to perform his official duties) divulge to any other person or make use of information which is acquired by him in the course of his duties. The penalty for any breach of this provision if $5 000 or imprisonment for one year or both. Clause 16 prohibits such a person from dealing in securities, or causing any other person to deal in securities if he comes into possession of market sensitive information in the course of his duty. He is also liable to compensate the person from whom he bought the securities or to whom he sold them. Clause 17 requires a person exercising a function or power of the N.C.S.C. to disclose any conflict of interest which arises in the course of his duties to the N.C.S.C.

Thirdly, there are detailed provisions (contained in clauses 6 to 11) which deal with the power of the N.C.S.C. to convene hearings and summons witnesses in appropriate cases. These provisions of the Bill effectively mirror provisions of the Commonwealth National Companies and Securities Act, 1979. It is envisaged that the power to convene hearings may be used to obtain facts in pressing and urgent cases. For example, there may be a need to ascertain whether certain parties are acting in concert at the height of a takeover battle.

In conclusion, the N.C.S.C. (State Provisions) Bill, 1980, establishes a three-tiered structure for the administration of companies and securities law. At the top is the Ministerial Council, exercising overall supervision and control. Below the Ministerial Council is the National Companies and Securities Commission, exercising such powers as are conferred upon it by this Parliament and the Parliaments of all other jurisdictions participating in the scheme. The final element is the South Australian Corporate Affairs Commission, which will continue to carry out most of the administration of companies and securities law in this State. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 defines certain terms used in the Bill and provides for other matters of interpretation. Subclause (5) provides that the Bill, except for clauses 1, 2, 3, 4, 20 an , 21, will be interpreted in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1980. The excluded clauses will be interpreted in accordance with the Acts Interpretation Act, 1915-1978.

Clause 4 provides that in the performance of a function or power under an Act passed by the South Australian Parliament the commission will be representing the Crown in right of South Australia. The commission is established by the Commonwealth by means of the National Companies and Securities Commission Act, 1979. Functions and powers will be bestowed upon it by the Companies (Acquisition of Shares) (Application of Laws)

Act, 1980, the Securities Industry (Application of Laws) Act, 1980, and the Companies (Application of Laws) Act, 1980, which is still in the draft stage.

Clause 5 requires courts to take judicial notice of the common seal of the commission and the signatures of members of the commission. Clause 6 provides immunity from action for members of the commission, legal practitioners, witnesses and members of the Ministerial Council acting in good faith and in the course of performing functions or exercising powers under the scheme. Clause 7 provides for hearings before the commission. Clause 8 allows a member of the commission to summon a person to appear before the commission to give evidence. Clause 10 provides remedies against a person who refuses to obey a summons under this clause.

Clause 9 provides for the manner in which proceedings before the commission must be conducted and the representation of parties appearing before the commission. Clause 10 sets out the duties of witnesses appearing at a hearing before the commission. Subclause (6) provides that failure to comply with the requirements of the clause is an offence punishable by a fine of $1 000 or imprisonment for three months. Subclauses (7) and (8) provide a procedure whereby the Supreme Court can order a person to fulfil his obligations under the clause and punish him for contempt if he does not. Clause 11 makes it an offence to insult a member of the commission, to interrupt a hearing of the commission or to do anything else in the nature of contempt.

Clause 12 is a key provision of the Bill. The functions and powers of the commission bestowed on it by the State Acts mentioned in the note to clause 4 will be performed by the South Australian Corporate Affairs Commission. This clause enables the commission to delegate its functions and powers to the State commission. The State commission, being an incorporated body, must act through its employees. Subclause (4) allows it, as a delegate, to authorise other persons to perform functions and exercise powers delegated to it. Clause 13 empowers authorities or officers of the State to perform or exercise functions or powers delegated to him or which he is authorised to perform or exercise under clause 12.

Clause 14 allows the commission to direct a delegate in respect of the performance or exercise of the function or power delegated and allows a delegate to make a similar direction in respect of a function or power he has authorised to be performed. Clause 15 imposes an obligation of secrecy on persons in relation to information obtained by them in the course of performing functions or exercising powers on behalf of the commission. Clause 16 provides that a person who has information that is not generally available by reason of his performance or exercise of functions or powers on behalf of the commission and which would affect the price of securities if it were generally available must not deal in or cause anyone else to deal in those securities. If a person contravenes subclause (1), subclause (2) makes him liable to compensate the other party to the transaction. The amount of the compensation will be the difference in the price actually negotiated and the price that would have applied if the information had been generally available.

Clause 17 provides that any person who has a private interest in a matter that he is dealing with on behalf of the commission must disclose the interest to the commission. Clause 18 provides that certain certificates signed by or on behalf of the Ministerial Council will be *prima facie* evidence of the facts stated in those certificates. Clause 19 requires copies of the report and financial statements of the commission and a copy of the report of the Auditor-General of the Commonwealth to be laid before both Houses of State Parliament. Clause 20 provides for rules to be made by the Supreme Court. Clause 21 empowers the Governor to make regulations for the purpose of the Act. The schedule sets out the formal agreement made between the Commonwealth and the States for the purpose of establishing the National Companies and Securities Scheme.

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

COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (APPLICATION OF LAWS) BILL

The Hon. K. T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act relating to the interpretation of certain provisions relating to corporations and the securities industry, and for certain other matters. Read a first time.

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

That this Bill be now read a second time.

It is intended that the scheme legislation should be uniform throughout the area of the scheme's operation. Accordingly, a special Interpretation Code has been enacted to ensure that the courts interpret the scheme legislation in a uniform fashion in each State and Territory. The Bill applies the provisions of the Commonwealth Companies and Securities (Interpretation and Miscellaneous Provisions) Act, 1980. It also applies some provisions of the South Australian interpretation legislation. For technical reasons these provisions are desirable to facilitate the operation of the scheme legislation. Copies of the Commonwealth Act and an explanatory memorandum which relates to it will be available for perusal by members if they so desire.

It will be seen that Parts I, II, IV and V are concerned with interpretation matters. Part III deals with the time for instituting criminal proceedings under the scheme legislation and specifies appropriate procedures to be followed. Clause 13 of the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Bill, 1980, brings into play certain provisions of the South Australian Acts Interpretation Act, 1915-1978, which enable South Australian rules on summary proceedings to apply to summary proceedings under the scheme legislation in South Australia. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 defines certain terms used in the Bill. "The Commonwealth Act" is defined to mean the Companies and Securities (Interpretation and Miscellaneous Provisions) Act, 1980, of the Commonwealth and includes any amendments to that Act made in the future.

Clause 4 specifies the Codes that are relevant Codes for the purposes of the Bill. The provisions of the Commonwealth Act having effect by reason of this Bill will apply to each relevant Code and will have effect only for the purpose of interpreting those Codes. They will not apply to any Act of the Parliament except the National Companies and Securities Commission (State Provisions) Act, 1980, which is expressly included by clause 5. In particular they will not apply for the purpose of interpreting this Bill, the Securities Industry (Application

of Laws) Act, 1980, or the Companies (Acquisition of Shares) (Application of Laws) Act, 1980. The Acts Interpretation Act, 1915-1978, will apply to those Acts.

Clause 5 makes it clear that the provisions applied by this Bill will be used for the interpretation of the National Companies and Securities Commission (State Provisions) Act, 1980, notwithstanding that that Act is not a Code. Clause 6 provides that the Crown will be bound. Clause 7 provides that provisions applying in the Australian Capital Territory for the purpose of interpreting Ordinances of that Territory apply for the interpretation of relevant Codes. The law that is applied is the law existing at the commencement of the Commonwealth Act and future amendments to that law will not be included. The laws do not apply in relation to matters for which there is express provision in this Bill or in a relevant Code. Paragraph *(b)* of clause 7 extends the operation of the clause to rules, regulations and by-laws.

Clause 8 applies the provisions of the Commonwealth Act as amended by schedule 1 as laws of South Australia. Schedule 1 alters the text of the Commonwealth Act so that the provisions make sense in their South Australian context. "The Commonwealth Act" is defined by clause 3 to include amendments to that Act passed in the future. These amendments, if and when they are made, will flow through automatically into South Australian law by reason of this clause. The position in each State will be the same and will enable uniformity of the law to be maintained in each jurisdiction. An amendment to the Commonwealth Act can only be made with the approval of the Ministerial Council. The Ministerial Council is constituted by a Federal Minister and a Minister representing each State. The first five sections of the Commonwealth Act are excluded by clause 8. Introductory provisions, adopted for the purposes of this State, are set out in schedule 2.

Clause 9 provides for the publication of the provisions of the Commonwealth Act as amended in the manner set out in the first schedule. The heading and sections set out in schedule 2 are to be included and the document may be cited as the Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code. Subclause (3) provides that a copy of the Code is *prima facie* evidence of the provisions of the Commonwealth Act applying by reason of the Bill.

Clause 10 provides that reference to the Code or a provision of the Code in any Act, regulation or other instrument is a reference to the provisions of the Commonwealth Act or the corresponding provision of that Act, respectively. Clause 11 allows the Governor with the approval of the Ministerial Council to make regulations amending schedule 1 so that the provisions of a future amendment to the Commonwealth Act can be varied appropriately for application in South Australia.

Clause 12 ensures that certain provisions of the Acts Interpretation Act, 1915-1978, apply to relevant Codes. These provisions deal with recovery of fines, summary procedure for the prosecution of offences and some other incidental matters. There are no corresponding provisions in the Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code. It is necessary to provide expressly that these provisions apply to Codes because the Acts Interpretation Act, 1915-1978, applies then only to Acts of Parliament.

Schedule 1 provides that the Commonwealth Act applies with the alterations specified in the schedule. The reason for most of these alterations is obvious and needs no explanation. Clause 10 of the schedule replaces five sections of the Commonwealth Act. These sections deal with the effect of repealing legislation on the previous and continued application of the law. They are transitional in nature, and similar provisions are found in the Acts Interpretation Act, 1915-1978, relating to Acts of State Parliament. The provisions in the Commonwealth Act relate to the making and repealing of laws by means of Commonwealth Acts, and because of this they are not easily translated to apply to Codes which consist of provisions enacted by the Commonwealth Parliament applied in South Australia. The provisions have therefore been redrafted to apply directly to the State Codes. Schedule 2 sets out the first five sections of the Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code.

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

SECURITIES INDUSTRY (APPLICATION OF LAWS) BILL

The Hon. K. T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act relating to the securities industry in South Australia. Read a first time.

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

That this Bill be now read a second time.

It will apply the substantive provisions of the Commonwealth Securities Industry Act, 1980. Again, copies of the Commonwealth Act and an explanatory memorandum will be available for perusal by members who wish to do so. The substantive provisions of the Commonwealth Act provide the content of the Securities Industry Code. The Securities Industry Code will supersede the South Australian Securities Industry Act, 1979. The purpose of the securities industry legislation is the protection of the investor in the securities market through a licensing system and various requirements calling for the disclosure of material information. Also, it penalises the manipulation of the securities market through fraudulent or unfair conduct.

The existing Securities Industry Act licenses stock exchanges and provides a mechanism for regulating the internal workings of stock exchanges. It licenses people involved in the securities industry, including dealers in securities, investment advisers and their representatives. It provides for the establishment of fidelity funds by stock exchanges. It creates a number of criminal offences, mostly associated with "market rigging" and insider trading. The Securities Industry Code is firmly based on the foundation provided by the existing securities industry legislation. However, there have been technical amendments, and a number of significant provisions have been added. The most significant changes introduced by the Securities Industry Code are:

1. Expanded Market Surveillance Powers: Sections 8 and 12 of the Securities Industry Code give the N.C.S.C. the authority to require the production of books and the disclosure of particular information by a wide range of persons. It is envisaged that these powers will frequently be used to ascertain when particular persons are acting in concert. This may be relevant for the purpose of enforcing the new Companies (Acquisition of Shares) Code or the Securities Industry Code itself.

2. Admissibility of Evidence from Special Investigations: There are a number of detailed provisions in the new Code which provide a basis for the admissibility of records of examination made in the course of special investigations as evidence in criminal or civil proceedings.

3. Power to "Freeze" Trading in Securities: Section

40 of the Code empowers the commission to prohibit trading in particular securities where it forms the opinion that this action is necessary to protect persons buying or selling those securities or to protect the public interest. Such action can only be taken after notice has been given to the relevant stock exchange and the stock exchange declines to take action itself. Any corporation whose securities are affected by such an order is entitled to appeal forthwith to the Ministerial Council.

4. Power of Court to Order Observance or Enforcement of Stock Exchange Rules: Section 42 makes it clear that where a corporation is listed on the stock exchange then that corporation shall be under an obligation to comply with, observe and give effect to the listing rules of that stock exchange. The provision also empowers the commission, the stock exchange or any person aggrieved to apply to the court to restrain any person from breaching those rules.

5. Availability of Injunction where Code Infringed: Section 149 provides that where a person has engaged, is engaging or is proposing to engage in any conduct which constitutes or would constitute an offence against the Code, then the Supreme Court may grant an injunction restraining that person from engaging in the relevant conduct. This remedy is available to any person whose interests have been or would be affected by the conduct and to the N.C.S.C.

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

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 sets out the arrangement of the Bill. Clause 4 defines certain terms used in the Bill. "The Commonwealth Act" means the Securities Industry Act 1980 of the Commonwealth. Subclause (2) provides that a reference in the Bill to a Commonwealth Act includes a reference to that Act as amended from time to time. Clause 5 provides that the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1980, will apply for the interpretation of the provisions of the Commonwealth Act applying by reason of clause 6 of the Bill. These provisions when published in accordance with clause 10 of the Bill will be cited as the "Securities Industry (South Australia) Code". It should be noted that although the Bill be interpreted in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1980, this Bill, when it has been enacted, will be interpreted in accordance with the Acts Interpretation Act, 1915-1978.

Clause 6 applies the provisions of the Commonwealth Act, except the first three sections, as laws of South Australia. Preliminary provisions will, by virtue of schedule 4, precede the applied provisions when they are published as a Code pursuant to clause 10. Clause 10 provides that the Code may be cited as the "Securities Industry (South Australia) Code". The Commonwealth provisions will be applied with the amendments set out in schedule 1 and will be interpreted in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1980. This Bill, however, when it has been enacted, will be interpreted in accordance with the Acts Interpretation Act, 1915-1978. By reason of clause 4 (2) the reference in clause 6 to the Commonwealth Act includes reference to future amendments of that Act. Future amendments of the Commonwealth Act require prior approval from the Ministerial Council and will apply automatically in South Australia by virtue of this clause.

Clause 7 provides that regulations in force for the time being under the Commonwealth Act will apply in South Australia as regulations under the provisions of the Code. The regulations will apply with the amendments set out in schedule 2. Clause 8 provides for the payment to the Corporate Affairs Commission of fees arising from the administration of the applied provisions. The services for which fees will be paid will be performed by the State Commission on behalf of the National Commission, and it is part of the agreement between the States and the Commonwealth that the fees be paid to the States.

Subclause (2) provides that the fee must be paid before a document is deemed to be lodged, and subclause (3) provides that the National Commission (acting through the State Commission) must not supply a service that has been requested until the fee has been paid. The State Commission by subclause (5) may waive or reduce a fee or refund it in any particular case. The fees payable will be those in the schedule to regulations under the Securities Industry (Fees) Act 1980 of the Commonwealth amended in the manner set out in schedule 3 of the Bill.

Clause 9 deals with amendment of the regulations applying under the Code and the regulations applying under the Securities Industry (Fees) Act 1980. Amending regulations must be initiated by the Commonwalth in accordance with the approval of the Ministerial Council. If the Commonwealth regulations are delayed for more than six months or are disallowed or subject to disallowance after six months, the Governor may make the proposed amendments for the purpose of application in South Australia.

Clause 10 provides for the publication of the Commonwealth provisions applied as law in South Australia by this Bill as amended by schedule 1. The document may be cited as the "Securities Industry (South Australia) Code", and by subclause (3) the Code shall be *prima facie* evidence of the provisions of the Commonwealth Act applying by reason of clause 6. Clause 11 is a provision similar to clause 10 providing for the publication of the regulations under the Commonwealth Act that will apply in South Australia. The regulations may be cited as the "Securities Industry (South Australia) Regulations". Clause 12 is a similar provision relating to the schedule of fees under the Securities Industry (Fees) Act 1980, of the Commonwealth. The document published under this clause will include the heading and provisions set out in schedule 6 and may be cited as the "Securities Industry (Fees) (South Australia) Regulations".

Clause 13 makes it clear that a reference in an Act, regulation or other instrument to the Securities Industry (South Australia) Code is a reference to the provisions of the Commonwealth Act applying by reason of clause 6, and that a reference to a section of the Code is a reference to the corresponding provision of the Commonwealth Act. The clause makes similar provision in respect of the Securities Industry (South Australia) Regulations and the Securities Industry (Fees) (South Australia) Regulations. Clause 14 provides for the amendment of schedules 1, 2 and 3 and clause 8 by regulation. Future amendments to the provisions of the Commonwealth Act and the Securities Industry (Fees) Act 1980, and to the regulations made under those Acts, are likely to require alterations for the purpose of their application in South Australia. These alterations will be made by regulations, which have been approved by the Ministerial Council, and which amend schedules 1, 2 and 3 and clause 8 as required.

Clause 15 ensures that the transitional provisions included in Part III of the Bill do not derogate from the provisions of the Act Interpretation Act, 1915-1978. Clause 16 provides that the provisions of the Common-

wealth Act applying by reason of clause 6 apply to the exclusion of the Securities Industry Act, 1979. Subclause (2) enacts provisions that ensure that the operation of the Securities Industry (South Austrlaia) Code will not affect the previous operation of the Securities Industry Act, 1979, or revive any law or matter not in force at the commencement of that Act. Provisions similar to these are found in the Acts Interpretation Act, 1915-1978, but it is necessary to make specific provision in this Bill to cater for the introduction of the Code.

Clause 17 is a general transitional provision ensuring that all things existing under the old Act continue under the new provisions unless it is made clear in the Bill or the Code that this is not intended. Clause 18 provides that a reference in an Act or a document to a provision of the old Act will be construed as a reference to the corresponding provision in the Code. Clause 19 provides for the continuation of proceedings by or against the State Commission to be continued by or against the National Commission under the Code. Clause 20 preserves the power of the Minister to consent to proceedings instituted under the old Act after the Code has come into force. Clause 21 provides for the continuation of registers, funds, deposits and accounts kept under the old Act at the time of the commencement of the Code by deeming them to be kept under the corresponding provision of the Code.

Clause 22 provides for the continuation of an order of the Supreme Court made under section 12 of the old Act. This section enables the court, amongst other things, to restrain a person from carrying on the business of dealing in securities, acting as an investment adviser, as a dealer's representative or an investment representative. Clause 23 enables an investigation commenced under the old Act but not completed at the commencement of the Code to be continued under the Code. Clause 24 provides for the continuation of licences in force under the old Act and deems a suspension of a licence under the old Act to be a suspension under the corresponding provision of the Code.

Clause 25 ensures that where, at the commencement of the Code, a licence holder has not lodged a statement under section 44 of the old Act in respect of the whole or part of a year ending before the commencement of the Code he must lodge with the National Commission a statement under that section in respect of that period. Clause 26 provides that where a dealer has not lodged a profit and loss account or balance sheet as required by the old Act when the Code comes into force he must lodge those documents and an auditor's report with the National Commission.

Clause 27 provides for the payment of annual fees prescribed under the old Act in respect of a year that commenced before but finished after the commencement of the Code to be paid to the State Commission. Clause 28 ensures that orders made by the Supreme Court under the old Act restraining dealings with dealers' bank accounts shall be deemed to be orders made under the corresponding provision of the Code. Clause 29 provides for the continued holding of a deposit received by a stock exchange under section 81 of the old Act under the corresponding section of the Code. Clause 30 requires stock exchanges to give to the National Commission audited balance sheets relating to deposits where the stock exchange had not given a report required under the old Act. Clause 31 requires the stock exchange to provide a balance sheet and audited accounts of its fidelity fund in accordance with its obligations under the old Act which have not been performed at the commencement of the Code.

Clause 32 provides that amounts held in the fidelity fund of a stock exchange under the old Act will continue as part of the fidelity fund to be held under the Code. Clause 33 provides that an order of the Supreme Court allowing a claim for compensation from a fidelity fund made under the old Act will continue as an order made under the corresponding section of the Code.

Clause 34 excludes from the operation of section 136 of the Code an accounting record relating to a period occurring at least five years from the commencement of the Code. Clause 35 gives the Supreme Court a general power to resolve any unforeseen difficulties that may arise in the transition to the new Code. Schedule 1 makes changes to the provisions of the Commonwealth Act that are necessary for their application in South Australia. Clause 15 of the schedule adds subsection (2) at the end of section 101 of the Code. This provision allows the Minister to exempt a stock exchange from the requirement to pay $100 000 into its fidelity fund if it has entered into a contract of insurance for the sum to be paid into the fund if a claim is made against it. Clause 22 of the schedule adds section 151 to the applied provisions. This section allows the Governor to exempt a member of a stock exchange from compliance with the provisions of the Code relating to the keeping of trust accounts. Schedules 2 and 3 make alterations to the regulations applying under the Code and the regulations applying under the Securities Industry (Fees) Act 1980 of the Commonwealth respectively for the purpose of their application in South Australia. Schedules 4, 5 and 6 provide the headings and introductory provisions for the Securities Industry (South Australia) Code, the Securities Industry (South Australia) Regulations and the Securities Industry (Fees) (South Australia) Regulations respectively.

The Hon. J. R. CORNWALL secured the adjournment of the debate.

COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) BILL

The Hon. K. T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act relating to the application of laws to regulate the acquisition of shares in companies incorporated in South Australia and matters connected therewith, to amend the Companies Act, 1962-1980, and for other purposes. Read a first time.

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

That this Bill be now read a second time.

Its primary purpose is to apply the substantive provisions of the Commonwealth Companies (Acquisition of Shares) Act, 1980. Copies of the Commonwealth Act and an explanatory memorandum will be made available for perusal by members who wish to do so. This Bill applies the substantive provisions of the Commonwealth Act (as they are amended from time to time) as the law of South Australia. The draftsman has been forced to make some technical alterations to provisions of the A.C.T. legislation which are inappropriate in the South Australian context. For example, there are references in the Act to the A.C.T. Unclaimed Monies Ordinance. This Bill changes these to refer to the South Australian Unclaimed Monies Act. The substantive provisions of the Commonwealth Companies (Acquisition of Shares) Act, 1980, are intended to be a code on the acquisition of company shares which will apply throughout the area of the scheme's operation.

The Companies (Acquisition of Shares) Code: The Companies (Acquisition of Shares) Code reflects a number of policy decisions which were taken by a meeting

of the relevant Ministers at Maroochydore in May, 1978.' Account has also been taken of submissions which have been made by the public in relation to the legislation. Drafts of the code have been released twice for public exposure and each time the provisions have been revised. The underlying policy behind the Companies (Acquisition of Shares) Code can be reduced to five basic principles:

1. An acquisition of shares which has the practical or potential effect of changing the control of a company must be treated as distinct from an everyday acquisition of shares.

2. Where a person wishes to gain control of the company through a takeover offer, he should be obliged to disclose his identity to the shareholders and directors of the target company.

3. Where a takeover offer is made, the shareholders and directors of the target company should have a reasonable time in which to consider the takeover offer.

4. The shareholders of a target company should have information before them which is sufficient to enable the shareholders to make a reasonably informed decision on the merits of the offer.

5. So far as practicable, each shareholder in a target company should have an equal opportunity to participate in any benefits offered by a person desiring to take over the company.

The Companies (Acquisition of Shares) Code is not concerned with small proprietary companies with fewer than 15 members. It takes effect where there is an acquisition of more than 20 per cent of the shares in other types of companies. The 20 per cent figure was chosen as one which represents the approximate point where a change in control occurs or is likely to occur in a public company. The Code prohibits the acquisition of more than 20 per cent of the shares in a company to which the Code applies unless that acquisition is conducted in one of three ways:

1. The acquisition is by means of a "creeping" takeover, that is, if the person acquiring the shares acquires no more than 3 per cent of the shares in the company (or 3 per cent of the shares in a relevant class of shares in the company) every six months.

2. The acquisition proceeds by way of a formal bid. The procedure for a formal bid is similar in many ways to the procedure laid down in the existing takeover legislation, which is to be found in Part VIB of the Companies Act, 1962-1980. However, the rules governing these bids have been tightened and are more detailed than the rules to be found in Part VIB of the Companies Act.

3. The acquisition proceeds by way of a takeover announcement on the floor of a stock exchange. Under this procedure, a person wishing to acquire the shares makes an announcement on the floor of a stock exchange to the effect that he offers to purchase all the shares in a company (or in a relevant class) for a cash consideration.

There are a number of other exemptions set out in section 12 of the Companies (Acquisition of Shares) Act, 1980. These exemptions apply to situations where it is not considered appropriate to apply the Code. In addition, the N.C.S.C. has a general power to exempt persons from the provisions of the Code. Some examples of acquisitions which are exempted from the scope of the Code are:

(i) an acquisition of shares by will or by operation of law (section 12 (a));
(ii) an acquisition pursuant to the issue of a prospectus under the companies legislation (subsections (b), (c) and (d) of section 12);
(iii) an acquisition of shares which occurs as the result of an acceptance of a takeover offer where the shares form part of consideration for the takeover offer (section 12 (j));
(iv) an acquisition of shares which results from the exercise by a lender of his security (section 12 (l));
(v) an acquisition of shares in the ordinary course of stock exchange trading by a person who has made a formal takeover bid for 100 per cent of the shares in a company or in a relevant (subsections (3) and (4) of section 13).

Procedure for a Formal Takeover Bid: The idea behind the formal bid procedure is that an offeror must make written offers to all eligible shareholders. This procedure must be used if the offeror wishes to acquire the shares outside the context of official stock exchange trading. The shareholder is to be provided with information material to the offer both by the offeror and by the directors of the target company. The formal bid procedure must be used if shareholders are to be offered any consideration other than cash. The rules governing this procedure are:

(a) The offeror must despatch offers in the prescribed form to all holders of shares in the company or in any relevant class. This written offer must be accompanied by a "Part A Statement" which contains detailed information about the terms of the offer, the offeror and other material.

(b) Any formal bid may be for less than 100 per cent of the shares in a company or in a relevant class of shares. However, if the number of acceptances exceeds the number of shares which the offeror wishes to acquire, the offeror must acquire an appropriate portion of the shares offered by each accepting shareholder. Therefore, the benefits of the bid will be shared on a pro rata basis amongst accepting shareholders.

(c) The target company must prepare a "Part B Statement". This contains the recommendations (if any) of the directors.

(d) Where the offeror is related to the target company, the directors of the target company are obliged to obtain an independent expert's report on the offer and this must be circulated to the shareholders.

Procedure for a Takeover Announcement: This procedure can only be used if an offeror wishes to acquire 100 per cent of the shares in the company or a relevant class for cash consideration. Generally, an offeror will not be able to use this procedure unless his stake in the target company is less than 30 per cent at the time the bid is initiated. A takeover bid made in this manner would proceed as follows:

(a) The offeror will cause an announcement to be made on the floor of the home stock exchange of the target company to the effect that for a specified period the offeror's broker will be prepared to acquire any shares in the target company (or in the target class of shares) for a specified cash price.

(b) Acquisitions pursuant to the takeover announcement may only be effected at official meetings of a stock exchange and must be carried out through the agency of a stockbroker who is a member of that stock exchange.

(c) The offeror must prepare a "Part C Statement" providing detailed material about the terms of the offer and the offeror. The offeror must despatch that statement to all shareholders in the target company or the target class.

(d) After the Part C Statement has been despatched, the target company must prepare a "Part D Statement" which will contain information about the target company and the directors' recommendations (if any).

(e) The offer made on the floor of the stock exchange may only be withdrawn in certain circumstances or with the approval of the commission.

General Safeguards: The Companies (Acquisition of Shares) Code contains a number of general provisions applying to both types of takeover offer which are designed to curtail some abuses which have occurred in recent years. Some of the most significant of these safeguards are:

(1) Persons associated with the takeover bid can only make profit forecasts or statements as to valuation of assets which relate to companies connected with takeover bids where those forecasts or statements have been approved by the commission. Moreover, the commission can specify the manner in which they are to be used (sections 37 and 38).

(2) Offerors or other persons who hold 5 per cent or more of the shares subject to a takeover bid are obliged to provide daily details of their dealings in the target company shares (section 39).

(3) Both civil and criminal liability is imposed where there are material mis-statements or omissions in statements which are despatched pursuant to the Code (section 44).

(4) The commission is empowered to declare an acquisition of shares made whilst a takeover bid is pending or any conduct that occurs in the course of a takeover bid to be "unacceptable conduct" (section 60). The commission cannot make such a declaration unless it is satisfied that as a result of the acquisition of shares or the conduct:

(a) the shareholders and directors of the company did not know the identity of a person who proposed to acquire a substantial interest in the company;

(b) the shareholders and directors of a company did not have a reasonable time in which to consider a proposal under which a person would acquire a substantial interest in the company;

(c) the shareholders and directors of a company were not supplied with sufficient information to enable them to assess the merits of a proposal under which a person would acquire a substantial interest in a company; or

(d) the shareholders of a company did not have equal opportunities to participate in any benefit accruing to shareholders under a proposal under which a person would acquire a substantial interest in a company.

Where such a declaration is made, any resulting acquisition of shares is deemed to have been a contravention of the code for the purposes of section 45.

Section 45 of the code empowers the commission or any other interested party to apply to the Supreme Court for damages or other appropriate orders where a person has contravened the code. The code makes specific provision for a person whose acquisition or conduct has been declared to be unacceptable to apply to the Supreme Court for a review of the commission's decision. The power of the commission to declare conduct unacceptable was provided as a response to numerous submissions by members of the business community calling for the commission to be given discretion and a degree of flexibility appropriate to a take-over situation. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 defines certain terms used in the Bill. "The Commonwealth Act" is defined to mean the Companies (Acquisition of Shares) Act 1980 of the Commonwealth. Subclause (2) provides that a reference in the Bill to a Commonwealth Act includes a reference to that Act as amended from time to time.

Clause 4 applies the provisions of the Commonwealth Act, except the first five sections, as laws of South Australia. Preliminary provisions will, by virtue of schedule 4, precede the applied provisions when they are published as a code pursuant to clause 11. Clause 11 provides that the code may be cited as the "Companies (Acquisition of Shares) (South Australia) Code". The Commonwealth provisions will be applied with the amendments set out in schedule 1 and will be interpreted in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1980. This Bill, however, when it has been enacted, will be interpreted in accordance with the Acts Interpretation Act, 1915-1978. By reason of clause 3 (2), the reference in clause 4 to the Commonwealth Act includes reference to future amendments of that Act. Future amendments of the Commonwealth Act require prior approval from the Ministerial Council and will apply automatically in South Australia by virtue of this clause.

Clause 5 provides that the code will form part of the Companies Act, 1962-1980, and will be read with it. Paragraph *(a)* ensures that the new provisions exclude Part VIB of the Companies Act, 1962-1980, which presently deals with take-overs. Clause 6 provides that regulations in force for the time being under the Commonwealth Act will apply in South Australia as regulations under the provisions of the code. The regulations will apply with the amendments set out in schedule 2. Clause 7 incorporates the regulations applying in South Australia by reason of clause 6 into the regulations made under the Companies Act, 1962-1980.

Clause 8 is included in the Bill to ensure that the provisions introduced by clauses 5 and 7 into the Companies Act, 1962-1980, and into the regulations made under that Act respectively can work properly in those contexts. The provisions applied by the Commonwealth Act give powers and impose duties on the National Companies and Securities Commission whereas the other parts of the Companies Act, 1962-1980, give powers and impose duties on the Corporate Affairs Commission established by the Act and on the commission. Clause 8 overcomes this problem by altering the construction of relevant terms in relation to matters arising under the applied provisions.

Clause 9 provides for the payment to the Corporate Affairs Commission of fees arising from the administration of the applied provisions. The services for which fees will be paid will be performed by the State Commission on behalf of the National Commission and it is part of the agreement between the States and the Commonwealth that the fees be paid to the States. Subclause (2) provides that the fee must be paid before a document is deemed to be lodged, and subclause (3) provides that the National Commission must not supply a service that has been requested until the fee has been paid. The State Commission will be supplying the service on behalf of the

National Commission and, by subclause (5), may waive or reduce a fee or refund it in any particular case. The fees payable will be those in the schedule to regulations under the Companies (Acquisition of Shares—Fees) Act, 1980, of the Commonwealth, amended in the manner set out in schedule 3 of the Bill.

Clause 10 deals with amendments of the regulations applying under the code and the regulations applying under the Companies (Acquisition of Shares—Fees) Act 1980. Amending regulations must be initiated by the Commonwealth, in accordance with the approval of the Ministerial Council. If the Commonwealth regulations are delayed for more than six months or are disallowed or subject to disallowance after six months the Governor may make the proposed amendments for the purpose of application in South Australia.

Clause 11 provides for the publication of the Commonwealth provisions applied as law in South Australia by this Bill as amended by schedule 1. The document may be cited as the "Companies (Acquisition of Shares) (South Australia) Code" and by subclause (3) the Code shall be *prima facie* evidence of the provisions of the Commonwealth Act applying by reason of section 4. Clause 12 is a provision similar to clause 11, providing for the publication of the regulations under the Commonwealth Act that will apply in South Australia. The regulations may be cited as the "Companies (Acquisition of Shares) (South Australia) Regulations".

Clause 13 is a similar provision relating to the schedule of fees under the Companies (Acquisition of Shares—Fees) Act, 1980, of the Commonwealth. The document published under this clause will include the heading and provisions set out in schedule 6 and may be cited as the Companies (Acquisition of Shares—Fees) (South Australia) Regulations. Clause 14 makes it clear that a reference in an Act, regulation or other instrument to the Companies (Acquisition of Shares) (South Australia) Code is a reference to the provision of the Commonwealth Act applying by reason of clause 4, and that a reference to a section of the Code is a reference to the corresponding provision of the Commonwealth Act. The clause makes similar provision in respect of the Companies (Acquisition of Shares) (South Australia) Regulations and the Companies (Acquisition of Shares—Fees) (South Australia) Regulations.

Clause 15 provides for the amendment of schedules 1, 2 and 3 and clause 9 by regulation. Future amendments to the provisions of the Commonwealth Act and the Companies (Acquisition of Shares—Fees) Act, 1980, and to the regulations made under those Acts are likely to require alterations for the purpose of their application in South Australia. These alterations will be made by regulations, which have been approved by the Ministerial Council, and which amend schedules 1, 2 and 3 and clause 9 as required.

Clause 16 is a transitional provision providing for takeovers which have not been completed at the commencement of the new provisions. Subclause (1) deals with takeover offers dispatched more than 30 days before the commencement of the new provisions where the offers remain open at the time of commencement. In that case the new provisions do not apply. Subclause (2) applies where offers were dispatched within 30 days before the commencement of the new provisions and remained open at the time of that commencement. In that case the new provisions do not apply for a period, that is specified in paragraph (a), after the commencement of the new provisions.

Clause 17 makes amendments to the Companies Act, 1962-1980, consequential on the commencement of the new provisions and their incorporation into that Act. Schedules 1, 2 and 3 make alterations to the Commonwealth provisions, the regulations applying under those provisions and the regulations applying under the Companies (Acquisition of Shares—Fees) Act, 1980, of the Commonwealth respectively for the purpose of their application in South Australia.

Schedules 4, 5 and 6 provide the headings and introductory provisions for the Companies (Acquisition of Shares) (South Australia) Code, the Companies (Acquisition of Shares) (South Australia) Regulations and the Companies (Acquisition of Shares—Fees) (South Australia) Regulations respectively.

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

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

In Committee.

(Continued from 27 August. Page 669.)

Clause 8—"Restriction upon reporting proceedings relating to reservation of question of law upon trial of acquitted person."

The Hon. K. T. GRIFFIN: When the Committee reported progress yesterday the Leader of the Opposition had been making some comments regarding the limit on clause 8 as presently in the Bill, and was speaking to amendments that would widen the embargo on publication of information, which would have the effect of identifying an accused person, whose case, after he had been acquitted, was referred to the Full Court on a matter of law for decision by that court.

The Leader said that he considered that the clause did not cover, in particular, the one-off situation, that is, a publication that was not published at daily or periodic intervals, where someone of a vindictive nature published a pamphlet, for example, about an accused person who may have been acquitted but whose case went to the Supreme Court on a matter of law.

It is my view that the Government's principal concern is to ensure that the main sources of information that may lead to the identification of an accused person in the limited context in which the clause is intended to operate should be covered, and the one-off pamphlet situation should not be a matter of concern. It would, if at all, be a remote occurrence for someone to act in that way, where an acquitted person whose case was referred to the Full Court on a matter of law was the subject of vindictive action by a disenchanted citizen. Our principal concern is to ensure that radio, television and the newspapers, as broadly defined, being the main sources of information about the identity of the accused person, should be the subject of this clause.

I will at the appropriate time move an amendment that will seek to clarify the definition of "newspaper" so that it will not extend to law reports and publications of a technical nature which are designed primarily for use by legal practitioners.

The Leader has made the additional suggestion that the court itself should undertake such actions as it deems appropriate to maintain the anonymity of an accused person in the circumstances envisaged in clause 8. That would follow the English situation. However, it is my view that the accused person has been identified throughout the course of the trial, that he or she may well be acquitted, and that no good purpose appears to be achieved by

eliminating the name of the accused from those reports of the case which take up a question of law only. The fact of that person's acquittal will be obvious. It will have been reported in the media, and the sort of protection that pertains under my proposal on questions of law is, I believe, adequate.

The Hon. C. J. SUMNER: The Attorney-General has canvassed virtually all the amendments relating to clause 8. My specific amendment is to line 22. I wish to expand the prohibition on publication to a pamphlet as well as to newspapers, radio or television. I believe that the prohibition on publication in newspapers and on radio and television could be thwarted if a person wished to prepare a pamphlet about a particular acquittal and the Court of Criminal Appeal commented on that acquittal and distributed it widely. The purpose of my amendment could therefore be defeated and, accordingly, I believe that the Committee should agree with my proposition, which would give this additional protection to an acquitted defendant.

The Committee divided on the amendment:

Ayes (9)—The Hons. Frank Blevins, G. L. Bruce, B. A. Chatterton, J. R. Cornwall, J. E. Dunford, N. K. Foster, Anne Levy, C. J. Sumner (teller), and Barbara Wiese.

Noes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, L. H. Davis, R. C. DeGaris, K. T. Griffin (teller), C. M. Hill, D. H. Laidlaw, K. L. Milne, and R. J. Ritson.

Pair—Aye—The Hon. C. W. Creedon. No—The Hon. M. B. Dawkins.

Majority of 1 for the Noes.

Amendment thus negatived.

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

> Page 3, line 33—After "intervals" insert ", but does not include—
> *(a)* a publication consisting solely or primarily of the reported decisions or judgments of the court; or
> *(b)* a publication of a technical nature designed primarily for use by lawyers".

The problem with the definition in subclause (2), if one were to construe it technically, is that it would prevent publication of the name even in official law reports or bulletins of a technical nature designed primarily for use by legal practitioners. That is not a problem that I want to create with the proposal in the Bill. For that reason I seek to amend the provision so that we clearly identify that law reports of a particular case and publications of a technical nature designed primarily for use by legal practitioners are not encompassed by the definition of "newspaper".

The Hon. C. J. SUMNER: This point was brought to the attention of the Committee by the Opposition, and I am pleased to see that on this occasion, at least, the Attorney has shown the good sense to accept and move an amendment giving effect to our suggestion.

Amendment carried.

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

> After line 33, insert new section as follows:
> 351b. Where an application has been made for the reservation of a question of law arising upon the trial of a person tried upon information and acquitted, the court to which the application is made or before which any consequent proceedings are heard and determined shall ensure that the identity of the person acquitted is not disclosed to the public during the proceedings before the court, unless that person consents to the disclosure.

This amendment provides that where an application has been made to the Full Court on a question of law following an acquittal, the court before which that reservation of the question of law is heard should ensure that the identity of the person acquitted is not disclosed to the public during the proceedings before the court, unless that person consents to such a disclosure. This means that the court would have to promulgate some rules, which would provide that there were no disclosures of the identity of the person who was acquitted.

In that sense it is an added protection against disclosure of that identity to that which has already been enacted as part of clause 8, which we have just been debating. I obtain support for this additional degree of anonymity from the practice in the United Kingdom where, in 1973, a similar procedure regarding references and points of law following an acquittal was adopted. Rule 6 of the Criminal Appeal (Reference of Points of Law) Rules, 1973, provides:

> The court shall ensure that the identity of the respondent is not disclosed during the proceedings on a reference except where the respondent has given his consent to the use of his name in the proceedings.

What I am attempting to do with this amendment is to bring the situation in South Australia into line with the situation which exists in the United Kingdom and which has existed there since 1973. I believe that the protection against newspaper or television publicity that we have already agreed to in Committee goes part of the way. However, I feel that the court should be given additional power to ensure that the identity of the accused, who has by this time been acquitted, should not be made public, and I believe that the new section I am suggesting, according as it does in almost all respects with the position in the United Kingdom, should commend itself to the Committee.

The Hon. K. T. GRIFFIN: With respect to the Leader, I cannot really see what is hoped to be achieved by this amendment. Proposed section 351a provides an embargo against publishing any information during the course of proceedings unless the acquitted person consents to publication which would identify that acquitted person.

As I have indicated, the principal sources of identification and publicity are newspapers, radio and television. I do not see how proposed new section 351b will achieve anything more than the proposal that has been accepted by the Committee. For that reason, I cannot accept the amendment. I believe there are adequate protections already encompassed in the Bill for an acquitted person.

The Committee divided on the amendment:

Ayes (9)—The Hons. Frank Blevins, G. L. Bruce, B. A. Chatterton, J. R. Cornwall, J. E. Dunford, N. K. Foster, Anne Levy, C. J. Sumner (teller), and Barbara Wiese.

Noes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, L. H. Davis, R. C. DeGaris, K. T. Griffin (teller), C. M. Hill, D. H. Laidlaw, K. L. Milne, and R. J. Ritson.

Pair—Aye—The Hon. C. W. Creedon. No—The Hon. M. B. Dawkins.

Majority of 1 for the Noes.

Amendment thus negatived; clause as amended passed.

Clauses 9 and 10 passed.

New clause 11—"Powers which may be exercised by a judge of the court."

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

> Page 4, after line 5, insert new clause as follows:
> 11. Section 367 of the principal Act is amended by striking out the passage "and to admit an appellant to bail," and substituting the passage "to admit an appellant to bail, and to direct that time spent in custody by an appellant pending determination of an appeal be counted as part of a term of imprisonment,".

This is an amendment to section 367 of the principal Act which deals with the powers that may be exercised by a judge of the court. For the benefit of honourable members, section 367 states:

> The powers of the Full Court under this Act to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any judge of the Supreme Court in the same manner as they may be exercised by the Full Court, and subject to the same provisions; but, if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Full Court.

I received a request from the judges of the Supreme Court to propose a much needed amendment to section 367 of this Act while we are debating amendments to the Act, particularly amendments that relate to appeals.

As I understand it, the problem is that whilst section 367 enables a single judge to exercise certain of the powers of the Full Court in relation to appeals, those powers do not include the power of the Full Court under section 364 to direct that the time a defendant spends in custody should count as part of his term of imprisonment. As I understand Their Honours, that creates difficulties under the present practice. All applications for leave to appeal come before a single judge in the first instance. If the judge refuses leave, the applicant is then at liberty to pursue his application before the Full Court. However, in many instances the applicant sees the futility of his application and does not pursue it. That attitude should be encouraged so that the Full Court's time is not wasted on futile applications.

The problem is that at present the applicant has to go to the Full Court to obtain the order that the time shall count. If a single judge could make that order, it is likely that fewer hopeless applications for leave to appeal would be pursued before the Full Court. Having received that request from Their Honours the judges, and having taken advice on the matter, I believe that this is an appropriate opportunity to move this amendment.

New clause inserted.

Title passed.

Bill read a third time and passed.

EVIDENCE ACT AMENDMENT BILL

In Committee.

(Continued from 27 August. Page 667.)

Clauses 2 to 4 passed.

Clause 5—"Evidence by accused persons and their spouses."

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

> Page 1, lines 21 to 24—Leave out paragraph *(b)*.

There are consequential amendments, but the effect of these amendments will be to place the Bill back to the position recommended by the Mitchell Committee regarding admissibility of evidence of the character of the accused and of previous convictions of the accused if the accused gives evidence that results in an imputation on the character of the prosecutor or witnesses for the prosecution. I said in my second reading speech that there were two legs to the Mitchell Committee recommendations. One was the abolition of the unsworn statement but the second was that, if the unsworn statement was to be abolished, there ought to be, without qualification, an amendment to section 18vi*(b)* of the Evidence Act by striking out the following words:

> or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution.

The Government also wishes to delete those words, but it also wishes to re-insert some circumstances in which the character and the convictions of the accused can be given in evidence. That is contrary to these comments by the Mitchell Committee at page 129 of the Third Report:

> It seems to us that where the accused can present his defence fully only by making imputations against witnesses for the Crown he should not thereby be put in danger of having his prior convictions proved.

I believe that the Mitchell Committee recommendation for abolition of the right to give an unsworn statement was very much tied to the suggestion regarding convictions of the accused being admitted. The prohibition on it being admitted is easy to explain. It could adversely affect the jury's view of the evidence, without there being specific reference to the facts of the case, and the jury may be influenced in making a decision by its feeling about the reputation of the accused because of his prior convictions. The Mitchell Committee said, "Let us abolish the unsworn statement but let us make sure that the situation in which convictions against the accused are given is very limited." They should not be admitted where the accused is involved in making imputations against the character of the prosecutor or the witness.

I believe that we should accept the Mitchell Committee recommendation. Considerable doubt has been expressed about abolition of the unsworn statement. There have been representations from the Aboriginal Legal Rights Movement and from some members of the legal profession about this Bill. We have passed the second reading but I think that, if we proceed with abolition, we ought to maintain some protections for the accused that now exist. The argument has been put by me and probably all other members that, although the unsworn statement may have come about by anomaly, over the past 80 years it has developed as one of the bulwarks of the rights of accused persons and has almost achieved the significance of the right to trial by jury and the right to having guilt proved beyond reasonable doubt.

The Hon. R. C. DeGaris: Do you think that that right is ever abused?

The Hon. C. J. SUMNER: I think it has been in some circumstances but the complete abolition of it is something about which considerable concern has been expressed. If we abolish the unsworn statement, we ought to do it in accordance with the Mitchell Committee recommendations about protection for the accused.

The Hon. K. T. GRIFFIN: Whilst, as the Leader has said, for a number of decades the unsworn statement has been regarded as one of the bulwarks of an accused person's rights, it has been used extensively in South Australia but not extensively in the United States and the United Kingdom. I understand that in the United Kingdom the accused still exercises his right to stand mute or to go into the witness box and be cross-examined without prejudice to the rights of that accused person.

What the Mitchell Committee was really concerned about (and it is taken up in the amendment that I intend to move) was the fact that, if the accused made accusations against police officers, for example, that would put the accused at risk and open up the opportunity for the accused person to be cross-examined as to his prior convictions. The Mitchell Committee, at page 129, states:

> As the section reads at present the fact that an accused person says in evidence that he has been assaulted by police

officers or that police officers or other witnesses for the prosecution have lied, puts him in danger of having evidence concerning his prior convictions produced to the court. Certainly the judge has a discretion as to whether such evidence will be admitted or not, but the accused does not know how the discretion will be exercised.

The Mitchell Committee also said that one of the most compelling reasons that it discerned for abolishing the unsworn statement but providing protection was that accused persons who choose not to give evidence do so because they have prior convictions and there is a danger of letting in evidence of those prior convictions.

The emphasis is on the evidence of prior convictions, which everyone recognises may have some relevance when a jury is considering the innocence or guilt of that accused person. It is that situation we have endeavoured to deal with in the amendment that I will be moving later during the Committee stage. I have discussed the amendment with representatives of the Law Society, with the Crown Prosecutor and other officers, representing the prosecution and the defence. They say that, in the light of the Government's policy to abolish the unsworn statement, the amendment would provide adequate protection for an accused in the circumstances to which I referred yesterday. It is correct that the Aboriginal Legal Rights Movement has expressed concern about Aborigines—literate, semi-literate or illiterate—who go into the witness box, are cross-examined, and may not acquit themselves well before the jury. As I indicated yesterday, the Mitchell Committee made specific reference to that. On page 126, the report states:

> We have been concerned particularly with the case of the unsophisticated type of Aborigine who tends to give the answer which he believes will please his questioner. We think, however, that the judge and the jury, in their respective ways, can be relied upon to appreciate and to make allowances for the witness who may be at a disadvantage for lack of education or lack of comprehension. One danger with the illiterate or semi-illiterate witness is always that he may answer a question as he did not intend to answer it merely because he did not comprehend all the words in the question. It is for the judge and for counsel for the accused to be alert to appreciate any difficulties which the witness may have in understanding what is put to him and to see that such difficulties are corrected. It is suggested that the jury is likely to compare the demeanour of an accused person giving evidence with the demeanour of "professional" witnesses, for example police officers, whose bearing is likely to impress the jury. We think that the jury is likely to be favourably impressed by the demeanour of a police officer giving apparently straightforward evidence. This will happen whether the accused gives evidence or makes an unsworn statement. Juries are aware of the fact that the accused may elect to give evidence and are certainly not likely to be impressed by a statement read in a faltering and unconvincing fashion when it contradicts evidence given by policemen not shaken in cross-examination. On the other hand sometimes the illiterate person becomes more convincing under cross-examination when he stands his ground on vital matters although he may give unconvincing answers on others.

The Mitchell Committee was not persuaded that there was a good reason for providing an exemption to the general proposition that the unsworn statement be abolished, believing that juries, from their centuries of experience, are able to discern the truth or otherwise of witnesses under cross-examination.

The Leader's amendment very seriously emasculates the proposal to abolish the unsworn statement. If one were to examine it closely, one would see that there are many people who may qualify for exemption from the requirement to give evidence on oath if they want to avoid cross-examination. The reasons relate to the intellectual capacity of the person, educational or cultural background, or personal idiosyncrasies unrelated to the question of the defendant's guilt or innocence. Because of those characteristics, the defendant is likely to create an unfavourable impression on the jury under cross-examination. I suggest, as I said yesterday, that if this sort of amendment is accepted by the Council it will lead to trials within the principal trial. It will allow a wide range of people to avoid the policy decision which I believe is important; that is, the abolition of the unsworn statement. It will make a mockery of the general principle that accused persons ought to be subject to cross-examination if they want to make any statement to the court, keeping in mind that all the prosecution witnesses have likewise been subject to cross-examination.

I repeat that the amendments, which I will move later during the Committee stages, take up the principal concern of the Mitchell Committee and, according to persons representing the prosecution and also persons acting mainly for the defence and representatives of the Law Society, the amendments that I will be moving adequately cover the difficulties which the Mitchell Committee was concerned about. I therefore cannot accept the Leader's amendment.

The Hon. C. J. SUMNER: The amendment that we are dealing with at the moment specifically concerns the question of the circumstances in which convictions of the accused should be allowed in evidence. That is the first part of my amendment.

The Hon. K. T. Griffin: It is all related.

The Hon. C. J. SUMNER: The Attorney-General has anticipated the debate on the subsequent line. At this point the debate is on the amendment relating to the circumstances in which convictions against an accused person should be admitted. Our consequential amendments provide for strict adherence on this point with the recommendations of the Mitchell Committee.

The Committee divided on the amendment:

Ayes (10)—The Hons. Frank Blevins, G. L. Bruce, B. A. Chatterton, J. R. Cornwall, J. E. Dunford, N. K. Foster, Anne Levy, K. L. Milne, C. J. Sumner (teller), and Barbara Wiese.

Noes (9)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, L. H. Davis, R. C. DeGaris, K. T. Griffin (teller), C. M. Hill, D. H. Laidlaw, and R. J. Ritson.

Pair—Aye—The Hon. C. W. Creedon. No—The Hon. M. B. Dawkins.

Majority of 1 for the Ayes.

Amendment thus carried.

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

> Line 6—Leave out "A person" and insert "Subject to subsection (2a), a person".
>
> After line 8—Insert subsection as follows:
>
> (2a) If the judge presiding at a trial is satisfied, on the application of the defendant—
>
> (a) that for reasons—
>
> (i) relating to the intellectual capacity, educational or cultural background or personal idiosyncrasies of the defendant;
>
> and
>
> (ii) unrelated to the question of the defendant's guilt or innocence,
>
> the defendant is likely to create an unfavourable impression upon the jury under cross-examination;
>
> and
>
> (b) that the subjection of the defendant to cross-

examination would therefore give rise to a substantial risk of miscarriage of justice,

the judge may permit the defendant to make an unsworn statement of fact in his defence.

These amendments would result in the retention of the right to make an unsworn statement in some instances. The Attorney-General, in the debate on the previous amendment, anticipated the argument on this amendment and, in effect, answered it. I have canvassed it fully in the second reading debate and also in the debate on the motion to refer the Bill to a Select Committee.

In essence, it would provide for discretion to be vested in the trial judge to enable an unsworn statement to be made if the judge considered that there was likely to be a substantial risk of miscarriage of justice if the accused was cross-examined and that, further, because of the accused's intellectual capacity, educational or cultural background and personal idiosyncrasies, if the judge considered that the defendant was likely to create an unfavourable impression, an unsworn statement in lieu of sworn evidence could be permitted for that defendant.

The amendments are designed to cover that situation, which was referred to in the Mitchell Committee report, particularly in relation to an Aboriginal defendant, where that person may be confused or unable in any way to cope with cross-examination. Indeed, he may, as has been suggested, answer "Yes" to any question, even though it is contradictory.

While the amendment is not confined particularly to Aboriginal defendants, it would obviously relate to them and to the comments made by the Mitchell Committee. However, the amendment is not moved on the basis of a person's race. It is done in a broader way to cover any person who fulfils the categories specified in the amendment. These amendments should commend themselves to the Committee.

This is not a great intrusion on the abolition of the unsworn statement, but goes some way, along with the amendment that the Committee has just carried, to ensuring that, as a result of the abolition of the unsworn statement, there will be no miscarriage of justice and no risk of a person's being convicted when he is innocent.

The whole thrust of the criminal judicial system has been to build in protections which will ensure that only the guilty are convicted. On those grounds, I believe that the amendments ought to commend themselves to the Committee.

The Hon. K. T. GRIFFIN: I have already given my reasons why I cannot support the amendment. This is a substantial emasculation of the policy to abolish unsworn statements and will, as I said, lead to trials within trials, and will make the whole operation of the abolition of the unsworn statement something akin to a farce.

The Committee divided on the amendment:

Ayes (10)—The Hons. Frank Blevins, G. L. Bruce, B. A. Chatterton, J. R. Cornwall, J. E. Dunford, N. K. Foster, Anne Levy, K. L. Milne, C. J. Sumner (teller), and Barbara Wiese.

Noes (9)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, L. H. Davis, R. C. DeGaris, K. T. Griffin (teller), C. M. Hill, D. H. Laidlaw, and R. J. Ritson.

Pair—Aye—The Hon. C. W. Creedon. No—The Hon. M. B. Dawkins.

Majority of 1 for the Ayes.

Amendment thus carried.

The Hon. R. C. DeGARIS: I move:

Lines 9 to 11—Leave out subsection (3).

I wish to comment on what has been achieved so far in this clause and indicate a course of action that may be necessary. In the second reading debate I indicated that there were several ways that this Committee could go on this question, although there appeared to be general agreement amongst both Parties that the unsworn statement should be abolished, that it was being abused and reasonable justice was being done by its abolition.

What has been achieved now, and I seek a correction if I am wrong, is that the previous convictions of any accused person cannot be brought into account irrespective of what allegations and accusations (no matter how scurrilous) that person makes about a witness.

We have then added another provision allowing the judge to permit an unsworn statement in certain circumstances. I object to the position where the jury is not acquainted with the facts in relation to the character of the person who makes scurrilous allegations against a witness. There is no possible way that the jury can know the character of the person making those allegations. That is not in the best interests of achieving justice, in any case.

The Hon. C. J. Sumner: It is what the Mitchell Committee recommended.

The Hon. R. C. DeGARIS: I know, but also there are many other recommendations that take the point I am making, which in my opinion complies with what I think is a reasonably just position. Regarding the amendment that we have just passed, we are taking a further step backwards and saying that a person can make an unsworn statement and can make, once again, scurrilous accusations without ever being able to be cross-examined on them, and there is also doubt whether any evidence can be recalled to rebut those accusations.

The point is that, no matter what is said in that unsworn statement, if it is allowed to be a discretion of the court, no cross-examination can be made upon a scurrilous attack on a witness, and it is possible (indeed, it is probable) that evidence cannot even be called in rebuttal of that attack.

The Hon. C. J. Sumner: That's not right.

The Hon. R. C. DeGARIS: If the Leader reads the Mitchell Committee report, he will find that it is mentioned there.

The Hon. C. J. Sumner: The Mitchell Committee states, "It probably can be rebutted".

The Hon. R. C. DeGARIS: That is what I said, but there is no guarantee that it can be rebutted. The Leader cannot guarantee that a prosecutor can call evidence in rebuttal. I am saying that having gone this far the Committee must consider or reconsider what it has done and provide some sort of discretionary machinery to cover the point that has been raised now that this amendment has been passed.

The Hon. C. J. Sumner: You mean by referring it to a Select Committee?

The Hon. R. C. DeGARIS: There is sufficient material available to read without going to a committee.

The Hon. C. J. SUMNER: On a point of order, Mr. Chairman, I do not wish to fetter the honourable member unduly in his contribution, but he is now canvassing matters that have been dealt with by the Committee, and is not speaking to his amendment.

The CHAIRMAN: Order! I think that the honourable member is speaking to the relevant provision in the clause as it stands now.

The Hon. R. C. DeGARIS: You are quite right, Mr. Chairman, because what I am suggesting is that, having carried this amendment, we are faced with the possibility of proceeding through the clause and reaching the end of the Bill and then recommitting the Bill to reconsider this point, or otherwise we could report progress at the end of this clause because leaving the provision as it is is, I believe, simply a travesty of the justice that we are trying to achieve.

The Hon. C. J. Sumner: Why didn't you support

referring the Bill to a Select Committee? That is exactly what I said.

The Hon. R. C. DeGARIS: I gave you the answer—there is no further evidence that can be drawn. What we have to do is apply our own logic, which you are refusing to do.

Members interjecting:

The CHAIRMAN: Order! I think the Hon. Mr. DeGaris should outline his amendment.

The Hon. R. C. DeGARIS: When this Bill is proclaimed it should not apply to any trial that has commenced. Where a trial has commenced under the provisions of the Evidence Act before this Bill becomes law it should proceed and be completed under the existing law because, if the evidence rules change halfway through a trial, it cannot be justified.

The Hon. K. T. GRIFFIN: The amendment is reasonable, and the Government accepts it.

The Hon. FRANK BLEVINS: The Opposition also accepts the amendments. The Attorney said that it was reasonable but, whilst it is reasonable, I would like to refer to what the Hon. Mr. DeGaris said.

The Hon. K. T. Griffin: You must speak to the amendment.

The Hon. FRANK BLEVINS: I will have the same latitude that you, Mr. Chairman, properly gave to the Hon. Mr. DeGaris. It was even endorsed by the Hon. Mr. DeGaris. It is obvious the further we go into this Bill that it should have been referred to a Select Committee. Clearly, it would not have been a long committee but it would have resolved some of these difficulties with which we are now confronted. The worse thing that can happen with this Bill is that eventually we will finish up by having to go to a conference, where matters such as those raised by the Hon. Mr. DeGaris and Opposition members can be discussed, talked out and may be even some further amendment made to the Bill; so this is certainly not the end of the line. A conference is the end of the line, and I expect that that is where we will finish up. My experience of conferences is that they are useful and that some good comes from them.

If ever a Bill should have gone to a Select Committee it is this one. It is totally unreasonable of the Government not to refer it to a Select Committee to argue out and take evidence on the very real issues of the Bill that have created differences amongst various members.

Amendment carried.

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

Page 2, lines 12 to 28—Leave out subsections (4) and (5) and insert subsection as follows:

(4) A defendant forfeits the protection of subsection (1) VI if—

(a) the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or a witness for the prosecution; and

(b) the imputations do not arise from evidence of the conduct of the prosecutor or witness—

(i) in the activities or circumstances giving rise to the charge;

(ii) in the activities, circumstances or proceedings giving rise to the trial; or

(iii) during the trial.

As I have indicated several times during the course of this debate, this amendment reflects the agreement that has been reached between representatives of the Law Society, my advisers and myself. These amendments adopt the Mitchell Committee recommendations to the extent that they protect an accused person against cross-examination as to his previous convictions, particularly in circumstances where he alleges that a confession has been beaten out of him or where a confession has not been made, or where a confession has been made and he has still been beaten. The accused person will be protected in those circumstances, which the Mitchell Committee believed to be of the utmost importance.

The Hon. FRANK BLEVINS: The Opposition opposes this amendment. I do not intend to go into any detail, because the arguments have been canvassed previously.

The Committee divided on the amendment:

Ayes (10)—The Hons. J. C. Burdett, M. B. Cameron, J. A. Carnie, L. H. Davis, R. C. DeGaris, K. T. Griffin (teller), C. M. Hill, D. H. Laidlaw, K. L. Milne, and R. J. Ritson.

Noes (9)—The Hons. Frank Blevins (teller), G. L. Bruce, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, J. E. Dunford, N. K. Foster, Anne Levy, and Barbara Wiese.

Majority of 1 for the Ayes.

Amendment thus carried.

The Hon. R. C. DeGARIS: I move:

Page 2—

After line 28 insert subsections as follow:

(6) This section, as in force immediately before the commencement of the Evidence Act Amendment Act, 1980, applies to a trial that commenced before the commencement of that amending Act.

(7) This section, as amended by the Evidence Act Amendment Act, 1980, applies to a trial that commenced after the commencement of that amending Act whether the charge was laid before or after the commencement of that amending Act.

As the main amendment for the deletion of clause 3 has been carried, I now move for the inclusion of subsections (6) and (7).

Amendment carried; clause as amended passed.

Clause 6 passed.

Clause 7—"Interpretation."

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

Page 2—After line 41 insert paragraph as follows:

(ab) books, diaries, or other records used in the course of carrying on the business of banking;

This amendment inserts an additional paragraph under the heading "Banking records". Subsequent to considering the Bill, I received advice that the words "books, diaries, or other records used in course of carrying on business of banking" had been omitted. In some instances, those things will be used as evidence. For that reason, and to make the definition of banking records complete, I commend the amendment to members.

The Hon. FRANK BLEVINS: The Opposition supports this amendment.

Amendment carried; clause as amended passed.

Clause 8 passed.

Clause 9—"Bank not compellable to produce records except under order."

The Hon. R. C. DeGARIS: As a number of amendments have been made to clause 5 that alter the position a lot, I would like to move a further amendment to cover certain points that I believe are outstanding. I ask the Attorney-General whether he would report progress at this stage or go back to clause 5 and report progress there.

The CHAIRMAN: If the honourable member wants to recommit clause 5, we would have to complete the Bill first.

Clause passed.

Progress reported; Committee to sit again.

THE BANK OF ADELAIDE (MERGER) BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

The Hon. K. T. GRIFFIN (Attorney-General): I move:

> That the Council at its rising adjourn until Tuesday 16 September at 2.15 p.m.

The Hon. R. C. DeGARIS: In speaking to the adjournment motion, I wish to raise two separate issues. The first is the proposed guidelines for public servants, and the second is a very quick look at the question of electoral changes.

In the matter of the guidelines, there are three directly interested groups of people, namely, the Executive, public servants and the Parliament. Since the guidelines were first tabled, the Public Service Association and certain members of Parliament have lodged their objection to the guidelines. Since the objections have been lodged, the Attorney-General has stated in the Council that the guidelines are capable of further negotiation and that, instead of making the attendance of a Public Service Board adviser compulsory, the public servant giving evidence before a Parliamentary committee may, if he so desires, make use of the advisory service.

As I understand the position, the Public Service Association is still not impressed even with the offer of further negotiation and the offer of the advisory service being used on request only. This point is referred to in the Public Service Association letter, which states:

> It worries us that public servants should be placed in a circumstance where they may be obliged to relate to Parliamentary committees in a manner objectionable to those committees.

I feel that this statement is open to a number of interpretations and deserves further amplification. One must now ask the question: if public servants do not wish to avail themselves of the Public Service Board's advisory service, why should the Executive bother to persist with them at all? While I have been interested in the controversy between the Government and the P.S.A., the views of the Parliament appear to me to assume the most importance.

It must be admitted that the Parliament has a very direct interest in this matter, and one may take the view that Parliament should demand that it be consulted upon matters in which it has such an interest. After all, the guidelines were designed by the Executive to give protection to the public servant when under examination by a Parliamentary, not a Government, committee. As far as I am aware, there has not been any complaint from public servants giving evidence before the Public Works Standing Committee or the Subordinate Legislation Committee in the past. To my knowledge, there have been no problems with public servants giving evidence before Select Committees, but, of course, there may have been. It would be of interest to the Parliament to know of those complaints.

I point out that Select Committees are limited in their powers to gather evidence, although the previous Government hurriedly adopted the request for a Royal Commission to investigate the Salisbury dismissal when it was proposed that a Select Committee inquiry should be undertaken in this Council. We are really left with only one committee to consider, and that is the Public Accounts Committee.

Harold Wilson, a Prime Minister of Great Britain, made the interesting comment many years ago that one of the few blood sports left in the United Kingdon was the Public Accounts Committee. I must admit that, in its short history in South Australia, I have at times been disappointed with the attitudes of some of the members serving on that committee. However, if the P.A.C. attitudes are of concern to the Government, consultation with the Parliament to overcome those problems is the surest way of improving the position.

There are many other points I would like to raise relating to the P.A.C. which obliquely touch on this question, but I do not believe that this is the time so to do. I intend leaving the consideration of the P.A.C. question there, with the broad comment that it was the Parliament which established the Public Accounts Committee, even though the chairmanship relies upon the patronage of the Executive.

If the rules for public servants giving evidence before that committee are to change, then it is reasonable that the Parliament should expect to be consulted on any guidelines. The Select Committee, on the other hand, is a committee of the Parliament, differing from the P.A.C. in that the chairmanship does not rely upon Government patronage, and, clearly, if guidelines were needed for public servants coming before Select Committees, then Parliament should be consulted.

I would remind the Government that in my contribution to the Address in Reply debate I took as my theme the declining significance of Parliament and used as my base not the writings of political radicals but the views of writers and politicians of Liberal and conservative persuasion. My suggestion to the Government is to withdraw or vary the guidelines and then, in ways which are available to the Executive, to consult with the Parliament on the problem the Executive believes exists. If the problem does exist (and from the Parliamentary point of view that has yet to be established) I am quite certain in my mind that Parliament can resolve it to the satisfaction of all parties who have a direct interest in this question. I commend to the Government such a process.

I am concerned about two matters that appeared recently in the newspapers, one written by Dennis Atkins in the *Sunday Mail* and the other by Peter Ward in the *Australian*. Atkins, in his article on 27 July 1980, stated:

> In the last State election there were about 30 000 informal votes for the Council. In the last Federal poll spoilt ballot-papers for the Senate in South Australia ran to about 88 000.
>
> The fact is that voting for the Upper House in South Australia is run on lines about as fair as can be worked out. Tinkering with the voting system in the way suggested would be a regressive step, making the Legislative Council less representative than at present.

I also refer to Peter Ward's article, in relation to Mr. Bannon, which stated:

> And while he is not keeping the Government on its toes, the Government proceeds with plans to alter the procedures for Upper House voting so that they become "fairer" to non-Labor parties. Given the record, I don't trust a Liberal Party in this State tampering with the voting system for either House. We don't want a Tonkmander any more than we should have had a Playmander (or a Jerrymander) from 1933 until, in varying degrees, 1976. So hands off the Constitution Act, Mr. Premier, until you can prove that you are making an actual, democratic improvement.

It is on those two articles that I made my comments. I do not disagree that both Dennis Atkins and Peter Ward are excellent journalists, who use the English language admirably. I often wish that I possessed the ability to weave words as effectively as Peter Ward does. But I do not wish to compare my ability to use words: I wish to look at the logic of what they are saying in those articles. First, Dennis Atkins said:

> The fact is that voting for the Upper House is run on lines about as fair as can be worked out.

Some Address in Reply speeches mentioned that, in 1975,

the A.L.P. with less than 48·6 per cent of the vote gained six out of 11 members, and non-Labor five out of 11, with 51·4 per cent of the vote. The claim that the present system is about as fair as it can be is quite untrue. Secondly, quoting Atkins:

> The Government proposes to change this to the method employed in Federal elections where the voter has the tedious task of putting a number next to every candidate.

Twice I have introduced Bills in this Council, neither of which followed the Senate system (which I agree with Dennis Atkins creates an unnatural number of informal votes) but followed the New South Wales system, which produced fewer informal votes than the system at present used in the Legislative Council of South Australia. I hope that the Government, in introducing its Electoral Bill, will follow the Bill I introduced, because the Senate system would be unjustified in the South Australian situation.

Peter Ward, I would have thought, would be the one person in South Australia, because of his keen support of the individual and his rights, to be amongst the strongest critics of the present Legislative Council voting system, which not only can permit a minority vote to elect a majority of members but also does not permit a voter to vote for a candidate he may wish to vote for. I will excuse him for not being consistent, on the grounds that he did not understand the two Bills I introduced, because, if he did, on his philosophic views, he would be out in the vanguard supporting change. To demonstrate to the House that Mr. Ward does not understand, his reference to Tonkmanders, Playmanders and Jerrymanders, and not to Donnymanders, makes that quite clear.

One last point: Premier Wran introduced a Bill for Legislative Council voting in New South Wales. It was the same system as we operate here in South Australia. The Bill was referred to a Select Committee, which interviewed 40 to 50 people, including politicians, academics and electoral experts. The interesting thing is that not one of those people from all around Australia who gave evidence before that Select Committee supported the Bill before the New South Wales Parliament, which Bill was identical to the system that we operate here in South Australia. I cannot think of a more damning indictment of the system in use. The system that the Select Committee recommended was finally accepted by the Wran Government, and New South Wales has the fairest voting system operating in any House in Australia. It is that system that the A.L.P. fought so strongly to prevent from operating in South Australia.

I hope that the two journalists to whom I have referred are prepared to examine the Government proposals when they are presented and not to make statements on electoral matters without understanding what is proposed, when it is proposed, or what the changes set out to achieve.

Motion carried.

At 5.27 p.m. the Council adjourned until Tuesday 16 September at 2.15 p.m.