LEGISLATIVE COUNCIL

Wednesday 23 March 1983

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

PETITION: TEACHER RELOCATION

A petition signed by 127 residents of South Australia concerning the relocation of a teacher from LeFevre Primary School and praying that the Legislative Council will ensure that a teacher is not removed from that school, and that their children's education is not disrupted, was presented by the Hon. Frank Blevins.

Petition read and received.

PAPER TABLED

The following paper was laid on the table:

By the Attorney-General (Hon. C.J. Sumner):

Pursuant to Statute—

Industrial and Commercial Training Commission—Report, 1981-82.

QUESTIONS

URANIUM MINING

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Attorney-General a question about Honeymoon.

Leave granted.

The Hon. M.B. CAMERON: Yesterday in this place the Minister of Agriculture, on behalf of the Minister of Mines and Energy, finally informed the public that mining of the Honeymoon uranium deposit would not be allowed to proceed in this State. His statement alleged four reasons for the Cabinet decision to stop the Honeymoon development and to cause the loss of 40 jobs and the waste of more than $10 000 000 already invested by companies in this project, as well as the loss of the development project I outlined yesterday. The Attorney-General, in response to my question yesterday, expressed grave concern about the dangers of the nuclear industry and the problems that mining could have in relation to nuclear proliferation and stated, in part:

> ... it also recognises that there are unresolved issues of safety involved in the whole nuclear fuel cycle. Those unresolved issues have been debated in this Chamber at length previously. I do not wish to canvass those issues at length again. Nevertheless, I think that everyone who has thought about the issue recognises that there are unresolved safety issues, whether it be in the nuclear fuel cycle in the area of disposal of nuclear waste, which has not yet been finally resolved, as honourable members know, or whether it is in the area of potential proliferation and nuclear war.
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> That is still an issue, I would hope, of considerable concern to the Australian community and the international community as well. Not enough has been done by Australia, by Australian Governments up to the present time, to try to resolve those issues.

The statement claimed that Honeymoon is only a small uranium mine and that Roxby Downs will provide plenty of uranium at any rate. I have never heard a statement that contained so many inaccuracies and contradictions. I believe that the Attorney-General has undermined Cabinets's credibility when on the one hand he says that Honeymoon cannot proceed because uranium is unsafe and will lead to nuclear proliferation and on the other hand Cabinet says that there is plenty of uranium in Roxby Downs that can be mined so that we do not need Honeymoon or the Stuart Shelf. If uranium is safe, it is safe, and if it is unsafe, it is unsafe. Surely the geography of our State does not decide whether or not a commodity is safe.

The Government alleged that its stand on Honeymoon was known by the people and that it therefore has a mandate to stop the project. That is blatantly untrue. The Labor Party refused to indicate its stand on the Honeymoon project before both the State and Federal elections, and the Premier, as Leader of the Opposition, went so far as to say that he could not give an indication as to what would happen to Honeymoon because he was not Premier yet and would have to wait until after the election. The Government committed itself to Roxby Downs, possibly the world's largest uranium mine, and the people of South Australia had every right to expect that this was a general endorsement of uranium mining in this State.

The Minister implied in his statement that the market potential for uranium mining is currently limited. This I would dispute. However, even if it were the case, it is not the job of government to make decisions in this way. Let businesses which have the acumen to make commercial decisions make commercial decisions, and let the Government govern.

Given the Attorney's reply to my question yesterday about the Ministerial statement that indicated that Cabinet is concerned 'that many of the economic, social, biological, genetic, safety, and environmental problems associated with the nuclear industry are unresolved' and that the nuclear industry has been able to develop 'before fundamental questions of safety, disposal techniques, effective regulatory and safeguard systems have been tackled and resolved', I ask the following questions.

How does the Attorney explain the decision to allow uranium mining at Roxby Downs and at future deposits on the Stuart Shelf and not at Honeymoon? Is the Attorney-General seriously considering that uranium from Roxby Downs and future deposits like Roxby Downs on the Stuart Shelf have a different effect on the nuclear fuel cycle than has uranium from Honeymoon?

The Hon. C.J. SUMNER: Clearly, that answer was provided for the honourable member yesterday when he pursued this matter. There are unresolved safety issues, and that is obvious. I believe that most fair-minded people would concede that there are unresolved safety issues in relation to the disposal of waste and, very particularly as far as I am concerned, the possibility of the proliferation of nuclear weapons.

As the Hon. Mr Cameron knows, Justice Fox indicated that the extension of uranium mining and the nuclear industry in this country would contribute to the possibility of proliferation of nuclear weapons. That must be a matter of considerable concern to everyone. I take the view, unlike some members opposite, that, in historical terms, it is difficult to see how the world can avoid a nuclear war. I am not suggesting that that will occur in the immediate future, although, of course, the possibility exists.

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: If honourable members opposite want an answer to the question, I am perfectly happy to give it.

The Hon. L.H. Davis: You are not answering the question.

The Hon. C.J. SUMNER: I am giving some background, to which honourable members opposite obviously do not want to listen. What I said was in historical terms. Given the history of conflict in the world over many centuries, particularly this century, it is difficult to come to any conclusion other than that a nuclear war is more probable than not for the world in the future. I am not saying that it will happen in the immediate future, although that is certainly a possibility but, if one looks at it in historical terms and

considers the conflicts we have had in the past and considers whether or not there is likely to be a major conflagration in the world in the future, I think that it is a distinct possibility. It is a probability, and some would say that, given human nature, there is an inevitability about that situation occurring.

However, the fact is that much of the world, not just Australia, has embarked on the nuclear fuel cycle in one form or another. There are protests in Europe at the moment about the arms race. Those protests are justifiable because, if there is build-up of arms across Europe and a proliferation of nuclear weapons in other countries beyond those that already have them, then the risk of nuclear conflagration that people have talked about is enhanced considerably.

The Hon. R.J. Ritson: No-one asked you about this. What does it have to do with Honeymoon?

The Hon. C.J. SUMNER: If uranium is mined and processed, ultimately that is the raw material used for nuclear weapons. That is the connection. I would have thought that that was—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I would have thought that that was fairly obvious to all members opposite. As I said, the reality, despite the problems I see and despite what is considered as the inevitability of a nuclear war due to a proliferation of nuclear weapons and the arms build-up, is that the world has embarked on the use of uranium. That is the situation.

People may regret that and I think that we may all learn to regret it, but that is a reality as much for Australia as for the rest of the world. The fact is that uranium mining is being permitted in Australia in a number of places, principally in Queensland and the Northern Territory. We are all faced, as a community, with the difficulty of what one does about that situation. Does one immediately close uranium mines, with all the attendant loss of benefits to Australia? The Labor Party took the view that those mines in existence should continue for the time being, but I believe there ought to be a protest made in Australia about the nuclear fuel cycle and the possibility of a nuclear war.

Therefore, I believe that Australia should adopt a more activist role in world forums on the question of arms control. Do we ever hear from the Hon. Mr Cameron about the dangers of the arms build-up in Europe? Do we hear anything from the Hon. Mr Cameron or Liberal Party spokesmen in Australia about the proliferation of nuclear weapons? The Labor Party in Australia is concerned about these issues and its policy in relation to uranium reflects that quite clearly. Therefore, I believe that there is a case for some protest to be made and some attempt to get active development in the world of measures to overcome those problems.

The Australian Federal Government should adopt a much more activist role in that than has occurred in relation to both the issues—disposal of wastes and proliferation of nuclear weapons. In stopping uranium mining in some places in Australia, I believe and the Federal Government believes that we are taking steps to indicate to the world that we are concerned about the proliferation of nuclear weapons; we are concerned about the unregulated and unsafe aspects of the nuclear fuel cycle and, therefore, we ought to take steps to try to resolve the unresolved safety issues. The situation is quite simple. As I said yesterday, there is a uranium mining industry in Australia; that reality has been recognised by the Government. Nevertheless, some steps should be taken, we believe, to resolve the issues that are still outstanding.

The Hon. M.B. CAMERON: I desire to ask a supplementary question. First, I do not believe that the Attorney-General has answered my first question, which was: is the Attorney-General seriously suggesting that uranium from Roxby Downs and deposits like Roxby Downs on the Stuart Shelf—some of them not yet discovered but which will be subject, according to the statements, to future search—has a different effect on the nuclear fuel cycle than has the uranium from Honeymoon? Is the Attorney-General suggesting that uranium mining at Honeymoon is at a less advanced stage than that at Roxby Downs, which would not be my understanding of the present situation? Is he seriously suggesting that the only reason for not allowing mining of uranium at Honeymoon is the desire to make a protest? Does he not recognise that this present statement is an absolute fallacy and sheer, unadulterated hypocrisy? Has one ever previously seen such a statement made in this Parliament, whereby one can mine uranium at Roxby Downs and at future discoveries on the Stuart Shelf, but one cannot mine it at Honeymoon because it happens to be in too pure a form?

The Hon. C.J. SUMNER: I am not quite sure what the honourable member is attempting to ascertain. I gave a full answer.

The Hon. L.H. Davis: What is the difference?

The Hon. C.J. SUMNER: What is the difference between uranium mined from Honeymoon and uranium mined from Roxby Downs? I suppose the end product is the same. I would have thought that even honourable members opposite, with their limited knowledge of science, could have determined that for themselves.

The Hon. M.B. Cameron: You have taken a big step forward in your thinking.

The Hon. C.J. SUMNER: Not at all. I have always thought that, probably since Intermediate physics or even before that. I probably came to the conclusion that certain isotopes of uranium of the same kind were the same, and I would have thought that that was pretty obvious.

The Hon. R.C. DeGaris: Did you pass Intermediate physics?

The Hon. C.J. SUMNER: Yes, but I am not sure that honourable members opposite would have passed it, in view of their proposition. They seem to think that there is some difference between the two. I would have thought that honourable members opposite would have realised that it did not need me—a mere lawyer with Leaving physics—to tell them that uranium that was mined from both mines was probably the same. In view of that fact, I really wonder why they bother to ask the question.

As to the rest of the question, I went through the arguments yesterday and earlier today, and I am not sure that I can take the matter much further. The fact is that the uranium mining industry is a fact, a reality in Australia at the moment: it is a reality in the world. We may regret that but, nevertheless, that is the position. I believe that more action is necessary, and I am sure that the present Federal Government will take a much more active role in world forums on the unresolved safety issue. Pending that, I think that the decision taken by the Government is justified.

RIVERLAND CANNERY

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Minister of Agriculture a question about the Riverland cannery.

Leave granted.

The Hon. K.T. GRIFFIN: The saga of the Riverland cannery is well-known. When the Liberal Government came to office in September 1979 it inherited a disastrous mess. Since that time the State Bank appointed receivers and managers who have been carrying on the business. Those

receivers and managers have done a tremendous job against all odds to streamline the operation of the cannery and keep it going with Government subsidies. In June 1981 the Liberal Government gave the guarantee to fruitgrowers that their fruit would be processed in the 1981-82 and 1982-83 seasons to the extent of a minimum of 7 100 tonnes in the light of the Australian Canned Fruits Corporation's likely quotas for 1981-82. The price that was guaranteed to fruitgrowers was the current applicable F.I.S.C.C. prices for each season.

The Liberal Government was conscious of the impact on local jobs and on the fruitgrowers and their families, in fact, the whole Riverland community, if the cannery were to close. The Government last year was also conscious of the I.A.C. inquiries into the long-term future of the fruitgrowing industry in Australia. With the completion of the 1982-83 season, questions arise as to the future of the cannery and the Government's support for it. Accordingly, I direct the following questions to the Minister:

1. Will the Government continue to indemnify the receivers and managers against losses?
2. Will the Government give guarantees for future canning fruit seasons?
3. Will the Government ensure that the cannery continues in operation or will it close down the cannery?
4. If the Government is to continue subsidising the cannery, will it do so through the receivers and managers or will some other restructuring occur?
5. If some other restructuring is contemplated by the Government what are the details of such restructuring?
6. If no decisions have been taken on the cannery, when will those decisions be made?
7. How does the Government see the future of the canning fruit industry for the Riverland of South Australia?
8. Are any accounts available for the operation of the cannery for the year ended 31 December 1982?
9. If such accounts are available, will the Minister table them?

The Hon. C.J. Sumner: Put the questions on notice.

The Hon. K.T. GRIFFIN: The Attorney interjects that I should put the questions on notice. If the Minister wishes to study them in detail, I shall be happy to put them on notice for the appropriate date.

The Hon. B.A. CHATTERTON: I can give an answer to some of the questions that the honourable member has asked. If further questions remain unanswered, perhaps the honourable member could put those on notice afterwards. Certainly, the problems of the Riverland cannery are very considerable, and the losses that have been made at the cannery are of quite incredible magnitide. They have continued over many years. In fact, the current estimate of loss is still in the region of $6 000 000 to $8 000 000 per annum, which is a large level of support for any Government to give to any operation.

I am well aware that the previous Government was very concerned about the level of the loss involved, and so are we. It is a difficult situation because, at this stage, anyway, the receiver/managers do not seem to be able to identify the various areas within the cannery operation that are making the most substantial losses; nor are they able to identify areas within the cannery operation that may be breaking even or even making a profit. That is one of the things that we have asked them to do, so that it can be considered in relation to the future operation of the cannery.

In fact, we have honoured a guarantee given to the fruitgrowers in this region for their harvest this year in relation to the price for their produce and the amount of fruit that is taken in by the cannery. However, we have not given any guarantee for next year's harvest, because we want to examine the cannery's future. Of course, there are a number of options: the cannery can be closed; it can maintain its present operations; it can maintain its present operations and attempt to get on to a more viable footing through further investment, because much of the plant, and so on, has become run down; or the cannery can close down part of its operations and concentrate on those areas that at least break even. So, a number of options can be examined by the Government in relation to the future of the Riverland cannery.

We have also decided that the people who are most closely involved should be consulted in relation to how the various options are examined and how they can be developed. Of course, the final decision about the cannery's future will remain with Cabinet and the Treasurer, because the funds come from that source. We believe that those people whose livelihoods are most directly involved with the cannery (that is, the people who work there—the growers who supply the fruit and the local community, which benefits from the income that is generated by those other groups) should all be involved in the process of examining the various options which I have outlined and others which might come up.

We have invited representatives from those groups to meet with the receiver/managers and with the Under Treasurer's representative to look at the implications of those options, what they will cost and whether they will ensure the survival of part of the cannery or some other viable operation in the future. That is the current state of affairs in relation to the Riverland cannery. We hope that this group's work will be completed by the end of June so that we are able to make the necessary decision for those fruitgrowers who will be looking at next year's crop.

MEEKATHARRA COAL

The Hon. I. GILFILLAN: I seek leave to make a brief statement before asking the Minister of Agriculture, representing the Minister of Mines and Energy, a question about the Wintinna coal deposit.

Leave granted.

The Hon. I. GILFILLAN: With a view to getting the best deal for power supply to South Australia, I was concerned to read in this morning's *Advertiser* that Mr Dinham, General Manager of the Electricity Trust of South Australia, has discarded the use of Meekatharra coal from the Arkaringa Basin as a contender for source of supply for the State's next power station, on the following grounds:

> At this stage their information is very sparse and quite inadequate to enable any meaningful conclusions to be drawn.

As Meekatharra lodged its submission two months ago, and it is public knowledge that a pre-feasibility study by Fluor, the major U.S.A. organisation, was provided by Meekatharra to both ETSA and the Department of Mines and Energy last July, and a full assessment by Preece Cardew, International Consulting Engineers, was provided to ETSA in December 1982, plus the fact that all geological reports are as a matter of course available for ETSA and the Department of Mines and Energy, it appears that there is little justification for ETSA rejecting Meekatharra out of hand.

The *Australian*, in an article this morning, recognises that of all the coal deposits currently under consideration only Meekatharra has black coal and, in the same article, it lists as one of the options under consideration the use of imported black coal. I am concerned that South Australia will not get the cheapest electric power because of prejudice against Meekatharra. It seems to me that they are being treated as unwanted latecomers. If there is any justification for their rejection as possible contenders in this project, the answer reported in the *Advertiser* as being given by the General Manager of E.T.S.A. is quite inadequate. Any deficiencies

in their submission should be no excuse for the Government and E.T.S.A. not exploring every avenue to provide the cheapest and best source of electric power for South Australia. I am not prepared to see the potential provision of power to South Australia for years to come put at risk, or put at second best, because of some pique between certain organisations, either E.T.S.A. or the Government which have found submissions from Meekatharra not to their liking.

Will the Minister of Agriculture, representing the Minister of Mines and Energy, ascertain whether his colleague agrees with the opinion of the General Manager of E.T.S.A., Mr Dinham, reported in the *Advertiser* this morning, regarding submissions made by Sturts and Meekatharra for development of the Wintinna coal field? Does he consider that Wintinna is still a contender as the source of coal for the next power station and, if not, what are the reasons for rejection of it as a contender?

The Hon. B.A. CHATTERTON: I will refer the honourable member's question to the Minister of Mines and Energy and bring back a reply.

HONEYMOON URANIUM MINE

The Hon. R.C. DeGARIS: Can the Attorney-General, representing the Minister of Mines and Energy, answer the following questions:

1. Was Mines Administration Pty Ltd informed that the A.L.P. policy towards uranium mining would change before the next Federal or State election?
2. Has the consortium that showed interest in the establishment of a uranium enrichment plant in South Australia been advised of the Government's decision in relation to Honeymoon?
3. What is the Government's policy if any processing industry, whether enrichment or not, is needed to be established in the Iron Triangle to handle the uranium production from Roxby Downs?
4. If we must wait for uranium production from Roxby Downs to occur, what effect does that have on the South Australian case for the establishment of an enrichment industry in South Australia?
5. Has the Government any information on the possible viability of an enrichment industry establishing in South Australia and, if so, will the Government make that information available to this Council?

The Hon. C.J. SUMNER: As the honourable member has asked detailed questions of some complexity, I will obtain the information and provide him with a reply.

YATALA LABOUR PRISON

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General a question about the Yatala Labour Prison.

Leave granted.

The Hon. J.C. BURDETT: A report appears in the *Advertiser* this morning as follows:

The Ombudsman, Mr R.D.E. Bakewell, said last night the incident was 'a sympton of problems which, to me, is not unexpected. It is something we have been warning the Government about for quite some time.'

The Hon. C.J. Sumner: That is something he has been warning Governments about.

The Hon. J.C. BURDETT: He said, 'The Government'. Did the Ombudsman in fact warn the Government in this regard, what action has the Government taken as a result of such warnings, and is the Attorney-General able to tell this Council of the times and nature of those warnings?

The Hon. C.J. SUMNER: My understanding of the matter is that the Ombusdsman had been warning the previous Government for ages about the situation at Yatala. He made quite clear, as I recall, in his reports that the situation was far from satisfactory at Yatala during the term of the previous Government. I do not have the specific information that the honourable member requests as to whether any specific warning was given by Mr Bakewell to this Government about the situation at Yatala. That was the report in the newspaper this morning, if the honourable member quoted it correctly, but my understanding is that Mr Bakewell has been issuing warnings about Yatala for a considerable time and certainly during the period of the previous Government. I have no knowledge of a specific instance of a warning since 6 November. If the honourable member wants a more detailed reply, I will attempt to obtain one for him.

The Hon. J.C. Burdett: I would like the Attorney-General to do so.

ETHNIC AFFAIRS COMMISSION

The Hon. M.S. FELEPPA: Has the Attorney-General a reply to the question that I asked on 16 December 1982 about the Ethnic Affairs Commission?

The Hon. C.J. SUMNER: My views are well known that officers of the Ethnic Affairs Division should not have been redeployed following the change of Government in September 1979, and I do not propose to canvas those views again. In *Hansard* of 23 October 1979 the Hon. C.M. Hill stated that two officers who were being redeployed were advised that they could not be transferred to the 'core' departments of Treasury, Auditor-General's, Public Service Board or Premier's Department. In my view this direction by Mr Hill was both unlawful and improper.

I have discussed with the Public Service Board the details of redeployment of the individual officers. One officer resigned in December 1979, and some of the others have experienced opportunities for development that may not have attached to their previous positions. Two have in fact received permanent salary advancement. However, the Public Service Board recommended the appointment of one redeployee, and this was delayed for over four months by the previous Government. This unwarranted and unethical action was rectified by the present Government processing the appointment shortly after assuming office.

It is not possible to say whether the long-term careers of the five officers concerned have been harmed. Certainly, in the short term, at least in relation to one officer, action of a discriminatory and an unjustified nature beyond the officer's removal in 1979 from the Ethnic Affairs Division was taken by the previous Government only last year.

LEGISLATIVE COUNCIL

The Hon. R.C. DeGARIS: Will the Attorney-General, as Leader of the Government in the Council, say whether the Government has any plans or proposals for reforms to the Legislative Council, in relation to the question of procedures in the Council or Committees of the Council? Also, will he say whether any constitutional amendments are being considered by the Government and, if so, would he advise the Council of the Government's intentions in those areas?

The Hon. C.J. SUMNER: The Labor Party, over its period in Opposition, made a number of comments about the reform of Parliament. The policy outlined at the last election indicated:

Parliament should be made a more effective instrument for discussion and debate on community issues and for scrutiny of

Government actions. The reputation of politicians is low because people are fed up with the political bickering and point scoring which occurs in Parliament. Mechanisms should be developed to assist the promotion of agreement and consensus on issues which are not of great political controversy.

However, there will always be issues that illustrate the nature of conflict between the Parties. Nevertheless, there are many areas where I believe that agreement can be reached, and we in the Parliament should attempt to create mechanisms whereby that agreement can be reached. The policy document also stated:

To this end, Labor would promote reform of Parliament by the expansion and development of the committee system. There should be a means of reviewing the operations of statutory authorities. This will occur through the Public Accounts Committee or if necessary by creating a separate committee.

In the Legislative Council a committee will be established to look at law reform proposals. One of the major problems with law reform has been obtaining legislative consideration of them. This would be improved by such a committee. Further, Labor will investigate the practicability of:

Rostering Ministers in both Houses for Question Time.

and

More adequate and streamlined machinery for the initiation and consideration of non-government legislation in both Houses.

As honourable members will know, I have spoken in this Council on this topic previously. It should also be stated that the Labor Party is committed to fixed terms of Parliament, and this reform was also announced at the time of the last election. The method whereby these reforms can be brought about is still under consideration by the Government. It may be that a select committee of Parliament could be appointed to consider the issues involved in Parliamentary reforms, the committee system, and possibly even expanded into the issues of blocking supply and three-year fixed terms, although I would have thought that the latter two issues were issues of policy to which a select committee really could not add very much. Nevertheless—

The Hon. R.C. DeGaris: It depends who is on the select committee.

The Hon. C.J. SUMNER: That is true. I really think that those issues have been canvassed enough and, indeed, that there probably would not be much that a select committee could add. Nevertheless, I have an open mind as to the mechanism of putting this policy into practice. I hope to take up the matter with the Government in the near future, and I believe that the proper method of addressing the issue would be to have discussions with the Leader of the Opposition in this place and possibly the Leader in the House of Assembly as to the means whereby some common issues can be developed.

I have no specific proposal as to the development of these policies at this time, but what I have outlined is probably a reasonable way of approaching the matter in the first instance, and that is to have discussions with members of the other Parties in the Parliament with a view to developing common points of interest. Nevertheless, the Government had a policy on Parliamentary reform at the last election and we will seek to take steps to implement that policy over the period of the Labor Government.

AERONAUTICS

The Hon. DIANA LAIDLAW: I seek leave to make a short statement before asking the Minister of Agriculture, representing the Minister of Education, a question about aeronautics.

Leave granted.

The Hon. DIANA LAIDLAW: The Department of Education in Western Australia has introduced a course of aeronautics for year 10, 11 and 12 students at the Kent Street High School. I understand that this course, which commenced in 1979, has proved to be extremely popular with male and female students. Apparently, students have come to Kent Street from high schools near and far to do the course.

Students are taught the theory of aerodynamics and how to maintain piston engine planes, and are given flight training. The students hope to become commercial pilots or navigators, to join the Royal Australian Air Force, or to fly small planes for other practical purposes. I understand that a pilot training course is available in South Australia for students attending both Prince Alfred College and St Peter's College. However, that course is not as comprehensive as is the course that is available at Kent Street.

Since there is an increasing use of flying in this State, especially in remote areas, will the Minister of Education consider introducing a course in aeronautics on a trial basis in one high school in the metropolitan area, perhaps in the Salisbury-Elizabeth area near Parafield Airport?

The Hon. B.A. CHATTERTON: I will refer the honourable member's question to the Minister of Education and bring back a reply.

FINANCIAL TRANSACTIONS TAX

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about the financial transactions tax.

Leave granted.

The Hon. L.H. DAVIS: The New South Wales and Victorian Labor Governments earlier this year imposed a duty on receipts of money by financial institutions at the rate of .03 per cent, that is, 3c per $100. In broad terms, the legislation defined financial institutions as including banks, building societies, cash management trusts, and credit providers, such as Bankcard, finance companies, and short-term money market dealers, and made the duty payable on receipts of money within the respective States, so providing significant revenue for those two Governments.

However, the legislation is necessarily complex and onerous. For example, the questions arise whether duty should be passed on to the clients or customers and how could accounting and computer systems be adapted to take account of this duty. Not surprisingly, the duty involved for many institutions and their clients and customers dealing daily with large volumes of money was a considerable financial burden. This has led to Victoria and New South Wales money pouring into Queensland banks. More important, the Queensland Premier, Mr Bjelke-Petersen, and the Treasurer, Dr Lew Edwards, have indicated that they have received many inquiries from both small and large companies which are now based in New South Wales and Victoria and which wish to relocate their offices in Queensland. I am reliably informed that some of those companies that are contemplating a move to Queensland are household names.

The Queensland Treasurer has also stated that the Queensland Government will review existing legislation, including the Stamps Act, to make it more attractive to companies from New South Wales and Victoria that wish to relocate in Queensland. In other words, the Queensland Government has made more than clear that it will do everything possible to promote Queensland as an attractive place in which to invest, to locate a head office, or to expand or establish a business and so take advantage of the financial burden that was recently imposed on companies that are now resident in Victoria and New South Wales.

One would have thought that the lead of the Queensland Government might be followed by the South Australian Labor Government. Here was an opportunity to promote

South Australia, the State with the good lifestyle and no financial transactions tax: here was an opportunity for the Premier to show that he really did want South Australia to win. Instead, there has been a deafening silence. There has been no public wooing to attract disgruntled New South Wales and Victorian investors and companies, as has been done so skilfully by the Queensland Government. Many South Australian businessmen to whom I have spoken have been surprised and disappointed by the inaction and apparent lack of interest in this matter by the South Australian Government. Indeed, there is a growing feeling among the business community—

The PRESIDENT: Order! Is this relevant to the explanation?

The Hon. L.H. DAVIS: Yes, Mr President: it is very relevant. I am coming to the question now. Indeed, there is a growing feeling in the business community that this State Government is considering the imposition of a financial transactions tax. What action, if any, has the South Australian Government taken to attract New South Wales and Victorian companies and investors to South Australia following the introduction of a financial transactions tax in those States? Does the South Australian Government intend to impose a financial transactions tax, which is estimated to cost each household in South Australia at least $125 per annum?

The Hon. C.J. SUMNER: As I indicated to the Council previously, and as the honourable member knows, no decision has been taken on taxation measures by the South Australian Government. As the honourable member also knows, what has happened is that a statement of the State's financial position and its difficult budgetary circumstances has been tabled in Parliament and made available to the community at large. The fact is that that budgetary situation obviously indicates a problem for the State Government caused by, as I have indicated previously, a number of factors—

The Hon. C.M. Hill: Don't blame the former Government again.

The Hon. C.J. SUMNER: The former Government must take some responsibility for it. The Hon. Mr Hill was a sensible and reasonable member of the former Government and he cannot deny what I am saying about the budgetary position before 6 November 1982. There are other factors that we have been through in this Council previously, including the natural disasters that have occurred. No doubt those matters will all be made known to the honourable member at the time any decisions are made on what financial measures have to be taken by the State Government to overcome the problem. That was fully explained before Christmas to this Council.

One of the options on a list of options that was outlined by the Treasurer was an increse in taxation. But there has been no decisions taken on taxation measures. I am sure that as soon as those decisions are made, if a decision is made to do that, the honourable member will know about it and, I am sure, have quite a lot to say about it. I do not feel that he will be kept in the dark on the issue.

The Government is aware of the matters that the honourable member referred to. I do not know how many companies, if any, have transferred from Victoria and New South Wales to Queensland. Certainly, in the rumour mill of the business circuit the suggestion is that if one does not have a financial transactions tax then one may be in an advantageous position to attract business from those States that have it. That has been said and I accept it.

The Hon. L.H. Davis: What has been done about it?

The Hon. C.J. SUMNER: I do not know that very much has been done about it in Queensland or anywhere else. Mr Bjelke-Petersen has said plenty about it, but he has said plenty about many things. It is certainly a view, but whether or not it has any basis or justification I do not know. Indeed, the Government is following it through. It is one of the considerations that have to be taken into account. I have heard the argument that the Hon. Mr Davis put, that if one does not have a financial transactions tax then one may be able to attract some investments from the other States that have it. However, it is all very much in the area of probability. Certainly, there are no certainties in that area. The argument that the Hon. Mr Davis put is an argument that the Government will consider in looking at the whole financial position of this State.

YATALA LABOUR PRISON

The Hon. M.B. CAMERON: I do not know whether or not the Attorney-General has yet received a copy of the Ministerial statement given in the Lower House, but I understand that one has been given by the Chief Secretary on the problem at the Yatala Labour Prison. I find it surprising that this statement was not also given in this Council, as it is a matter of public interest. Does the Attorney-General have a copy of that Ministerial statement?

The Hon. C.J. SUMNER: I do not have a copy of it. I have some notes which the Hon. Mr Keneally, being a man of considerable aptitude, spoke on when giving his Ministerial statement in the House of Assembly.

The Hon. R.I. Lucas: Why not photocopy the statement?

The Hon. C.J. SUMNER: There was no statement that could be photocopied. There were notes that the Chief Secretary used in giving his statement to the House of Assembly.

The Hon. L.H. Davis: That is called a Government on the run.

The Hon. C.J. SUMNER: It is called up-to-date information. I am sure that I can arrange for a briefing for the honourable member about the situation at Yatala, or for a briefing for the shadow spokesman if he should want it, or for any other member in this Council, if they so desire. The Government has nothing to hide in relation to this matter. I can obtain from the Chief Secretary the specific information that the Leader or other members want and then advise them of it; alternatively, should members want a full briefing, I am very happy for that to occur.

The Hon. M.B. CAMERON: I have a supplementary question. That seems an *ad hoc* way of obtaining information on a subject on which there was, I understand, at the beginning of Question Time in the other House, a Ministerial statement. Whether or not that statement was from notes—

The PRESIDENT: Order! This Council cannot deal with procedures of the other place. The honourable member's question is possibly bordering on being out of order.

The Hon. M.B. CAMERON: I feel that it would have been a matter of courtesy that the Council receive similar treatment on a matter of public interest. Was the Government given prior warning of yesterday's riot at the Yatala Labour Prison and, if so, by whom?

The Hon. C.J. SUMNER: Honourable members opposite should understand that I am not the Chief Secretary; they may not have gathered that. I did not attend the fire scene yesterday afternoon: the Chief Secretary attended the fire scene yesterday afternoon. The Chief Secretary has been involved all morning in matters concerning the fire. That should be obvious to honourable members. As a result of what the Chief Secretary ascertained last night and this morning, he was able to advise the House of Assembly, where he sits, of the up-to-date situation. I would have thought that that was perfectly reasonable. I am not the Chief Secretary or the Minister responsible. The Minister responsible is in the House of Assembly and he provided

information to the House which will be publicly available, even to honourable members opposite.

If the Leader suggests that the Hon. Mr Keneally should not have made a statement until tomorrow so that members opposite could have a typed-up, nice, pretty copy of it, I think that the position the Leader is adopting is quite absurd. A statement was given by the Hon. Mr Keneally as the Minister responsible in the other place. When it is possible, those Ministerial statements are given in the Council as well. I have offered to give the honourable member a full briefing on the matter, either by the Hon. Mr Keneally or by one of his officers. The Leader is asking a specific question and I will obtain an answer to that question and bring back a reply. If any other honourable members have any specific questions in relation to the fire I will obtain that information for them also. I do not believe that the Council has been deprived of information.

NATURAL DEATH BILL

The Hon. FRANK BLEVINS obtained leave and introduced a Bill for an Act to provide for, and give legal effect to, directions against artificial prolongation of the dying process. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

This Bill is in similar terms to the one recommended by the Legislative Council Select Committee on the Natural Death Bill, 1980, which passed this Council on 26 March 1980. The difference is that the part of the previous Bill which referred to the definition of death has been omitted as unnecessary due to the Death (Definition) Act, 1983, at present before the Council.

The principal purpose of the Bill is to provide for, and give legal effect to, directions against the artificial prolongation of the dying process. This will ensure that a terminally ill patient will be able, if he wishes, to issue a direction that extraordinary measures are not to be taken when death is inevitable and imminent.

As the select committee report and the *Hansard* reports of the debates are readily available to members, I feel that a summary of the arguments for the Bill is more appropriate than a further extensive second reading. The proposition is a simple one. Adults have (with some minor exceptions) the absolute right to refuse medical treatment, and no doctor is permitted to treat a patient against the patient's known wishes. If the patient is conscious, aware of his rights, and able to signify consent or otherwise to treatment, no problem should arise. However, once a patient is unconscious or is heavily sedated, and is therefore unable to exercise his right to refuse or consent to medical treatment, then the treatment at that stage of a terminal illness is entirely at the discretion of the doctor. It may be that the treatment the doctor gives would not be wanted by the patient, but the patient is unable to have any effective say. This Bill, if passed, would provide a framework that would ensure that any person who so desired would have his wishes respected in the circumstances I have outlined.

Besides this part of the Bill's most important function of ensuring that the patient's wishes are respected, it would also have the effect of relieving the doctor and relatives of terminally ill patients of the responsibility of deciding what treatment should or should not be applied.

On a topic as sensitive as this, it is also important that I spell out clearly what the Bill does not do. The Bill does not attempt to solve every problem involved in people dying due to a terminal illness. Some people might think that it should; the fact is that it does not. For example, the Bill specifically restricts itself to adults; so the problems relating to terminally ill children do not come within the scope of the Bill. A person whose condition is what is commonly referred to as vegetable, again, may not come within the scope of the Bill. On reading the interpretations in Part I, it is immediately apparent that death has to be 'imminent' and treatment has to be 'useless'. Very many people in a vegetable state would not meet that criteria. The *status quo* would therefore be undisturbed.

The Bill also does not authorise any act that causes or accelerates death, as distinct from an act that permits the dying process to take its natural course. The Bill not only does not authorise such acts, but specifically states that it does not authorise those acts in clause 7 (2). I appreciate that it is not usual for a Bill to state what it does not permit. However, the select committee unanimously agreed that, to avoid any misunderstanding by lay people reading the Bill, such a clause should be inserted.

This Bill is a result of a unanimous decision of a select committee of the Legislative Council. It answers some important medical-legal questions. It does not disturb the present doctor-patient relationship unless the patient wants it disturbed. If it is disturbed, it is disturbed in favour of the patient, allowing him to assert his rights to make his own decisions regarding useless medical treatment in cases of terminal illness. This Bill does not disadvantage anyone. No-one's rights are adversely affected, only strengthened, and, due to the safeguards written into the Bill, it cannot be misused.

The Bill allows people who are about to die a say in their own dying process—not if they are going to die, not when they are going to die, but how. To me, that is a right we should acknowledge, and I therefore strongly commend the Bill to the Council. 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 provides the necessary definitions. For the purposes of the Act, a terminal illness is a condition that is such that death would be imminent if extraordinary measures were not taken to prolong life, and from which there is no reasonable prospect of a temporary or permanent recovery. In this context, 'recovery' includes a remission of symptoms or effects of the illness. 'Extraordinary measures' are medical or surgical procedures that are designed to prolong life by maintaining vital bodily processes that are not capable of independent operation. This would include, for instance, the supplementation or supplanting of a bodily function by a machine.

Clause 4 provides for the making of a direction by a person who wishes that, in the event of his suffering from a terminal illness, his life shall not be prolonged by extraordinary measures, and also provides that the medical practitioner who is treating him shall act in accordance with the direction, unless there is reason to believe that the patient has revoked or intended to revoke the direction or that when he made it he did not understand what he was doing. The provision does not derogate from the duty of a medical practitioner to inform his patient of all treatments that are available in his case.

Clause 5 provides that the Act does not limit the right of a person to refuse medical treatment, nor the legal consequences of taking, or refraining from taking, therapeutic measures in the case of a patient who has or has not made a direction under the Act or extraordinary measures in the case of a patient who has not made a direction under the

Act. It is not to be inferred, for instance, that a medical practitioner may not, in the exercise of his judgment, withhold extraordinary measures in the case of a patient who has not made a direction.

Clause 6 provides that the non-application of or the withdrawal of extraordinary measures shall not be regarded as a cause of death for the purposes of the law of this State. Clause 7 is a savings provision that will permit the preservation of organs for transplant and the life of a foetus where the mother has died.

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

CASINO BILL

The Hon. FRANK BLEVINS obtained leave and introduced a Bill for an Act to provide for the establishment and operation of a casino under strict statutory controls; and for related purposes. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

In introducing this Bill to the Council I am, of course, aware, as are all honourable members, that several attempts have been made over the past 10 years to permit the legal operation of a casino in South Australia. Briefly, the history of the proposal shows that attempts were made by the Hon. D. Dunstan, the then Premier, in 1973, Mr Peterson (member for Semaphore) in 1981, and the Hon. M.M. Wilson, the then Minister of Recreation and Sport, in 1982. Motions relating to a casino have also been introduced on occasions. All these proposals have failed to gain a majority when voted upon in Parliament.

That members of the House of Assembly have not been able to find enough common ground to agree to any of the proposals before it is, to me, a supporter of a casino, a matter of regret. My reason for introducing the Bill is to see if this Council can find an acceptable formula that will break the impasse that has developed over the past 10 years.

In regard to the Bill itself, honourable members who have followed the various proposals for a casino in the House of Assembly will recognise that this Bill is based on the Bill introduced by the Hon. Michael Wilson in 1982 with the addition of amendments proposed by the select committee into that Bill, plus the final amendments moved by the Hon. Michael Wilson. That final amendment provided for the casino licence to be held by the Lotteries Commission. When researching the various casino proposals it appeared to me that a Bill incorporating some of the features of the last three proposals would have the best chance of achieving the consensus necessary for a casino Bill to pass.

Essentially, the Bill proposes that there be a casino supervisory authority that will determine the terms and conditions of the licence to be issued, and also to supervise the operations of the casino. Once the authority has decided which of the proposals before it has the most merit, it shall submit its determination to the Minister. The Governor may then grant a licence to the Lotteries Commission in accordance with the determination of the authority. It will be possible for the Governor to vary the terms and conditions recommended by the authority where it is felt to be in the public interest to do so. Provision for further variations of the conditions of a licence is made in clause 14.

Honourable members will see from Part IV of the Bill that the casino will be under the strictest control possible regarding its operation, supervision and management. Because of the sensitive nature of the operation I could not be a party to, let alone propose, any Bill that did not have this essential feature.

I now want to put, as briefly as I can, the arguments for this Bill and attempt to answer some of the arguments which may be used against it.

I have no doubt that, if this Bill passes the Parliament, a casino licence will be issued and South Australia will have a new facility. The economic impact of this to South Australia will extend from the construction phase to the eventual generation of income, employment, and revenue to the State. It can be reasonably expected that, during the construction phase, hundreds of workers could be employed on-site and many more off-site in supplying materials. Because the hospitality and entertainment industry is very labour intensive, it would reasonably be expected that several hundred staff would be employed in a casino complex when operational (Wrest Point, I believe, employs 600 and Alice Springs 200).

The spin-off effects of such a complex would also be considerable. For example, Wrest Point in its first seven years of operation purchased $24 000 000 worth of goods and services which has to have had a very positive effect on its local suppliers. Besides direct spending within the complex itself, visitors to the complex must spend millions of dollars a year with local retailers, entertainment houses, and restaurants. This again must have a positive impact on employment and Government revenues.

The tourist industry would obviously be the major beneficiary of a casino being established in this State. It has been clearly demonstrated interstate and overseas that a casino complex is an attraction by itself, not necessarily attracting only gamblers, but other tourists who would visit casinos as part of a 'package' night out, enjoying perhaps a meal, a floor show and then, if they wish, heading for the gaming tables. It is obvious from media advertising that casinos in other States have encouraged the development of package holidays. Both airlines and many tour operators sell casino packages which they promote independently of the casinos themselves. The airlines and tour operators would obviously do the same for a casino complex in this State, giving a significant boost to the visibility of South Australia as an attractive place for tourists to visit. If a convention facility was also included within a casino complex, that would add a further attraction to promote, ensuring even more investment and employment.

It is impossible to calculate just how much profit would be generated by a casino for the sole use of the State. However, its certain something around the amount generated by the Wrest Point Casino would be available. This has amounted to date to approximately $23 000 000. Whilst this is obviously not going to solve the State's financial problems, I am sure it would be welcomed by any Treasurer.

I anticipate two major arguments against the Bill. The first is that gambling itself is morally wrong and should not be encouraged by permitting a casino. The second is that casinos attract crime and are, therefore, undesirable.

Regarding the first argument, I respect the sincerity of those people who hold the view that gambling is morally unacceptable. That is their opinion; it is a legitimate opinion, and they are entitled to it. What I do not accept is that their opinion should be imposed on those who hold the contrary view, also legitimate; that is, that gambling is something that individuals should be free to engage in if they wish. It is this element of choice that appeals to me. As a non-gambler, it is highly unlikely that I would waste too much of my money frequenting a casino but, if others wish to do so, what right have I to say they cannot? I claim the right, within the bounds of good order, of course, to spend my time and money as I wish. It would be morally unacceptable for me to claim that right for myself without granting it to others. That is why I crossed the floor to vote with the former Government when the soccer pools legis-

lation was before this Council. All this Bill does is to permit people to gamble in a casino if they wish. If they choose not to do so for moral or other reasons, then they are perfectly free to make that choice and give effect to it by staying away.

The second argument that may be used against this Bill is the 'attraction of a criminal element' argument. My response to that particular theory is: what evidence is there to support it? We are fortunate in having 10 years of experience with casinos in other States and there has not even been a suggestion, never mind any evidence, of any criminal activity associated with them. There are at least two reasons for this. The first is the high degree of Government control of all Australian casinos. If one believes that criminals can take over Australian casinos then one cannot have much faith in the integrity and efficiency of our Governments, police forces and licensing authorities. The second reason is that the casino complexes both in operation and envisaged are just too small to make criminal activity worth while. Organised crime seems to deal in millions of dollars these days. Imagine anyone trying to launder that much money in Hobart, Launceston or Adelaide. My guess is that anyone gambling with much more than a couple of thousand dollars would stand out like the proverbial 'sore thumb', and attract instant surveillance. In other words, the sums able to be passed through a casino are just too small to make the high degree of risk involved worth it.

With the experience of casinos in other States to draw on, there is no reason why a casino complex in this State should not mirror the trouble-free operation of complexes in those other States.

I want to make only one more point before concluding. There are many people who feel that investment capital spent on establishing a casino could be better spent on something else—building a school, a hospital, or something of that nature. I suppose that in an ideal world that would be so. But we do not live in an ideal world. Investment capital is not hovering above South Australia waiting to be plucked out of the sky to use as Governments wish. If a casino is not established in South Australia, then the capital available for it will simply go elsewhere. What Governments can do is make sure that a percentage of that capital is used for other facilities that people need. That is why we have Governments and a vast array of taxation measures. When we have, as we do at the moment, a vast underutilisation of labour and material resources, no other project will be 'squeezed out' because of the building of a casino.

Indeed, the revenue for the State from it will enable something that some people would see as more socially useful created. In essence, it is a question of balance—the positive social impacts of a casino, employment, new facilities and revenue, against unsustainable negative allegations of moral danger and organised crime. If put that way, I am sure that the majority of South Australians would agree that the case for a casino carries the most weight. In conclusion, I want to state that, being a gambling measure, Labor Party members of the Council have a conscience vote on the Bill. I have no idea how they will vote as I have not asked any of them for their attitudes to the proposition. The same goes for non-Labor members: I have not asked any of them, either. However, in commending the Bill to the Council there is one thing of which I am confident. Regardless of the history of casino Bills in South Australia, I know that this Bill, in this Council will be dealt with on its merits. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted

Explanation of Clauses

Clauses 1, 2 and 3 are formal. Clause 4 contains definitions required for the purposes of the proposed new Act. Clause 5 establishes the Casino Supervisory Authority. Clause 6 deals with the membership of the Authority. It is to consist of three members of whom one (the Chairman) is to be a legal practitioner or a person who has been a judge. The clause also requires that one member of the Authority should be a person with qualifications and experience in accounting.

Clause 7 is a standard saving provision. Clause 8 provides for payment of allowances and expenses to members of the Authority. Clause 9 provides for the appointment of the Secretary to the Authority. Clause 10 sets out the functions of the Authority. Clause 11 confers certain procedural powers on the Authority. Clause 12 requires the Authority to hold a public inquiry to determine the premises in which a casino may be established and the terms and conditions to which the licence for the casino is to be subject. All interested persons have a right to be heard and to be represented by counsel at the inquiry.

Clause 13 provides that, upon the completion of an inquiry by the Authority, the Governor may grant a licence to the commission on terms and conditions recommended by the Authority. The Governor may add to or vary the terms and conditions of a licence where, in his opinion, it is necessary to do so in the public interest. Clause 14 deals with investigation of proposed modifications of the terms and conditions of the licence by the Authority. The Governor is empowered to alter the terms and conditions of a licence in accordance with a recommendation from the Authority. Clause 15 provides that there shall be no more than one licence in force under the Act and that the licence is not transferable.

Clause 16 provides that it shall be lawful for the commission to operate a casino in accordance with the licence granted under the new Act. Subclause (2) provides that the casino may be established and operated on behalf of the commission by a suitable person. Clause 17 prevents the admission of persons under the age of 18 years to the licensed casino. Clause 18 empowers the Minister to order the exclusion of undersirable persons from the casino. A right of appeal against such an order lies to the Authority. Clause 19 provides for the keeping and auditing of accounts. Subclause (5) requires that moneys accruing to the commission by virtue of the operation of the casino must be paid into the Hospitals Fund.

Clause 20 makes the Superintendent responsible for scrutiny of the operation of the casino. Clause 21 provides for the inspection necessary to ensure the proper and fair operation of the casino. Clause 22 empowers the Authority to give directions to the commission as to the management, supervision and control of the casino. Clause 23 requires the Authority to prepare an annual report as to the operation of the casino. The report must be laid before both Houses of Parliament. Clause 24 prohibits possession of poker machines (either in the casino or elsewhere). Clause 25 provides for summary disposal of offences. Clause 26 is a regulation-making power.

The Hon. G.L. BRUCE secured the adjournment of the debate.

RAMSAY TRUST

The Hon. K.L. MILNE: I move:

That

1. the Ramsay Trust could be a viable proposition and of great value to this State in relation to the provision of low cost housing;

2. in view of the fact that no interest is payable to investors, the element of indexation received by investors of the Trust

should be treated as capital and exempted from income tax in order to protect the capital of the investors against inflation; and

3. the Premier be asked to convey the substance of this motion to the Ramsay Trust for a report prior to requesting the Prime Minister to take the necessary action to ensure that tax exemption as set out in 2 above be introduced for limited liability companies which are either public benevolent institutions under section 78 of the Income Tax Act, or are exempt from company income tax under section 23 of the Income Tax Act.

I do not wish to go into a great deal of detail in explaining this motion, because I am hoping that it will be passed unanimously by this Council and that the necessary research will be done by the Minister responsible in another place. I believe that the Ramsay Trust was a genuine attempt to overcome the drastic effect of high interest rates on low-income earners who are trying to buy homes or keep them after they have been bought.

High interest rates have a drastic effect on the home building industry and building suppliers. This is a time of high interest rates, which means that the wealthy, with large sums of money on deposit, have income running out of their ears. Those who are badly off, including many young people, can no longer afford to buy their homes, or even rent them. In periods of high interest rates the young, those who are badly off and low-income earners are struggling to pay high interest rates, the bulk of which go to the wealthy. The wealthy are embarrassed because their high income puts them into the highest income tax bracket, and most of it goes to the Income Tax Commissioner. In spite of receiving interest at a high rate, that part of their investment capital remaining after tax is not keeping pace with inflation. Many wealthy people would welcome a scheme such as the Ramsay Trust, because it preserves their capital in line with the inflation rate while producing no income when they do not need income.

All members would be aware of property trusts which have been operating successfully for many years. These trusts invest in real property and pay interest or dividends while accumulating capital increments—the former are taxable, the latter are not. That is to say, the income from the investment—the dividend— is treated as income and is taxable. However, the capital gain (the capital increment) is not treated as taxable. In Victoria, the Commissioner of Taxation recently ruled on the capital ingredient of property trusts. Broadly speaking, he said that, if property purchased is held for at least 10 years and is purchased for investment and not for trading in real estate, any increase in capital value is not taxable. I believe it is possible that the Ramsay Trust could come under this ruling. Under those conditions, the term of 10 years (which has been criticised) for investing in the trust is relevant and sensible.

Perhaps one mistake or error of judgment made by those responsible for the Ramsay Trust is that they expected wealthy investors to make an investment, albeit guaranteed by the Government, out of a gesture of kindness. That is and always has been contrary to how the wealthy think. Most of them are already making gestures of some kind to charities of their own. It is self-evident that, if anyone invests $1 000 and it is indexed at the same rate as inflation, there is no income advantage at that stage; if the investment is then taxed at the rate of 60 per cent (the highest rate), the capital value is reduced.

One other problem is that the taxable income accrues all at once, in five or 10 year lump sums, which is the worst way to receive income. That is not an attractive proposition for people who are taking other action to at least preserve their capital. The Ramsay Trust proposal as it stands at the moment is not hedged against inflation.

The Hon. L.H. Davis: The Hon. Mr Gilfillan doesn't agree with what you are saying. He has said that it is wonderful.

The Hon. I. Gilfillan: I'm still learning.

The Hon. K.L. MILNE: I hope that we are all still learning. In fact, I hope that the Opposition is learning as I speak.

The Hon. M.B. Cameron: That's pretty difficult.

The PRESIDENT: Order! The Hon. Mr Milne should not let members sidetrack him.

The Hon. K.L. MILNE: I hope that members of the Opposition will treat this matter seriously and will not regard it as having been finalised, because there are various arguments that can be made to improve the situation. I believe much of the problem would be solved if the capital increase was made tax free, because, if the rate of capital increase is in line with inflation and investors receive no interest, they will not be making a profit in a taxation sense. The Ramsay Trust was designed to assist low-income earners and stimulate the home building industry at a time of recession. The scheme would also stimulate building suppliers and financiers, thus generating a great deal of income tax which would offset the loss of taxation on the capital increments. That would be wonderful for South Australia, especially for those people who need low-cost housing. Tax concessions could be given to those organisations on condition that the funds were used exclusively for low-cost housing projects reserved for those needing assistance.

I am sure that if the taxation problem can be overcome, if the scheme is promoted properly (more individually, in fact), and if the relevant organisations are consulted (organisations such as banks, Australian Finance Conference, insurance industry, and the Stock Exchange), then possibly some adjustments can be made to the tenant or client side of the scheme and it can be made to work. I think that, next time, much more effort will be needed to explain and promote such a scheme to investors, stockbrokers, portfolio managers and the business world in general because it is new to them and their clients. The fact that no income is being provided (which, again, is a new scheme) should be properly discussed with individuals. One should remember that one person in South Australia invested $50 000 in the scheme before its collapse.

The Hon. L.H. Davis: How do you know that?

The Hon. K.L. MILNE: That person may have had a slight interest in the matter, but stimulating the housing industry was more important to that person than was income. What did the Hon. Mr Davis say?

The Hon. L.H. Davis: I was interested that you knew that.

The Hon. K.L. MILNE: I know the chap involved.

The Hon. Diana Laidlaw: Are you saying that the fires and the Federal election were not the only reasons for the failure of the trust?

The Hon. K.L. MILNE: I am not saying that at all. If the honourable member wants me to say something about that matter, I will. However, it is obvious that when the Liberal Party was in Government it could have introduced a scheme such as this, but it did not do so.

The Hon. J.C. Burdett: Because it wouldn't work. We were satisfied that it wouldn't work, and it hasn't worked.

The Hon. K.L. MILNE: Honourable members opposite should not ridicule the scheme because we are getting somewhere with it. In fact, they may be sorry if they treat it with disdain. I am sure that if this scheme, or one similar to it, was implemented it would be successful and, as I have said before, of great value to the State.

The Hon. I. GILFILLAN: I support the motion. I have spoken previously in support of this motion. I think my colleague, the Hon. Mr Milne, has put forward the bases for persisting with this scheme. I was encouraged in this matter when I listened to the Address in Reply speech given by the Hon. Mr Davis. It gave me much satisfaction to hear

that not only has he detailed and accurate knowledge of the scheme but also that he is willing to look at it analytically and critically, but with a positive attitude. That is a credit to him and to the way in which this Chamber works. I make this point because it quite often appears that a confrontationist situation exists here, and it is a great relief to find that that is not the case. In fact, the Hon. Mr Davis came to the Hon. Mr Milne and me to have informal discussions, and that encourages me to think that not only is this motion worth while but also that it stands potentially capable of producing an end product superior in form to that in which the Ramsay Trust was put forward. It would have the background prestige that this sort of scheme would then have, with improvements coming from suggestions such as those made by the Hon. Mr Davis. I support the motion.

The Hon. L.H. DAVIS secured the adjournment of the debate.

SECOND-HAND MOTOR VEHICLES BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to regulate dealing in second-hand motor vehicles; to repeal the Second-hand Motor Vehicles Act, 1971; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

The Second-hand Motor Vehicles Act, 1971, was based on recommendations made by a committee of members of the Law School of the University of Adelaide who presented a report (the 'Rogerson Report') to the Standing Committee of Attorneys-General of the Commonwealth and States of Australia on 25 February 1969. The Rogerson Report related to consumer credit and money lending, but it devoted a chapter to used car transactions, because it found that 'there is ample evidence that purchasers of second-hand motor vehicles are the source of much trouble and hardship in the field of consumer credit. We believe that strong and far-reaching methods are needed if prevalent abuses are to be remedied' (page 46). In introducing the Bill for the 1971 Act into the House of Assembly, the then Attorney-General said (*Hansard*, House of Assembly, 26 October 1971):

> Used car transactions have been a source of innumerable and constant complaints by purchasers. Many people have suffered injustice and found themselves without a remedy. Many, who could ill afford it, have paid for cars which have turned out to be of little value to them and, in fact, involved them in great expense. This measure provides an effective means of preventing such injustices. It asks no more of used car dealers than that they should observe ordinary standards of honesty and integrity. Those who are frank and honest with their customers have nothing to fear from the measure. On the contrary, it will ensure that they do not suffer from the competition of dishonest methods used by competitors. One frequently reads advertised statements by used car dealers that their business is conducted on frank and honest lines. This Bill will ensure that those claims are made good and that the public receives the protection it needs.

The Second-hand Motor Vehicles Act, 1971, was assented to on 9 December 1971 and came into operation on 1 April 1972. From time to time Bills have been drafted to amend the Act, but no amendments have been finalised and the Act remains as initially passed. An amendment Bill was introduced into the House of Assembly on 9 November 1978 and passed by the House of Assembly on 20 February 1979. It was partially debated in the Legislative Council, but then lapsed when Parliament was prorogued on 29 March 1979.

In 1980 the then Government established an inter-departmental working party to undertake a comprehensive review of the Act. The working party comprised representatives from the Department of Public and Consumer Affairs, Premier's Department and the Department of Industrial Affairs and Employment. In conducting the review, the working party was asked to hold discussions with industry representatives and officers of the department who were responsible for administration of the legislation, to take into account all views and submissions and to prepare final recommendations to the Minister of Consumer Affairs on amendments to the Act.

The working party reported in May 1982 and recommended significant changes to the legislation in a number of areas. The report suggested that it would be preferable to draft a new Act rather than to introduce a large number of amendments to the 1971 Act. A Bill was prepared by Parliamentary Counsel in October 1982, but this Bill was only in draft form and had not been circulated to interested parties for comment at the time of the election in November. I therefore decided to seek comments on the Bill and circulated copies for this purpose to the following:

South Australian Automobile Chamber of Commerce Inc.
Chamber of Commerce and Industry (S.A.) Inc.
Australian Finance Conference
Law Society of South Australia
Society of Auctioneers and Appraisers (S.A.) Inc.
Royal Automobile Association of S.A. Inc.
Consumers Association of S.A. Inc.
Second-hand Vehicle Dealers Licensing Board
Consumer Services Branch, Department of Public and Consumer Affairs

In the meantime, the Hon. J.C. Burdett, M.L.C., introduced the same Bill into the Legislative Council as a private member's Bill. I must emphasise that this Bill had not at that time been considered by the parties referred to above. Before any submissions were received, Parliamentary Counsel had re-examined the draft Bill because there were some aspects that he was unhappy about from the drafting point of view.

Submissions were then received and examined and the Bill was redrafted in the light of those submissions and the Government's policy. The Government is satisfied that the revised Bill takes into account the various views that have been expressed by interested parties and is a great improvement on the draft Bill prepared for the previous Government. This Bill confers jurisdiction on the Commercial Tribunal established by the Commercial Tribunal Act, 1982. The new tribunal will take the licensing and disciplinary functions over from the Second-hand Vehicle Dealers Licensing Board and will also have an adjudication role in respect of certain types of dispute.

The Bill includes specific provisions relating to the sale of second-hand vehicles by auction. The present Act contains no such provisions, and this has led to some confusion and uncertainty. Auctioneers who auction second-hand vehicles only on behalf of other persons and who do not otherwise act as dealers will not have to be licensed. However, all second-hand vehicles offered for sale by public auction will have to have a notice displayed setting out certain information for the benefit of prospective purchasers. In the case of a trade auction, at which only dealers will be permitted to bid, there will have to be a notice on the vehicle, and in any advertisement of the auction, advising of this restriction. Where a second-hand vehicle is sold by auction on behalf of a person who is not a dealer, the position regarding the vendor's duty to repair (commonly referred to as the 'warranty', although the description is not strictly correct) will be the same as if the vendor sold the vehicle by a negotiated private sale, that is, there will not be any duty to repair.

However, where the auction is conducted on behalf of a dealer, that dealer will be subject to the duty to repair.

The provisions relating to the licensing of dealers have been revised in accordance with recent developments in occupational licensing policy. Licences will be continuous, rather than subject to renewal every year, but each licensee will have to lodge an annual return and pay an annual fee. Where the return is not lodged or the fee is not paid, a default fee will be payable and the licence may be suspended and, ultimately, cancelled if the default is not remedied. More stringent licensing criteria are also imposed and provision is made for licence applications to be advertised and for objections to be lodged. The tribunal will be required to be satisfied that an applicant has made satisfactory arrangements to fulfil his obligations under the Act (particularly in relation to his duty to repair) and that his premises are suitable. This latter requirement will assist in preventing 'backyard dealers' from operating from their homes in a manner that enables them to pretend to be private sellers.

Used car dealers are presently required to be licensed under both the Second-hand Dealers Act and the Second-hand Motor Vehicles Act. This double licensing is considered to be unnecessary. It is therefore proposed that the revision of the former Act, which is being conducted by the Chief Secretary, will include a provision to the effect that a dealer who deals principally in motor vehicles and who is licensed under the Second-hand Motor Vehicles Act will not be required to hold a licence under the Second-hand Dealers Act. Such a dealer will, however, continue to be bound by the documentation and other requirements of the latter Act.

The provisions of the present Act in relation to disciplinary proceedings have proved to be quite unsuitable and ineffective. The only action that can be taken under these provisions is to disqualify a person from holding or obtaining a licence, and this penalty is obviously appropriate only in the most serious cases. The Bill therefore introduces a new flexible system with a range of different penalties that can be imposed depending on the gravity of the conduct in question. The grounds on which disciplinary action may be taken have also been expanded so as to ensure that the provisions are effective not only for the purpose of taking action against offenders but also to act as a deterrent against misconduct. One of the grounds on which such action may be taken will be a breach of a code of practice prescribed by regulation. It is expected that the code adopted by the South Australian Automobile Chamber of Commerce will be so prescribed (possibly with some modifications) so that the standards of conduct considered appropriate by that body will be applied to the whole industry.

The Bill clarifies the obligations of a dealer in relation to the particulars that are required to be included in the notice displayed on a second-hand vehicle that is offered for sale (presently the first schedule notice, commonly referred to as the 'red sticker'). For example, the present Act requires the dealer to disclose the odometer reading of a vehicle when it was acquired from the last private owner. This has enabled a dealer to disclose the actual odometer reading, even when he suspected that this did not accurately represent the distance travelled by the vehicle—or even when he knew that this was the case because he had been so advised by the previous owner. The new provisions will require a dealer to state whether the odometer reading is considered to be reasonably accurate. If he acts responsibly in this respect he will be protected by the provision that gives him a defence to a prosecution for making a false or misleading statement. In order to discourage dealers for simply stating in every case that the odometer reading is not reasonably accurate (as has happened in Victoria under a similar provision), a dealer will not be permitted to use the odometer reading as a selling point unless he has stated that it is reasonably accurate. For example, he will not be able to say on the notice that the odometer reading is not reasonably accurate and then describe the vehicle in an advertisement as having 'low mileage'.

Under the Bill a contract for the sale of a second-hand vehicle by a dealer will be required to be in writing and to set out certain essential particulars in the manner required by the regulations. The Government will be consulting closely with the industry to ensure that the regulations in this respect are effective to require meaningful disclosure of the required information but do not impose any unreasonable paperwork burden on dealers. A purchaser will be required to be given a copy of the contract, together with a copy of the notice that was displayed on the vehicle and a notice in prescribed form that will summarise the purchaser's rights and obligations in respect of the transaction.

The provisions that impose on a dealer a duty to repair a defect in a second-hand vehicle sold by him have been completely rewritten. The new provisions continue to use the purchase price of the vehicle as the principal benchmark for determining the duration of the 'warranty', but the amounts have been adjusted. The position may be summarised as follows:

(1) If the vehicle is sold for under $500 or was first registered more than 15 years ago, the duty to repair applies only if the defect existed in the vehicle when the purchaser took possession of it and the defect was such that the vehicle was not roadworthy. This applies also to a defect in the tyres or battery of a vehicle.

(2) If the vehicle is sold for an amount between $500 and $1 499, the duty to repair applies to a defect that appears within one month or before the vehicle has been driven for 1 500 kilometres (whichever occurs first).

(3) If the vehicle is sold for an amount between $1 500 and $2 999, the duty to repair applies for two months or 3 000 kilometres.

(4) If the vehicle is sold for $3 000 or more, the duty to repair applies for three months or 5 000 kilometres.

The Bill also includes for the first time a definition of 'defect' and makes clear that, in determining whether a defect exists, regard must be had to the apparent condition of the vehicle and any representation by the dealer regarding its condition. To ensure that the provisions operate effectively and reasonably, there is power to exclude by regulation any defect to which the duty to repair should not apply.

The question of the extent of a purchaser's responsibility to return a vehicle to a dealer where a defect is to be repaired has been a vexed one for some time. The present Act contains no specific provisions on this subject but the Bill introduces a system under which the obligations of the parties are clearly set out.

A licensed dealer will have to obtain approval from the tribunal of the place to which vehicles are to be brought for the repair of defects and this place will be registered by the tribunal. The registered place of repair will be notified on the notice displayed on a vehicle when it is offered for sale so that a purchaser will be aware of this right at the outset. However, the parties to a particular transaction may agree on a different place and record this in their contract. Thus, a purchaser will not be bound by the requirement to bring a vehicle to the registered place of repair if he has managed to negotiate an arrangement that is more convenient in the particular case.

Where a purchaser wishes a dealer to repair a defect in accordance with the duty to repair, he will be responsible for delivering the vehicle to the registered place of repair, or such other place as may be agreed with the dealer. It must be emphasised that the registered place of repair is the place at which the dealer will accept delivery of vehicles for this purpose. The actual repairs may be carried out

elsewhere if the dealer wishes, but the dealer will be responsible for all arrangements after the purchaser has delivered the vehicle to the registered place of repair.

Where a purchaser complies with his obligations but the dealer refuses or fails promptly to repair a defect, the tribunal will be empowered to make appropriate orders to direct that repairs be carried out or to resolve any dispute about the extent of the dealer's obligations.

Despite these provisions, there may still be cases in which it would not be reasonable for a dealer to insist on a vehicle being delivered to his registered place of repair. For example, a vehicle may break down in the country as a result of some minor defect, such as a burst radiator hose, which could easily and inexpensively be repaired by a repairer located at or near the place of breakdown. A responsible dealer would be expected to allow the purchaser to have the defect repaired by that repairer at the dealer's expense. If he unreasonably fails to do so, and the purchaser has the vehicle repaired at his own expense, the Bill provides that the purchaser may subsequently apply to the tribunal for an order that he be reimbursed for the costs he has reasonably incurred. In addition, if a dealer repeatedly acts unreasonably in this respect, disciplinary proceedings could be brought against him.

When a second-hand vehicle dealer disappears or becomes insolvent, there are inevitably unsatisfied claims against him in respect of his duty to repair or his failure to pass on to third parties moneys received by him for this purpose. The working party canvassed this problem in some detail in its report and recommended a bonding system, with appropriate security (usually by way of insurance) for licensed dealers. However, in subsequent discussions with dealers and insurers it was found that this system was not likely to be practical. The Bill, therefore, adopts a different approach and establishes a compensation fund for the purpose of satisfying these claims.

The fund will be established by contributions that licensed dealers will be required to make in accordance with the regulations. These contributions will be determined from time to time, and the Government will monitor the position closely to ensure that the fund is sufficient to meet potential claims. However, when the fund has built up to a level that is sufficient for this purpose, further contributions will be required only to the extent that the interest on investments of the fund is insufficient to meet current claims and the cost of administration of the fund.

The fund will be administered by the Commissioner for Consumer Affairs, but claims will be paid only in accordance with orders of the tribunal. The Commissioner will be subrogated to the rights of a person to whom an amount is paid out of the fund so that recovery proceedings can be taken in appropriate cases.

The present Act provides that a purchaser may waive a right conferred by the Act only with the consent of the Commissioner for Consumer Affairs. This approach has been criticised as being excessively paternalistic. However, it is necessary to ensure that any provision enabling waiver of rights is not abused by unscrupulous dealers and that a person who waives a right understands what he is doing and is not subjected to undue pressure. The Bill therefore does away with the concept of the consent of the Commissioner and provides for the Commissioner to issue a certificate that he has explained the effect of a waiver of a right and that he is satisfied that the person to whom the certificate is issued understands the effect of that waiver. However, this procedure will not be available where the purchaser is a minor.

Because the waiver of a right is treated as a matter that is personal to a particular purchaser, dealers will be prohibited from advertising a vehicle for sale on condition that the purchaser waive any of his rights under the Act. For example, it will not be permissible for a dealer to advertise a vehicle at a reduced price 'without warranty'.

The penalties for breaches of the legislation are substantially increased in this Bill. The maximum penalty for serious breaches will be a fine of $5 000 and provision is made for additional penalties for continuing offences. The Bill includes other provisions that are considered necessary to ensure that there is a fair balance between the interests of dealers and purchasers, together with appropriate administrative and machinery provisions. I seek leave to have the extensive detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. Under the clause, the operation of a provision of the measure may be suspended until a subsequent day fixed in the proclamation or fixed by subsequent proclamation. Clause 3 provides for the repeal of the Second-hand Motor Vehicles Act, 1971. Under the clause, licences granted under that Act are continued in force subject to the new provisions. Clause 4 sets out the arrangement of the measure.

Clause 5 provides definitions of terms used in the measure. Under the clause 'dealer' is defined as a person who carries on the business of selling second-hand vehicles, that is, a person who has established an organisation that has as its purpose or one of its purposes the sale of second-hand vehicles on a continuing basis for profit or gain. The term would not include a person who sells such vehicles merely as an incidental part of carrying on some other business. Attention is also drawn to the definition of 'sell', the effect of which is to extend the provisions of the measure to a sale of a second-hand vehicle by a dealer on behalf of another person.

Clause 6 provides that regulations may be made exempting from compliance with the measure, or specified provisions of the measure, specified vehicles or classes of vehicles, specified persons or classes of persons, or specified transactions or classes of transactions. An exemption under the clause may be made either unconditionally or subject to conditions.

Clause 7 provides that the provisions of the measure are in addition to and do not derogate from the provisions of another Act and do not limit or derogate from any civil remedy at law or in equity. Clause 8 provides that the Commissioner for Consumer Affairs has the responsibility for the administration of the measure subject to the control and direction of the Minister.

Clause 9 provides that it shall be an offence for a person to carry on business as a dealer or hold himself out as being a dealer unless he holds a licence under the measure. The penalty for the offence is fixed at a maximum of $5 000. Under the clause, the requirement for a licence is not to apply to a person licensed as a credit provider under the Consumer Credit Act if the person's principal business is not the selling of second-hand vehicles. In addition, the requirement is not to apply to an auctioneer who sells second-hand vehicles on behalf of others by auction or sales negotiated immediately after the conduct of auctions and who does not otherwise carry on the business of selling second-hand vehicles.

Clause 10 provides for applications for dealers licences. The clause makes provision for any person (including the Commissioner for Consumer Affairs or the Commissioner of Police) to lodge an objection to an application for a licence. Under the clause, the Commercial Tribunal deter-

mines applications for such licences having regard to criteria set out in the clause at subclause (9).

Clause 11 provides that a licence continues in force until the licensee dies or, in the case of a body corporate, is dissolved unless the licensee fails to pay the annual licence fee or lodge the annual return or the licence is for any other reason suspended or cancelled. Clause 12 requires a dealer to register with the tribunal premises in which he carries on business as a dealer. The tribunal is required to register such premises only if it is satisfied that the premises are suitable for the purpose of carrying on business as a dealer.

Clause 13 requires a dealer to register with the tribunal a place that is to serve as a place of repair under the measure. 'Place of repair' is defined by clause 5 as the place at which the dealer accepts delivery of vehicles that he has sold but is under a duty to repair pursuant to Part IV of the measure. The place of repair need not necessarily be the place at which the dealer actually carries out repairs to vehicles. The tribunal is required to register a place of repair only if it is satisfied that the place is sufficiently proximate to the registered premises of the dealer.

Clause 14 provides that the tribunal may hold an inquiry for the purposes of determining whether proper cause exists for disciplinary action to be taken against a person who has carried on, or been employed or otherwise engaged in, the business of a dealer. An inquiry may not be commenced except upon the complaint of a person (including the Commissioner for Consumer Affairs or the Commissioner of Police). Where, upon an inquiry, the tribunal is satisfied that a person has been guilty of misconduct or a failure of a kind set out in the clause at subclause (10), the tribunal may reprimand the person, impose a fine not exceeding $5 000, suspend or cancel a dealer's licence held by the person, or disqualify the person permanently or for a period, or until further order, from holding a dealer's licence.

Clause 15 provides that where a person who is disqualified from holding a dealer's licence is employed or otherwise engaged in the business of a dealer, the person and the dealer are each to be guilty of an offence and liable to a penalty not exceeding $5 000. Clause 16 requires the Registrar of the Commercial Tribunal to make an entry on the register established under the Commercial Tribunal Act, 1982, recording any disciplinary action taken against a person by the tribunal and to notify the Commissioner for Consumer Affairs and the Commissioner of Police of the name of the person and the disciplinary action taken.

Clause 17 provides that clauses 18 to 20 do not apply in relation to the sale of a second-hand vehicle by auction, or the sale, or offering for sale, of a second-hand vehicle to a dealer. The clause also excludes from the operation of clause 18 and clause 20 the sale of a second-hand vehicle negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle.

Clause 18 requires a dealer who is offering or exposing a second-hand vehicle for sale to ensure that a notice in the prescribed form is attached to the vehicle. Subclause (3) sets out the particulars and other information relating to a second-hand vehicle that is to be included in the notice. Subclause (4) provides an appropriate defence in relation to an offence of including incorrect particulars or information in a notice or failing to include all the particulars and information required. Amongst the information required by subclause (3) is a statement whether or not the odometer reading of the vehicle may be regarded as a reasonably accurate measure of the distance travelled by the vehicle. By subclause (5) it is to be an offence if a dealer refers in any advertisement published in connection with the sale of a vehicle to the odometer reading or distance travelled by the vehicle unless the notice attached to the vehicle contains a statement that the odometer reading is reasonably accurate.

Clause 19 regulates the form of a contract for the sale of a second-hand vehicle by a dealer. Under the clause, such a contract must be in writing, be comprised in one document, be signed by the parties and contain certain particulars specified in the clause. These particulars must be set out in the contract document in a manner to be prescribed by regulation. Subclause (2) provides that any such contract that is not in writing is to be unenforceable against the purchaser. Subclause (3) provides that where any such contract does not comply with those requirements the dealer is to be guilty of an offence.

Subclauses (4) to (6) are designed to ensure that the purchaser is provided with a copy of the contract document for his retention. Subclause (7) excludes from the operation of the clause the sale of a second-hand vehicle negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle except where the sale is made by the auctioneer on his own behalf or on behalf of another person who is a dealer.

Clause 20 requires a dealer to ensure that the purchaser of a second-hand vehicle is provided with a copy of the notice under clause 18 and a notice in a form to be prescribed by regulation before the purchaser takes possession of the vehicle. Clause 21 defines 'trade auction' as an auction for the sale of a second-hand vehicle at which bids will be accepted only from persons who are dealers.

Clause 22 provides that an auctioneer is not to conduct an auction for the sale of a second-hand vehicle (other than a trade auction) unless a notice in the prescribed form is attached to the vehicle and has been attached to the vehicle at all times when the vehicle has been available for inspection by prospective bidders. Subclause (2) sets out the particulars and information relating to the vehicle that must be included in the notice. Subclause (3) provides a defence in relation to an offence of including incorrect particulars or information in a notice or failing to provide all the particulars and information required. Subclause (5) prohibits any reference in an advertisement for the sale of a second-hand vehicle to the odometer reading or distance travelled by the vehicle unless the notice required to be attached to the vehicle under subclause (1) contains a statement that the odometer reading may be regarded as reasonably accurate.

Clause 23 provides that, where a second-hand vehicle is sold to a person other than a dealer by auction or a sale negotiated immediately after the auction, the auctioneer must ensure that the purchaser is provided with a copy of the notice under clause 20 and a notice in the prescribed form before the purchaser takes possession of the vehicle. Clause 24 requires a notice in the prescribed form to be attached to the second-hand vehicle that is to be sold by trade auction. The clause also requires any advertisement relating to a trade auction to include a statement in the prescribed form.

Clause 25 imposes a statutory duty upon a dealer to repair certain defects in a second-hand vehicle sold by him. The basic duty imposed by the clause is to repair any defect present in the vehicle or appearing after the sale. The repairs must be carried out to accepted trade standards under subclause (2). 'Defect' is defined under subclause (10) as a defect by reason of which—

(a) the vehicle does not comply with the Road Traffic Act;

(b) the vehicle cannot be driven safely;

(c) the part of the vehicle affected by the defect is not in proper working condition.

The expression includes a defect which would not reasonably be expected to be present in the vehicle having regard to—

(a) the apparent condition of the vehicle at the time of sale;

and

(b) any representations made by the dealer as to the vehicle's condition.

Under subclause (3) the duty does not apply to the sale of a vehicle—

(a) to a dealer;

or

(b) on behalf of a person other than a dealer where the sale is by auction or by negotiations conducted immediately after an auction.

Under subclause (4) the duty does not apply to a defect appearing—

(a) after a period of one month or a distance of 1 500 kilometres (whichever occurs first) in the case of a vehicle sold at a price below the prescribed range;

(b) after a period of two months or a distance of 3 000 kilometres (whichever occurs first) in the case of a vehicle sold at a price within the prescribed range;

or

(c) after a period of three months or a distance of 5 000 kilometres (whichever occurs first) in the case of a vehicle sold at a price above the prescribed range.

Under subclause (5) the periods specified under subclause (4) are to be extended by a period equal to that elapsing between the time when the vehicle is made available to a dealer for repairs and the time at which he has actually carried out his duty to repair.

Under subclause (6) the duty does not apply to—

(a) a defect arising from deliberate damage to the vehicle after sale;

(b) a defect arising from misuse of the vehicle after sale;

(c) a defect arising from any accident after sale;

(d) a defect in paintwork or upholstery reasonably apparent at time of sale;

or

(e) a vehicle in the possession of the purchaser for more than three months prior to sale.

Under subclause (7) the duty does not apply to—

(a) a defect in a vehicle sold below the prescribed amount;

(b) a defect in a vehicle which was first registered at least 15 years prior to date of sale;

or

(c) a defect in the tyres or battery of a vehicle, unless the defect is present in the vehicle when the purchaser takes possession of it and the effect of the defect is such that the vehicle does not comply with the Road Traffic Act, cannot be driven safely or cannot be driven at all.

Under subclause (8) certain defects can be declared by regulation to be excluded from the duty subject to conditions. Under subclause (9) the duty arising under the Act is to be discharged by a dealer who has another dealer sell a vehicle on his behalf.

Under subclause (10) there are definitions of 'prescribed amount' and 'prescribed range'. The prescribed amount is $500 or such other amount as is prescribed. The prescribed range is from and including $1 500 up to but not including $3 000 (or such other amounts as are prescribed).

Clause 26 provides at subclause (1) that where a purchaser requires a dealer to repair a defect that he is liable to repair, the purchaser must deliver the vehicle during business hours to the dealer's registered place of repair or such other place as has been agreed between dealer and purchaser, and allow the dealer a reasonable opportunity to repair the defect.

Under subclause (2), where the vehicle is delivered to the dealer in accordance with subclause (1) and the dealer refuses to repair the defect or fails to do so with due expedition or the purchaser is unable to deliver the vehicle to the dealer by reason of his refusal to accept delivery or his absence, the purchaser may apply to the tribunal for any of the following orders:

(a) an order that the dealer repair the defect;

(b) an order that the dealer pay to the purchaser the reasonable costs of repairing the defect;

(c) an order that the dealer compensate the purchaser for any loss or damage.

The purchaser is under a duty to mitigate any such loss or damage. Under subclause (4), where the tribunal orders the dealer to carry out repairs and he fails to do so, the tribunal may order that the dealer pay for the reasonable cost of the repairs or pay compensation to the purchaser for loss or damage.

Under subclause (5), where repairs are carried out by a person on behalf of the dealer and that person is paid by the purchaser, the dealer is liable to reimburse the purchaser for the amount paid.

Subclause (6) overrides the general principles of subclause (1) in providing that where a dealer is under a duty to repair and, as a result of the defect, the vehicle cannot be driven, cannot be driven safely or cannot be driven without risk of damage, and the purchaser has notified the dealer of the situation and given him a reasonable opportunity to nominate a place of repair other than that referred to in subclause (1), and the dealer fails to nominate another place or it is unreasonable that the purchaser be required to take the vehicle to the place nominated by the dealer, then the purchaser may have the vehicle repaired at his own expense and the tribunal may order the dealer to reimburse the purchaser for that expense.

Under subclause (7), where a dealer is not licensed or does not have a registered place of repair the purchaser may have the vehicle repaired at his own expense and the tribunal may order the dealer to reimburse the purchaser for that expense. An order of the tribunal under this clause may be made on such terms as the tribunal considers just, and the tribunal may make orders as to costs according to its discretion. A determination of the tribunal on a question of fact is final.

Clause 27 provides for the conciliation of matters before the tribunal where the tribunal considers that there is a reasonable possibility of a resolution by this method. Nothing said in the course of an attempt to reach a resolution may subsequently be given in evidence in proceedings.

Clause 28 provides for the establishment of the Second-hand Vehicles Compensation Fund and for its administration by the Commissioner. Under subclause (4), where the amount of the fund is not sufficient to meet an amount that may be required to be paid out of it under clause 30, the fund may be supplemented from the general revenue. Under subclause (5) any excess contained in the fund may be paid to the general revenue towards any amount paid out of it under subclause (4). Moneys standing to the credit of the fund and not immediately required may be invested in a manner approved by the Minister.

Clause 29 requires every licensee to pay into the fund a contribution in accordance with the regulations. If a licensee fails to pay his contribution in accordance with the regulations his licence is suspended until the contribution is paid.

Clause 30 provides for claims against the fund. Under subclause (1) where the tribunal has ordered a dealer to pay a sum of money to a purchaser and either the dealer has failed to comply with the order within a period of one month or the tribunal is satisfied that there is no reasonable prospect of the dealer complying with the order by reason

of his death, disappearance or insolvency, the tribunal may order payment out of the fund of the amount of the order.

Under subclause (2), where a person who has purchased a vehicle from a dealer or sold a vehicle to a dealer applies to the tribunal, the tribunal may authorise a payment out of the fund to the person if the person has a valid unsatisfied claim against the dealer arising out of the sale or purchase but not in pursuance of this measure, and there is no reasonable prospect of the claim being satisfied by reason of the death, disappearance or insolvency of the dealer.

Clause 31 subrogates the Commissioner to the rights of the person to whom a payment is made out of the fund in respect of the order or claim in relation to which the payment was made. Clause 32 requires the Commissioner to keep proper accounts in respect of the fund, and provides for the audit of the accounts.

Clause 33 provides in subclause (1) that any purported waiver of a right conferred by the Act is void. Under subclause (2) a person other than a minor may waive a right under the Act if he has obtained a certificate certifying that an authorised officer has explained the effect of the waiver and was satisfied that the person understood that effect.

Subclause (3) provides that the Commissioner may not issue a certificate unless the prospective purchaser has supplied the prescribed particulars in relation to the purchase and an authorised officer has explained the effect of the waiver and is satisfied that the effect has been understood.

Subclause (4) provides that a dealer who purports to limit the rights conferred by this measure is guilty of an offence. Subclause (5) provides that a person who enters into an agreement with intent to evade the operation of this measure is guilty of an offence. Subclause (6) prohibits a dealer from publishing a statement to the effect that a sale is conditional upon the obtaining of a certificate of waiver or in such a manner as to induce a prospective purchaser to obtain such a certificate. Under subclause (7) a contract for the sale of a second-hand vehicle conditional upon the obtaining of a certificate is void.

Clause 34 prohibits interference with the odometer of a second-hand vehicle. Under subclause (2) interference includes altering the odometer reading, removing or replacing the odometer or rendering the odometer inoperative or inaccurate. However, these acts may be undertaken with the approval of the Commissioner under subclause (3).

Subclause (4) is an evidentiary provision raising a presumption that a defendant interfered with an odometer where it is proved that the reading on the odometer was less, during or shortly after the defendant had possession of the vehicle, than it was before the vehicle came into his possession. Subclause (5) provides a defence in proceedings under subclause (1) if the defendant can prove that the action was not taken by him to enhance the apparent value of the vehicle and that the action was not taken for any fraudulent purpose.

Clause 35 is an evidentiary provision raising the presumption that a person has carried on the business of selling second-hand vehicles if it is proved that he sold or offered for sale, six or more such vehicles within a 12-month period. Clause 36 provides that an act or omission of an employee or agent of a dealer is deemed to be the dealer's own act or ommission unless the dealer proves the person was not acting in the course of his employment or agency.

Clause 37 provides that an agreement between a dealer and a person other than a dealer from whom the dealer purchases a second-hand vehicle which indemnifies the dealer against any costs incurred under the measure in relation to the vehicle is void. Clause 38 allows the Registrar to request the Commissioner or the Commissioner of Police to investigate any matter relevant to the determination of any matter before the tribunal or any matter which might constitute cause for disciplinary action under the measure.

Clause 39 relates to the annual report by the Commissioner on the administration of the measure. Clause 40 relates to the service of documents required by this measure or the Commercial Tribunal Act, 1982, to be served. In the case of a licensee such a document is deemed to have been served if it is left at the licensee's address for service. Under subclause (2) a licensee must give notice of his latest address for service in accordance with the regulations.

Clause 41 prohibits the making by any person of a false or misleading statement when furnishing information required under this measure. Clause 42 prohibits a licensee from carrying on business otherwise than under the name in which he is licensed. Clause 43 requires a licensee whose licence is suspended or cancelled, upon direction, to return the licence to the Registrar.

Clause 44 provides that where a body corporate is guilty of an offence under the measure then every member of its governing body is also guilty unless he proves that he could not, through the exercise of reasonable diligence, have prevented the offence. Clause 45 provides that a person guilty of an offence constituted by a continuing act is liable to an additional penalty for each day the offence continues of one-tenth of the maximum penalty. The penalty and the additional penalty apply also if the act continues after conviction.

Clause 46 provides that proceedings for an offence are to be disposed of summarily. Clause 47 deals with the commencement of prosecutions. Proceedings for offences are not to be commenced by a person other than the Commissioner or an authorised officer except with the Minister's consent. Clause 48 is the regulation-making power. Among other things, regulations may regulate advertising of second-hand vehicles and prescribe a code of practice for licensees. Such a code of practice may incorporate, in whole or in part, a code of practice adopted by a body which, in the opinion of the Governor, represents the interests of a substantial section of licensees.

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

CONSUMER TRANSACTIONS ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Consumer Transactions Act, 1972-1982. Read a first time.

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

That this Bill be now read a second time.

This Bill is complementary to the Bill for a new Second-hand Motor Vehicles Act and implements one of the recommendations of the working party appointed to review the Second-hand Motor Vehicles Act, 1971. Section 8 (7) of the Consumer Transactions Act provides that many of the conditions and warranties implied by that Act in consumer contracts for the sale of goods do not apply in the case of 'the sale of a second-hand vehicle within the meaning of the Second-hand Motor Vehicles Act, 1971'. This exemption extends even to vehicles that have been exempted from the 'warranty' provisions of the Second-hand Motor Vehicles Act, with the result that no statutory warranty at all applies to these vehicles. For example, many imported vehicles have been exempted from the statutory warranty provisions pursuant to section 24 (5) of the Second-hand Motor Vehicles Act but, because they remain within the definition of 'second-hand vehicle' under that Act, they are also exempt from

the conditions and warranties set out in section 8 of the Consumer Transactions Act.

The working party referred to above considered that the statutory warranties provided for in the two Acts in question were not mutually exclusive, but complementary. The existence of a duty to repair certain defects in a second-hand motor vehicle should not exclude, for example, the Consumer Transactions Act warranty that the vehicle is fit for a particular purpose that has been made known to the dealer in a manner which indicates that the purchaser was relying on the dealer's skill or judgment. In any event, warranties along the lines implied by the Consumer Transactions Act already apply, by virtue of the Federal Trade Practices Act, to dealers that are bodies corporate, and it is illogical and inconsistent that they do not apply also to non-corporate dealers.

The Government is satisfied that it is proper that the conditions and warranties implied by subsections (3), (4), (5) and (6) of section 8 of the Consumer Transactions Act should apply to the sale of a second-hand vehicle and that this will not impose any unreasonable burden on dealers.

Clause 1 is formal. Clause 2 provides that the Act shall come into operation on a day to be fixed by proclamation. Clause 3 makes the substantive amendment to section 8 of the principal Act.

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

WRONGS ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Wrongs Act, 1936-1975. Read a first time.

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

That this Bill be now read a second time.

This measure amends the Wrongs Act with two primary objectives. The first objective is to amend the provisions of the principal Act dealing with defamation to extend a privilege conferred in certain circumstances upon newspaper publications to radio and television broadcasting. The second objective is to rationalise the law relating to liability for damage caused by animals by substituting the principles of the law of negligence for the existing principles which are often anachronistic and arbitrary.

I turn now to the first of these objectives. The present law provides protection against actions for defamation in certain circumstances. The Wrongs Act provides that a fair and accurate report in a newspaper of any proceedings publicly heard before a court, if published contemporaneously with the proceeding, is privileged. It states that this is also the case with the publication of a fair and accurate report in a newspaper of proceedings or the publication of certain official notices or reports unless published maliciously. The Act provides a penalty for unfair and inaccurate reporting. A defence exists where in the action for libel a person can prove that the publication in a newspaper or magazine was published without malice and without gross negligence. The fact that reporting of matters is privileged in certain circumstances only if published in a newspaper fails to observe that radio and television provide a medium for dissemination of information nowadays.

The attention of the Government was drawn to the imbalance of the privilege granted to one form of publication rather than the others. Accordingly, the Bill extends the privilege to radio and television reporting. This will mean that fair and accurate reporting of court proceedings, if published contemporaneously, of certain official notices and reports, reports of meetings of select committees of Parliament, and reports of meetings of royal commissions will be privileged against actions for defamation be they reported in a newspaper, or on radio or television. The monetary penalty for breach of the Act will be increased from $20 to $2 000.

The second objective of the measure relates to liability for animals. The law relating to liability for animals is in a confused and undesirable state. In 1969 the South Australian Law Reform Committee in its seventh report presented to the then Attorney-General (Mr R. Millhouse) recommended changes in the law relating to liability for animals. I have on a previous occasion commended this report to honourable members and I have also commended an article which the Speaker, Hon. T.M. McRae (the member for Playford) prepared for the *Australian Law News*. As honourable members will no doubt recall, several attempts have been made to implement some of the Law Reform Committee's recommendations, but no change to the law in South Australia has yet been achieved.

Honourable members will be aware that in the famous case of *Donoghue v Stevenson* (1932 Appeals Cases 562) the law of negligence was clarified. The classical pronouncement is to be found in Lord Atkin's speech in that case, as follows:

> There must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances . . . The rule that you are to love your neighbour becomes in law you must not injure your neighbour: and the lawyer's question, 'Who is my neighbour?' receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be—persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am direct in my mind to the acts or omissions which are called in question.

In my respectful submission, there is no reason why this basic principle of the general law of negligence should not apply to persons in custody of animals. Yet, for various reasons, strange and peculiar distinctions have been drawn.

At present the law relating to damage caused by straying animals is governed by the English case of *Searle v Wallbank*, a 1947 decision of the House of Lords. This case decided that the owner or occupier of a field abutting on to a highway owes no duty of care to users of the highway to keep his animals such as horses, cows and sheep from straying from the field on to the highway. The owner or occupier is not liable for damage caused by animals straying from his land on to the road, even though he may have known his fences were in a bad state of repair. An application of the general principles of negligence would result in a reasonable farmer being required to forsee that if he fails to take reasonable care with regard to the fencing of his property, injury to persons using the highway and their property is not unlikely to occur. However, the rule in *Searle v Wallbank* relieves the farmer from this liability. The effect of the rule in *Searle v Wallbank* is to subsidise the farmers at the expense of the motoring public. The rule has been judicially disowned in Canada and Scotland and after much discussion has been abrogated by Statute in England. In Tasmania and Western Australia it has been held that the rule is inapplicable to the conditions in those States. The ordinary negligence approach has been favoured obiter by two members of the Queensland Supreme Court. In New South Wales, legislation has been implemented to abrogate the rule and return the area of liability for straying animals to the general rules of negligence. In Victoria and South Australia the archaic and inappropriate rule of *Searle v Wallbank* continues to apply.

Furthermore, there are ancient distinctions which delineate between animals said to be naturally in a wild state and domesticated animals. The group to which a particular species belongs is a question of law and is often difficult to

ascertain. For example, the dingo belongs to the wild group whereas the domestic dog is in the domestic group. People who keep animals from the wild group as domestic pets in our society do so entirely at their own risk. The animal does not assume the nature of a domestic amimal simply because it is kept as a tamed domestic pet. As the Law Reform Committee Report mentioned, this peculiar rule caused one famous writer to ask whether a snail was a wild animal. The Law Reform Committee recommended the abolition of the distinction between wild and domestic animals.

This Bill provides that the keeper of an animal who negligently fails to exercise a proper standard of care to prevent an animal from causing lose or injury shall be liable in damages in accordance with the principles of the law of negligence to a person suffering loss or injury in consequence of his neglect. The standard of care is to be determined by the facts of the particular case and not by reference to any legal categorisation. I have provided that a court in determining whether a proper standard of care has been exercised shall take into account measures taken to control the animal and to warn against any vicious propensity that it might have.

I have abolished the rule in *Searle v. Wallbank.* I have provided protection for employees of the owners of an animal. I have defined 'owner' in a reasonable fashion. I have dealt with the question of trespass and incitement. I have provided that an action in nuisance can still be maintained and that no statutory remedies or rights are affected. I have made it quite clear that this Act will not be retrospective.

I feel sure that the proposals I have put to the Council are in accordance with the great weight of opinion in the legal profession and, furthermore, are in accordance with the numerous reports of Law Reform Commissions throughout the Commonwealth and in many of the Australian States.

Finally, I believe that the Bill is in accordance with common sense and justice and does equity to all concerned. I commend this measure to the Council. As I have stated on a previous occasion when commending a similar Bill to honourable members, the law as it presently stands can work considerable injustice. An example of the extraordinary consequences that can follow upon the archaic rules which presently apply in South Australia is demonstrated by facts of the case *S.G.I.C. v. Trigwell.*

A young lady was driving her motor vehicle from Lyndoch in the direction of Gawler and seated next to her was a young female friend. As they were passing a farm, sheep strayed from the farm onto the road. The farmer had been warned on two occasions by the local policemen that his fences were in a state of disrepair. The end result was horrific. The young lady struck the sheep and the car went out of control. It smashed headlong into a car conveying a man, his wife and three children coming from Gawler to Lyndoch. The toll of that accident was absolutely horrifying. The young lady was dead, her female passenger was a paraplegic and in the other car the husband and the wife suffered horrific injuries and all of the other passengers were injured. The matter went to the High Court. Only as a matter of luck, and because the young lady who was the driver was dead and not there to defend herself, it was held that all the survivors could sue her insurance company, but the court held that, notwithstanding what was a virtual criminal act by the land owner whose sheep had unquestionably caused the accident by straying through poorly maintained fences, nonetheless by virtue of the ridiculous rule in *Searle v. Wallbank* the land owner was not liable.

When this matter has been raised previously it has always been defeated or deferred. On this occasion however, I believe the issue cannot further be avoided. I have no doubt that the balance of reason and common sense indicates that there is a need for change which will be reflected in the vote. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 repeals section 3 of the principal Act. Clause 3 inserts new section 4 immediately after section 3a. The new section sets out the arrangement of the remainder of the Act. Clause 4 amends section 6 of the principal Act. That section provides that a fair and accurate report in a newspaper of any proceedings publicly heard before a court shall, if published contemporaneously with the proceedings, be privileged. The clause extends the application of the section to reports published by radio or television.

Clause 5 amends section 7 of the principal Act which provides that a fair and accurate report in a newspaper of certain other proceedings or the publication of certain official notices or reports shall be privileged unless published maliciously. The proceedings referred to in the section are those of public meetings, meetings of local government bodies, meetings of Royal Commissions or select committees of either House of Parliament or meetings of shareholders of banks or incorporated companies. The notices or reports referred to are those published at the request of a Government office or department, a Minister of the Crown or the Police Commissioner. The clause extends the application of this section to publication by radio or television and to publication of the proceedings of either House of Parliament.

Clause 6 amends section 8 of the principal Act which creates a summary offence of publishing a report of a kind referred to in section 6 or 7 that is unfair and inaccurate. The clause extends the application of this section to publication by radio or television and increases the monetary penalty for the offence from $20 to $2 000.

Clause 7 amends section 10 of the principal Act. Section 10 provides a defence to an action for libel contained in a newspaper or magazine if it is proved that the libel was published without malice and without gross negligence. The clause extends the application of the section to publication by radio or television.

Clause 8 amends section 11 of the principal Act which provides for mitigation of damages for a libel in a newspaper if the plaintiff has been compensated or agreed to be compensated in respect of libels to the same effect. The clause extends the application of this provision to any publication whether by newspaper or otherwise.

Clause 9 amends section 14 of the principal Act which provides for defences to an offence against section 8. The clause makes consequential amendments to section 14 so that it applies to publication by radio or television. Clause 10 provides for the insertion after section 17 of the principal Act of new Part IA, consisting of one clause to become section 17a of the principal Act, dealing with liability for animals. Subclause (1) provides that the keeper of an animal which causes an injury or loss attributable to the failure by the keeper to exercise a proper standard of care in relation to the animal, is liable in accordance with the principles of the law of negligence, in damages, to a person suffering that injury or loss. Subclause (2) provides that the standard of care to be exercised by the keeper of an animal depends on the nature and disposition of the animal (which is to be determined according to the facts of the case and not in accordance with any legal categorisation).

The effect of this provision is the abolition of the legal distinction between wild animals and domestic animals.

Subclause (3) provides that a person seeking damages for loss or injury caused by an animal need not prove that the keeper of the animal had prior knowledge of a vicious, dangerous or mischievous propensity of the animal. The purpose of this provision is to abolish the common law doctrine of scienter. Subclause (4) requires a court, when determining whether a proper standard of care has been exercised to take into account any measures taken by the keeper to ensure that the animal remained under his control and in his custody, and to warn against any vicious, mischievous or dangerous propensity that it might exhibit.

Subclause (5) provides that in any proceedings, the fact that the loss or injury resulted from the animal straying onto a public street or road is not an excusing or mitigating circumstance. The purpose of this provision is to overrule a body of common law which excused the keeper of an animal from liability for injury or loss occasioned by such a circumstance. Subclause (6) provides that where the employee of a keeper of an animal is injured in circumstances that would give rise to an action under the clause, it shall not be presumed from fact of employment that the employee has voluntarily assumed risks attendant upon his employment that may arise from working in proximity to animals.

Subclause (7) defines 'keeper' as the owner or any person having custody or control of an animal. Where the owner, or the person having custody or control, of the animal is an infant, keeper includes the infant's parent or guardian or the person having actual custody of the animal. Subclause (8) provides that a person who incites or knowingly permits an animal to cause loss or injury is liable in trespass to a person who suffers damage as a result. Subclause (9) excludes the operation of any other principles upon which liability would be based were it not for this clause. Subclause (10) provides that the clause does not affect an action in nuisance relating to an animal, does not derogate from any other statutory right or remedy and does not affect any cause of action that arose before the commencement of the Wrongs Act Amendment Act, 1983.

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

WHEAT DELIVERY QUOTAS ACT (REPEAL) BILL

The Hon. B.A. CHATTERTON (Minister of Agriculture) obtained leave and introduced a Bill for an Act to repeal the Wheat Delivery Quotas Act, 1969-1975. Read a first time.

The Hon. B.A. CHATTERTON: I move:

That this Bill be now read a second time.

The Wheat Delivery Quotas Act was enacted in 1969 to ensure fair returns to growers at a time when wheat was over-supplied. The buoyancy of export markets over the last 10 years has meant that it has not been necessary to enforce quotas. However, records relating the quotas to properties have been maintained.

Recent discussion with the United Farmers and Stockowners of S.A. Inc. have revealed that the industry now believes that the need for this legislation no longer exists and the cost of maintaining records is no longer justifiable.

Australian export markets have expanded since 1969 with the result that wheat marketing is more flexible than at the time of the passing of the Act. The demand for wheat is expected to increase even further over the next 10 years with the result that the need for quotas is unlikely to arise during that period. Furthermore, the industry now considers that should an over-supply occur in future, a quota system based on deliveries and not on production would be more suitable for modern farm management. South Australia is the only State maintaining quota records. In the result, it is appropriate that the Wheat Delivery Quotas Act, 1969-1975, be repealed. Clause 1 is formal. Clause 2 repeals the Wheat Delivery Quotas Act, 1969-1975.

The Hon. H.P.K. DUNN secured the adjournment of the debate.

BULK HANDLING OF GRAIN ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave for the Hon. B.A. Chatterton to introduce a Bill for an Act to amend the Bulk Handling of Grain Act, 1955-1977.

Later:

The Hon. B.A. CHATTERTON (Minister of Agriculture) introduced a Bill for an Act to amend the Bulk Handling of Grain Act, 1955-1977. Read a first time.

The Hon. B.A. CHATTERTON: I move:

That this Bill be now read a second time.

The South Australian Co-operative Bulk Handling Ltd is a co-operative venture created under the Bulk Handling of Grain Act, 1955-1977, to establish, maintain and conduct in South Australia, a scheme or system for receiving, handling, transporting and storing of grain in bulk. In providing these functions the co-operative acts on behalf of grain growers, millers, merchants and others concerned in the marketing of grain. The co-operative is obliged to pay rates to 66 councils which have grain silos located in their respective areas. With the advent of recent changes to the bases on which local government may calculate its rates, the co-operative faces substantial increases in this tax, especially where capital value assessments are made.

According to the co-operative, the rates now liable to be paid to some councils are inappropriate and, furthermore, are iniquitous in terms of sharing that tax revenue among the several councils. The co-operative has therefore requested that a Bill to amend its Act be introduced to provide that in lieu of council rates it pay a sum of money to councils, which sum would be indexed for inflation and based on the total storage capacity of silos built in the respective districts. This formula will ensure a more equitable distribution of these funds. Under the arrangement, 43 of the 66 councils will receive more funds while, of the 23 councils to receive less, 13 will be under $1 000 difference.

The drafting of this Bill was approved by the previous Government in May 1982 and was intended to come into operation on 1 July 1982. However, the Bill was never approved for introduction. The Bill has the support of the Local Government Association, 53 of 66 rural councils and the United Farmers and Stockowners Association. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 inserts new section 18a after section 18 of the principal Act. Subclause (1) provides that, notwithstanding the Local Government Act, the company is not liable to pay to the council for an area in which any bulk handling facilities are situated rates declared as general rates by the council, but shall pay instead an amount determined according to the formula—

$$A = S.C. \times \frac{5}{100} \times \frac{C.P.I._x}{C.P.I._1}$$

where

A is the amount to be paid in dollars and cents;
S.C. is the storage capacity of the bulk handling facility as at the thirtieth day of June in the preceding financial year;
$C.P.I._x$ is, in the case of the financial year commencing 1 July 1983, the consumer price index for the quarter ending on 30 June 1983, and in the case of any subsequent financial year, the consumer price index for the quarter ending on the preceding 30 June;
$C.P.I._1$ is the consumer price index for the quarter ending on 30 June 1983.

Under subclause (2) the Minister must publish in the *Gazette* before 31 August in any year, the maximum number of tonnes of wheat that could be stored in each of the company's bulk handling facilities as at the preceding 30 June. Subclause (3) provides that where the company becomes liable to make a payment under subclause (1), the Local Government Act applies in relation to the payment and recovery of the payment. Subclause (4) defines the significant words and expressions of the clause: 'area' has the meaning assigned it under the Local Government Act; 'bulk handling facilities' means bulk handling facilities used by or under the control of the company and includes adjacent land used for the purposes of operating the facilities; 'consumer price index' means the quarterly consumer price index number for Adelaide prepared by the Commonwealth Statistician; 'council' has the meaning assigned it under the Local Government Act; 'general rate' means a general rate, including a differential general rate, declared by a council under the Local Government Act; 'storage capacity' of any bulk handling facilities means the number fixed by the Minister under subclause (2) as the maximum number of tonnes of wheat that could be stored by the facilities as at the relevant date.

The Hon. H.P.K. DUNN secured the adjournment of the debate.

SOUTH AUSTRALIAN HEALTH COMMISSION ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave for the Hon. J.R. Cornwall to introduce a Bill for an Act to amend the South Australian Health Commission Act, 1975-1981.

Later:

The Hon. J.R. CORNWALL (Minister of Health) introduced a Bill for an Act to amend the South Australian Health Commission Act, 1975-1981. Read a first time.

The Hon. J.R. CORNWALL: I move:

That this Bill be now read a second time.

It removes subsection (5) of section 11 of the South Australian Health Commission Act, 1975-1981. Subsection (5) provides that where the office of a member of the South Australian Health Commission is vacated in mid-term the person appointed to replace him may be appointed only for the balance of the previous member's term of office. The former Chairman of the commission resigned in January this year, part way through his term of office, to take up the position of head of the New South Wales Health Department. Section 11 (5) places unreasonable restrictions on the Government in relation to the term it can offer a new Chairman. The amendment is intended to provide the Government with flexibility.

On removal of the subsection there will be no need to substitute another provision. The principal Act already provides in section 8 (4) and (5) that members of the commission may be appointed for any term up to a maximum stated in those provisions. Therefore, the appointment of a member may be limited to the unexpired portion of the previous member's term of office if this is desired. The provisions of the Bill are as follows: Clause 1 is formal. Clause 2 removes section 11 (5) from the principal Act.

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

REAL PROPERTY ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Real Property Act, 1886-1982. Read a first time.

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

That this Bill be now read a second time.

This is a Bill to amend the Real Property Act in various respects. The major areas covered by the Bill are as follows: first, the Assurance Fund. Two of the principal advantages claimed for the Torrens system of land registration are the security of a registered proprietor's title and the protection given to a *bona fide* purchaser for value. These two advantages are to some extent in opposition to one another, for the protection given to a *bona fide* purchase for value is sometimes given at the expense of an owner's 'secure' title. To prevent an innocent party incurring a loss because of these competing interests an assurance fund was established by the original Real Property Act and contributions were made by way of a small levy imposed upon transmission of an estate of freehold upon the death of the registered proprietor and upon first bringing land under the provisions of the Act.

A person is entitled to compensation from the fund when deprived of any estate or interest in land by fraud, by the operation of the system or when he suffers loss through any omission, mistake or misfeasance of the Registrar-General or his officers. In 1945 the Government of the day, anxious to have all land in South Australia brought within the ambit of the Real Property Act, decided not to charge assurance fund levy on bringing land under the Act. In 1956, the levy on transmissions ceased to be collected. The amount of money standing to the credit of the assurance fund in 1956 cannot be ascertained as neither the Auditor-General nor the Registrar-General kept a running account of moneys paid into the fund and the money which constituted the fund was kept as part of the general revenue of the State.

Even though the levy is no longer collected, for the purposes of the Real Property Act, the fund continues to exist and claims can still be instituted against it. In 1981 a successful claim was made against the fund resulting in a payout of nearly $90 000. In that case a migrant, Mr Zafiropoulos, who had little understanding of written English, was fraudulently induced to sign a document transferring his house property together with a substantial amount of land to a company called Photo Investments Pty Ltd. Mr Zafiropoulos had no knowledge of the effect of the document. Photo Investments became the registered proprietor of the property and took out two substantial mortgages: the mortgagees had no knowledge of the fraud. Photo Investments default and the mortgagees threatened to foreclose.

An action was instituted in the Supreme Court (the report of which can be found in (1978) 18 SASR 5). The court found that Mr Zafiropoulos was entitled to have his property back, subject however to the lawfully executed mortgages. Following negotiations between the parties and on the receipt of the advice of the Crown Solicitor it was decided that a claim against the assurance fund was made out on the facts. A Governor's warrant was obtained for payment of the amount owing under the mortgages and for other costs. The required payment was met by the Treasurer from general revenue. At present the Registrar-General is considering two

cases involving forgery which may result in claims against the fund.

There has been an increase in claims in several jurisdictions, namely, New South Wales and Western Australia. In one New South Wales case which reached the High Court, the decision made it quite clear that where a person is deprived of his land in consequence of fraud and is unable to recover from the perpetrator of the fraud, then the assurance fund will be liable. Assurance funds are not and should not be seen as State funds; they are built up as insurance funds by the contribution of landowners. It is considered appropriate for contributions to the fund in South Australia to be reintroduced.

It is proposed that a levy will be collected as documents are lodged for registration. This is in keeping with the manner in which fees are collected elsewhere in Australia. It has been specifically provided that the Registrar-General shall keep an account of the moneys he receives for the fund. Provision has been made for the Treasurer to assign moneys to the fund if necessary. This would be essential if a large claim was made in excess of the amount paid into the fund. We are in the midst of a wage freeze and consequently it is not intended that this part of the legislation will be proclaimed until the wage freeze is over.

Coupled with the reintroduction of assurance fund fees it is considered a simpler method of obtaining money from the fund is called for. At present, a plaintiff must go through the complicated procedure of obtaining a Governor's warrant. It is considered that when small claims against the fund are involved, formal methods of recovery should be avoided. When the sum claimed from the fund is less than $20 000 a certificate from the Crown Solicitor should be sufficient to enable the Treasurer to pay out of the fund. For sums in excess of $20 000 the Governor's warrant procedure is to be maintained. Provision has also been made for claims against the assurance fund to be mitigated or barred altogether where the person suffering loss has been negligent or failed to take all reasonable care. The Bill also provides for an increase in the penalty for incorrect certification of real property documents.

A solicitor or licensed land broker is required to certify any documents for registration as 'correct for the purposes of the Real Property Act'. This certification relates not merely to clerical correctness but to the legality of the document. The expectation is that the certifying party vouches for the *bona fides* of the transaction as far as can reasonably be ascertained. It is hoped the imposition of a fee will have the effect of stimulating conveyancers to proceed more carefully with their work, rather than to succumb to the temptation of relying on the Lands Titles Office to detect errors in instruments lodged for registration. It is anticipated that the fee will not be levied where the correction is based on a contentious point of law or in other limited circumstances.

In order to set the Real Property Act in line with the Registrar-General's practice, a minor amendment to section 273 of the Real Property Act is also included. This section provides that the Registrar-General shall not receive any instrument purporting to deal with or affect land unless it is certified to be correct for the purposes of the Act. There are a limited number of dealings with land which the Registrar-General does not require to be certified. The amendment brings the Act into line with the actual practice of the Lands Titles Office. A further minor amendment clarifies the position of the Commonwealth Crown by virtue of the enactment of the Real Property Act Amendment Act, 1982. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the commencement of the measure. Clause 3 amends section 3 of the principal Act, which sets out definitions of expressions used in the Act. The clause provides a re-vamped definition of the assurance fund. Clause 4 inserts a new section in Part XVIII of the Act, 'The Assurance Fund'. The proposed new section provides that the assurance fund, kept at the Treasury, shall consist both of moneys which the Treasurer assigns to the fund for the purposes of this Act and those moneys collected by way of the prescribed assurance levy. The provision will allow the Treasurer to transfer to the fund such extra money as may be necessary. The Registrar-General is to keep an account of all moneys received by him under this section.

Clause 5 amends section 205, which deals with proceedings against the Registrar-General where it is appropriate that he act as nominal defendant. The amendment widens the application of the section to encompass any situation where compensation cannot be fully recovered from the person who would normally be liable. It also makes it clear that the Registrar-General's liability under this section is limited to that amount of compensation or costs that the claimant cannot recover from the defaulting party. Clause 6 provides for the repeal of section 206 of the principal Act. This section becomes superfluous with the introduction of other provisions contained in this measure. Clause 7 amends section 208 of the principal Act by striking out that part of the section which requires a claimant under this part to give written notice to the Attorney-General and the Registrar-General of his intention to issue proceedings. Section 210 also provides that a claimant may apply to the Registrar-General for compensation before commencing proceedings and given current practice it is unnecessary to have the duplication which section 208 presently creates.

Clause 8 provides for the amendment of section 210 of the principal Act. This section presently provides that, where it is appropriate to do so, the Governor may issue a warrant for payment of compensation from the assurance fund. It is proposed that where the amount of compensation does not exceed $20 000 the Crown Solicitor will be able to authorise payment. A warrant signed by the Governor and counter-signed by the Chief Secretary will still be required for amounts exceeding $20 000. Clause 9 provides for the repeal of section 216 and the substitution of a new section. The present section 216 directs a court before which proceedings under this part are brought to take into account any fault or neglect on the part of the plaintiff. This section is recast to provide that in any action under this part for compensation, regard shall be had to any degree of contributory negligence on the part of the plaintiff and the award to the plaintiff is to be adjusted accordingly.

Clause 10 amends section 220 of the principal Act and in particular that paragraph which deals with the Registrar-General's power to require a person lodging an instrument to comply with any requisitions which, in the opinion of the Registrar-General, are necessary or desirable. Mention is now made of the prescribed correction fee and that the Registrar-General may refuse to proceed with registration until it is paid. Clause 11 amends section 233 1a of the principal Act, which is the interpretation provision for that part of the Act that deals with the division and amalgamation of allotments. The amendment provides a definition of the Crown in right of the Commonwealth and for this to be distinguished from the Crown in right of the State. This is consequential to the succeeding provision. Clause 12 effects an amendment to section 233 1d of the principal Act. This section is now to distinguish clearly between the Crown in right of the State and the Commonwealth Crown. The

amendment returns the legislation to the situation which existed under the Planning and Development Act, 1966-1981, where the Crown in right of the Commonwealth did not necessarily require approval for a plan of subdivision.

Clause 13 alters the penalty for falsely or negligently certifying documents under the Act. The penalty is now to be up to $5 000. Clause 14 amends section 273 of the principal Act which provides that all instruments presented for registration must contain a certificate that the document is correct for the purposes of the Act. As a matter of conveyancing practice, some documents do not require such certification. The amendment therefore validates this practice by permitting the Registrar-General to exempt instruments of specified classes from the requirement of certification. Clause 15 provides a second subsection to section 274 of the Act. It is considered desirable that where the Registrar-General requires the correction of a document which has been lodged under the Act by a solicitor or land broker, that the solicitor or land broker should not be able to recover from his client the cost of his errors or omissions. This amendment enacts this policy and provides a penalty of $500 for breach of this subsection.

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

ADDRESS IN REPLY

Adjourned debate on motion for adoption.
(Continued from 22 March. Page 492.)

The Hon. C.M. HILL: I support the motion that the Address in Reply as read be adopted. I thank His Excellency for the manner in which the Forty-fifth Parliament was opened and I record my sympathy to relatives of the late Cyril Hutchens, C.B.E., and the late Gordon Gilfillan. As His Excellency said in his Speech on opening day, both those gentlemen gave long and splendid service to the South Australian Parliament.

I congratulate the new members elected to this Chamber. All of them have been associated with some form of politics or community affairs for some time. I think that that is an excellent prerequisite to a successful Parliamentary career. I am grateful to my Party, and to the people of this State, for giving me the opportunity to serve in this Council for a further term. As a member of this House of Review, I intend to review decisions and legislation of the Government keeping uppermost in my deliberations the interests of the people of South Australia as a whole. In this review process this Council should not be obstructive but should assist the Government wherever possible. However, this practice depends on whether the Government acts within its mandate, the guidelines for which are in its election policy of late last year.

I believe that this is a very important point and it must be borne in mind, because a significant promise was made by this Government at the last election that there would be no increases in taxation or no new taxes. Already, the Premier has indicated that new taxes may be necessary, dishonouring a major election promise. Of course, that promise gained votes for the Labor Party, in a very closely fought election. The dishonouring of a major election promise, if that occurs, will invoke great criticism from the people at large, and I am sure that such criticism, if it comes, will be echoed in this Council.

I wish to defend the policy of the former Government on financial management. In this Council last week, and on other occasions (as well as today), the Leader of the Government in the Council criticised the financial policy of the previous Government. Indeed, he blamed the previous Government for the financial mess (they were the words he used in this Council last week) in which the Government now finds itself. The Hon. Mr Sumner did not say today that it was a mess, but he certainly referred to those problems.

The main thrust of the Attorney's criticism last week concerned the $42 000 000 in the Consolidated Account in the Budget for 1982-83 as presented by the previous Government. Of course, that was a surplus of $42 000 000 on capital transactions, which offset a deficit on recurrent transactions of the same amount. That resulted in a balanced and consolidated Budget. I can recall some criticism even in regard to the consolidated format of the Budget. It is interesting to note that, in this current financial year, New South Wales and Victoria adopted for the first time the consolidated fund format. From what I can ascertain from research, a figure that is comparable to the $42 000 000 in this State would be $120 000 000 in New South Wales.

What was the position, in regard to its then future financial management, facing the previous Government in 1979 when it came to office? In broad terms, we came to government with a promise of reduced taxation. Special reference was made to death duties and gift duties and to some land tax arrangements. We honoured that promise. We were confronted with vast salary and wage increases. We promised that there would be no retrenchments in the Public Service and in Government instrumentalities, and we honoured that promise. We had to implement expenditure cuts and we reduced some of the day labour force by attrition and early retirement schemes. We increased charges to what we believed and considered, after much deliberation, to be a fair and reasonable maximum figure.

All of these options were considered when deficits arose in the Revenue Account. Of course, it is true, as the Hon. Mr Sumner stated, that money was taken from capital works programmes, from money that was part of tax reimbursement funds. We knew the consequences of that action: we knew that the construction industry would suffer somewhat.

The Hon. C.J. Sumner: How long were you going to keep doing that?

The Hon. C.M. HILL: We would have done it until we ultimately improved the situation, which I will come to in a moment. We knew that employment, unfortunately, in the construction industry would suffer somewhat. In all those circumstances, I submit that that was the best course to adopt. It was the best of all options. I now refer to the point made by the Hon. Mr Sumner by interjection. In the longer term (that is, in a further three-year term after the first three years of government) more expenditure cuts could have been achieved, and the pressure on capital works could have been relieved.

However, the present Labor Government will not cut expenditure. It has announced further increases in the number of teachers, despite the fact that overall there is a reduction in student enrolments. The Public Service Association revealed after the election that, in the election campaign, the Labor Government gave a commitment to save 732 Public Service positions in this financial year. So, with promises and commitments like that, it is little wonder that the present Government is in a financial mess.

The Hon. C.J. Sumner: That has not accounted for that much of any overrun.

The Hon. C.M. HILL: It does not matter whether or not that specific item has been the cause. The Government must cut expenditure. As I see the situation from announcements that the Government has made, it is not doing that whatsoever.

The Hon. C.J. Sumner: Government initiatives have not added greatly to the Budget deficit, compared to the $42 000 000 that was transferred by your Government from

capital works to revenue, and compared to the problems associated with the drought (which was unbudgeted for), fire, and floods.

The Hon. C.M. HILL: The Government is receiving some aid from the Federal Government for some of those physical disasters. If the Government is to put right the financial situation, it must face up to the fact that it cannot expand the size of the Public Service: in fact, it must reduce it. The Government must continually review and contain Government expenditure. In that regard I noticed only last Friday an announcement that even Mr Hawke is now setting up a committee to investigate cutting expenditure, despite all his promises, which were rather comparable to the promises made by this Government, involving job creation schemes and other measures of expenditure. We simply cannot afford that in the current financial situation. The Government must ensure that wages and conditions for public servants do not become the pacesetters.

I suggest that the Government must publicly announce and fight at the economic summit for at least a 12-month wages pause rather than the six-month wages pause. It must maintain its commitment (which was a commitment given by the previous Government) to a capital works programme, which increased spending by 30 per cent this financial year, despite the transfer of the $42 000 000.

Therefore, I do not accept the criticism made by the Leader of the Government in this Council, and I look forward with interest to seeing the Government's method, by comparison with the strategy of the previous Government, of dealing with the financial problems in this State. Again, I stress that, if the best that the Government can do is to break its election promises and increase taxation, it will incur the wrath of the people of this State. That criticism will be voiced very strongly in this Council and, of course, in the Parliament as a whole.

I want to touch on one other area, and I do so to initiate, if possible, some public discussion, because it is an issue on which a wide spectrum of views should be canvassed. In due course some change might be encouraged or developed as a result of public response. I suggest that the word 'ethnic' used in the public administration of ethnic affairs and used descriptively to denote many migrants and their families should not be used by public authorities in this State and, indeed, throughout the land. Efforts should be made so that citizens generally can be persuaded or encouraged to stop calling other people 'ethnics'. The word 'ethnic' derives from the Greek *ethnikos,* meaning heathen.

The broad and widely accepted current meaning is that the word 'ethnic' pertains to a race or to members of the community who are migrants or descendants of migrants, usually the native language of such migrants not being English. One dictionary states that the word 'ethnic' pertains to nations not Jewish or Christian. The more one seeks to clarify the meaning of the word the more embarrassing the position becomes.

Most Australians give different answers to the question, 'Who is an ethnic in Australia?' This gives some strength to the belief that Australians relish fixing tags on newcomers to this country. This is a great pity. I know some members of the Latvian community who were called 'Balks' when they arrived in Australia in 1949, 'new Australians' for a period in the 1960s and now they are called 'ethnics'. This applies to the same people, not newcomers to this country in each decade. Those people are Australian citizens, as are their children. Some are tradesmen, some are professional men and one is a professor at the Adelaide University. But, they are all labelled 'ethnics'. The Latvians smilingly accept the situation, but the host population should be ashamed of themselves. The word carries with it, to a degree, a stigma which migrants do not deserve. Indeed, considering the contributions of migrants to the Australian way of life economically, culturally and socially, they deserve praise and complimentary recognition for their presence, rather than the derogatory label.

I submit a personal view, namely, that leadership by Governments is necessary to reduce the use of the word. This could be in the form of publicity and, indeed, in the dropping of the expression from usage by Governments. As an alternative, I believe that emphasis should be given to the word 'citizenship'. I believe that newcomers should be called migrants until they accept citizenship, and then they are Australians and called Australians. If some communities wish to retain some reference to their race, then I believe such expressions as Australian Greek, Australian Italian or Australian of Latvian stock should be used. Reasonable people would have no objection to that.

Returning to the Government's involvement in this matter, to hasten the burial of the word 'ethnic' from our everyday vocabulary, it would be possible for the Minister of Ethnic Affairs to be called the Minister for Citizenship, the Ethnic Affairs Commission to be called the Citizenship Commission and the Federal Department of Migration and Ethnic Affairs to be called the Federal Department of Migration and Citizenship. Emphasising the word 'citizenship' has some further benefits within the Australian community. It should be a goal of all migrants, and welcome and congratulations should be showered on those who apply for and receive citizenship. It should be seen as a critical turning point in the life of a migrant. It should be a goal to which all migrants should aspire. Emphasis on citizenship should, therefore, be supported.

However, alternative approaches may cause the people to favour some option other than accepting the word 'citizenship'. But, this does not alter the main thrust of my submission, which is that I believe the time has come to drop the description 'ethnic', to do away with the label of 'ethnic', and to treat newcomers to Australia with more respect and equality by calling them, at least those who have become Australian citizens, Australians.

The term 'migrant' could apply to those who are involved in the settlement process and who aspire to become citizens of their new land. In that situation there is nothing derogatory in the description of migrants. It could perhaps be Italian migrant or Greek migrant, just to quote some examples. Such a change would affect a large number of people. I have not been able to obtain the 1981 census figures, but the 1976 census figures indicate that in the South Australian community over 15 000 people were born in Germany, nearly 15 000 in Greece, nearly 32 000 in Italy, nearly 11 000 people in the Netherlands, nearly 7 000 in Poland and almost 9 000 in Yugoslavia. If we add to those numbers the families of those people there is a further increase, as the figures were taken out in 1976; we then have some idea of the large section of the South Australian community that is affected by this particular question.

All members recognise the growth of post World War II migration. Australia is a nation of migrants and their families. Two honourable members in this Council have mentioned in this debate that they consider themselves ethnics. My paternal grandmother was German and I am proud of that ancestry. Therefore, I suppose that I am an ethnic, although I have never been called an ethnic. That apparently indicates that it takes three generations for that label to be erased completely. It ought to be achieved much quicker than that, and it can be achieved if people talk about the issue. A new attitude in approach will evolve if Governments take the initiative and encourage change. Therefore, I hope that those interested in this matter in the community will discuss and consider this issue further. I look forward to the day when the word 'ethnic' is no longer used in the hackneyed

and unkind way in which it has been used in the past decade.

I now refer to the principal point I made in my speech, which was to rebut the criticisms made by the Leader in this Council of the financial management strategies of the previous Government. I suggest that the present Government must settle down and perform in this area and that it should not blame the methods or policies of the outgoing Government for the present situation. The present Government must wrestle seriously with the very difficult financial situation that it faces. If the Government breaks election promises by way of introducing taxes or increasing taxes, it must expect serious criticism. The Labor Party has been given a responsible task in governing this State, and the people await its decision and its record in this very important area of financial management. I support the motion.

The Hon. K.L. MILNE: May I, too, begin with a welcome to the new members. Like the Hon. Ms Levy I appreciate looking at the new faces but, unfortunately, sitting on the cross-bench I only see them in profile, not face to face. So, let that be a warning. All members miss those who, for one reason or another, left this Council at the previous election. We wish them well. It is not until those members are no longer here that one realises that we took them for granted.

Naturally, I wish to make special reference to my Party colleague, the Hon. Ian Gilfillan, and to congratulate him on being elected to Parliament, after many years of contribution to politics and after helping many others to become members of Parliament. I had hoped, now there are two of us, that the workload would be at least halved, but the Hon. Mr Gilfillan is so energetic and enthusiastic that the workload is actually heavier.

The Hon. B.A. Chatterton: For him, but not for you.

The Hon. K.L. MILNE: For me. Nevertheless, in all seriousness, it is wonderful to have a partner, as it were, and those who have been politically lonely—and there are some in this Chamber—will understand what I mean.

I would particularly like to congratulate the Hon. Robert Lucas on his maiden speech. With due respect to the Hon. Renfrey DeGaris, whose opinions on Parliament I respect very much, and others who have spoken in the same way, I think that his exposition of what the role of the Legislative Council should be and how it should function was an outstanding contribution to Parliamentary democracy. It will become a reference work for those interested in the preservation of Parliament as representing the people, as distinct from the elected dictatorship that we have now, particularly in the Federal Parliament. I trust that the Liberal Party, and all of us for that matter, will not only listen to what the Hon. Mr Lucas had to say but also have the courage to implement it, or most of it. That speech, I believe, was Liberalism at its best.

The Hon. M.B. Cameron: Are you going to join us?

The Hon. K.L. MILNE: I was just wondering whether the honourable member was coming our way. Perhaps I am more interested in what Messrs. DeGaris, Sumner, Lucas, Carnie, Lord Hailsham and others have said because I have recently been studying the Swiss system of Parliamentary procedure. The Swiss have tried very hard to design a system whereby their Parliaments are truly representative of the people, in which personal ambition is at a minimum and where those serving in Parliament do so at considerable sacrifice for the most part; for about 75 per cent of the members of the Swiss Parliaments it is a part-time job and the salary is part-time, too. Their system is modelled on the United States system to some extent, as indeed ours partly is, too, but they have made considerable improvement—or so they think, and so do I—and they designed it in 1848, by the way.

I will write a report to the President shortly, but as few, if any, are likely to read it I will take the liberty of talking briefly about it now. I make clear that I am not posing as an expert on Swiss politics, but I simply want to isolate various features of their political system in the hope that some of them would be useful in our own political development.

The Hon. Anne Levy: You cannot hold them up as models of democracy when they have not got adult franchise yet?

The Hon. K.L. MILNE: It has got something to commend it. The Swiss have three tiers of Government, much the same as we have. It starts at the community level, which is roughly the equivalent of our local government. Then there are 23 canton governments, roughly equivalent to our State Governments, except that I understand that they all have only one House. Then there is their Federal Parliament, which consists of two Houses. The upper House, for want of a better term, is known as the Council of State, comprising 46 members, two from each canton, and in some ways similar to the Australian Senate; the lower House is the National Council and has about 200 members. The National Council chamber is designed in a semi-circle, similar to the United Nations forums, and 46 seats are built in around the back perimeter to accommodate the 46 members of the Council of State when they wish to debate matters together. This seems to me to be more civilised than cramming two Houses into one as we do for the opening of Parliament.

The first task of the Federal Parliament after an election is to meet to appoint what they call the Government. I could not understand this at first, but that is not the way they refer to the people who are in fact elected to run the country. The Parliament elects seven people who are experienced in some field—in economics, in education or in administration—and are known to have been successful administrators. It is then their job to get on with the management of the country and to allow the members of Parliament to get on with their own job of debate. This, obviously, is taken from the United States system to some extent, but the difference is that the seven Swiss administrators are elected by Parliament as a whole, and in the United States they are chosen by the President personally.

These seven people are hard to define. Their role is something between that of a Cabinet Minister, a permanent head of a Public Service department and the managing director of an enormous private sector enterprise, and one must remember that they are elected, not appointed. It is their job to carry out the legislation handed to them by the Parliament, but if they wish to initiate legislation they may do so and hand it to Parliament for debate and approval.

One of those seven is elected annually by the seven to be President or head of State for one year, and one year only. Thus, they have done away with the increasing farce and privilege of the American presidential election. In doing so, they have taken a lot of the glamour out of government, which perhaps is a pity, but they have certainly solved the problems of designing a Parliamentary system to suit a country comprising 23 cantons or groups, all with different histories and customs and all with their own pride, both in their own performance and that of Switzerland, and who between them speak four languages—German, French, Italian and Romansh.

The Swiss are very proud of their Parliament, and their Parliament House in Bern demonstrates this quite clearly. The Parliament House is designed rather like the Festival Theatre of Adelaide, with wide galleries on the outside of its debating chambers where members of Parliament may meet members of their constituencies in comfort. There is ample accommodation for the press and the electronics media, including changing rooms and rest rooms. In other words, they regard the media as very much part of their

Parliamentary life. They have special rooms where important guests are received by the President of the year, with committee rooms much the same as ours but better appointed. The Parliament House, which was completed in 1900, has been designed to cope properly with what a Parliament of that nature, and to some extent our nature, should be doing, and which, what is more, members will be pleased to hear, is especially designed to cope with the three Party and four Party system.

This leads me to the question of one vote one value, as we know it in Australia. We are all familiar with the announcement made by the Hon. Mick Young, Minister of State in the Commonwealth Parliament, that the Labor Party will be taking steps to ensure that there is an improvement on the present attempt of one vote one value. On the one hand, it wants to reduce from 10 per cent to 5 per cent the margin of difference between the numbers in one electorate and another and, on the other hand, introduce optional preferential voting, which is virtually a step towards first past the post, which is the least democratic system of them all, in my view.

First, let me say that experience has shown that a tolerance of only 5 per cent between electorates is almost impossible to achieve without annual, or even more frequent, electoral boundary changes.

The Hon. R.C. DeGaris: It would have to be annual.

The Hon. K.L. MILNE: At least annual. If the Federal Government is not aware of that already, then I think a gentle message to it from its colleagues here might be of value to it. More important is that trying to make all electorates of equal numbers has very little to do with one vote one value, or one vote being of the same value as another. Therefore, to announce it as Mr Young has done is a deception, and he must surely be aware of it. If the State District of Semaphore were exactly the same size as the State District of Bragg, it would not alter the value of a Liberal vote in Semaphore, or a Labor vote in Bragg, or a Democrat vote in either of them.

The Hon. R.C. DeGaris: I do not think that Semaphore has many Labor voter in it these days.

The Hon. K.L. MILNE: The honourable member knows what I mean. Perhaps I should have referred to Port Adelaide: a Liberal vote in Port Adelaide or a Labor vote in Bragg, or a Democratic vote in either of those districts. Neither has helped to elect a member of the House of Assembly. Never! Both the Liberal Party and the A.L.P. know full well, and have always known, that the only way to obtain one vote one value, if that is what is wanted, or something like it, is to have multi-member electorates with proportional representation and limited or full preferential voting.

They also know that this will create additional Parties in Parliament as it has done in many countries in Europe, and this they do not like at all because it interferes with the elected dictatorship of the two-Party system, and the Liberal/Labor club. Perhaps I should not put every member of those Parties in that category, because one of the reasons why Mr Olsen objects to optional preferential voting is that it would prevent Parties such as the National Party and the Australian Democrats from having representation in the Lower House. I admired him for saying this, and it fits in with the kind of philosophy propounded by the Hon. Mr Lucas. It also fits in with the Parliamentary democracy in most modern systems in European countries.

National Natural Disaster Fund:

Australia is a country where we have frequent natural disasters in different parts of it—cyclones in the north, floods in many places, bushfires in many places, and earthquakes. Each time a natural disaster occurs it seems to take us by surprise, and we are not equipped to handle it in a manner befitting a people who care for others.

For some years I have been recommending the introduction of a national natural disaster fund, the theory being that, if all taxpayers in Australia, with certain exemptions, paid a small levy on their income tax each year, a fund could be created which would be available immediately a disaster occurred.

Furthermore, the organisation for the distribution of the money would be in existence. In between disasters the fund could build up and the interest could be used for fire-fighting equipment and training, flood mitigation, research and other emergency matters, or income could be used to augment the fund itself.

My suggestion would be to try to raise, say, $300 000 000 per annum which, divided amongst, say, 6 000 000 taxpayers, would be very little per annum, on a sliding scale. It could be a minimum of $1 and a maximum of $10 for those with large incomes. The levy would be negligible and certain categories such as pensioners and the unemployed, not paying income tax, could be exempt. But money raised in this way would mean that the whole nation was contributing to a disaster in any one place. In a country like Australia we have natural disasters of various kinds, such as cyclones in the north, floods in Brisbane and down the east coast, and here, terrible fires from time to time in Tasmania, Victoria, South Australia, and in other States for that matter, and earthquakes occasionally (the experts say that Adelaide is due for one any time). Therefore, such a scheme has to be national; otherwise, the State where the disaster occurred would be trying to finance the damage itself—as we are at present, and very unsuccessfully at that.

For example, the damage in the recent fires in South Australia must be in the vicinity of $200 000 000, and the system which we are using to raise money will probably bring in about $50 000 000 at the most. Insurance claims will supply some relief, but there will still be a shortfall, especially as about 25 per cent of the victims were not insured. In other words, the system in use does not work properly, and never has worked. The Federal Government makes a donation, the State Government makes a donation, and the Prime Minister and Premiers strut around with halos around their heads; the Opposition Leaders always say that the grant is inadequate, and they are always right, and they strut around with halos round their heads; the Lord Mayor open funds and the donors wear halos as well. The moneys raised are never sufficient, and those who are uninsured are usually paid first, while those who have been paying expensive premiums for years frequently have to wait, especially if there is an argument with their insurance company.

Farmers who lost buildings and equipment during the recent fire are already at a disadvantage. According to the U.F. and S., the upper limit for low interest loans for re-establishment purposes should have been $130 000—and I can well believe it. However, the limit set by the State/Federal agreement was $50 000, and the State Government considers that it has been successful by having the limit raised to $70 000—still only about half what the farmers and stockowners feel is required. Nevertheless, money could be raised by Lord Mayoral funds, to be used for special problems which always occur, even if we had a natural disaster fund.

I have been asked what effect this would have on insurance companies, and whether it would reduce their premium income. It would certainly reduce some of their premium income, but it would almost certainly increase their profits, or reduce their losses on underwriting disaster risks. For a natural disaster fund, we are talking about uninsurable risks or risks of such magnitude that the premiums payable to cover them are enormous and often beyond reach of the average person. Therefore, many people do not insure against

flood, cyclone, bushfire, earthquakes, and so on. What would happen is that the fund would insure all or part of its risks with the insurance companies—if they wanted the business.

The fund would not be used for individual domestic losses such as burglary, water damage or fire in a person's home. Those risks would need to be covered by insurance in exactly the same way as they are now, but insurance premiums for those risks are calculated on an entirely different basis from natural disasters and are much cheaper. Insurance premiums for ordinary risks would remain much the same, but the loading for disaster risks would come off and the reduction would probably exceed the levy that I have suggested on income tax.

A scheme similar to this is operating successfully in New Zealand, and I cannot see why it could not be easily introduced in Australia to the benefit of the people as a whole, and the insurance industry as well. I have conveyed this matter to the Federal Leader of my Party, Mr Don Chipp, and I would be grateful if my colleagues in this Council would convey similar sentiments to their Federal members so that legislation could be introduced quickly with some chance of success. This matter should not be delayed until people have forgotten about it and it no longer seems important.

Unemployment:

With the unemployment benefits at $40 per week below the accepted povery line of $101 per week for a single person, it means that those who are unemployed are not able to climb even up to the povery line level. The poverty line for a single person is $101 per week, while the unemployment benefit is $64.40; thus, the unemployment relief payment is nearly $40 below the poverty line. The A.L.P. has indicated that it intends to raise this by $4.25, but obviously that is inadequate.

It is criminal that any earned income over $10 per week reduces the unemployment benefit by 50c for every $1 earned up to $60 per week. At that stage each $1 earned is taken directly off the unemployment benefit, which is even worse. The minimum wage at the present time is approximately $175 per week, and we believe that an unemployed person should be encouraged to earn up to at least this minimum wage. At present this would mean being allowed to earn up to $110 per week, which, when added to the unemployment benefit of $64.40, would bring the income to approximately $175 per week. The Democrats call on both the Labor and Liberal Parties, in recognition of this injustice, to accept that those receiving unemployment benefits be encouraged to earn up to the poverty line without penalty and to earn partly that and up to the minimum wage ($175 per week) at a reduction of only 50c from the unemployment benefit for every $1 earned. It is to Australia's shame, regardless of which Party is in power, that those who do not have a full-time job, through no fault of their own, are not allowed to earn up to the poverty line without being penalised by the welfare system.

The rules as set at the present time are an incentive for the unemployed to cheat, and a disincentive for them to even try to find a part-time job. The people making these rules, all of whom would be earning good salaries with annual leave, long service leave, indexed superannuation, and other privileges, forget that there are expenses involved in getting a job after being unemployed for months, and, in some cases, for years. For example, new clothes, good nourishing food, more fares, newspapers, telephone calls, accommodation costs and even, for some jobs, new transport may be required. The rules bear no relationship to the human needs of our fellow Australians in those dreadful circumstances.

As far as I know, neither the Liberal Party nor the Labor Party made any mention of this dilemma throughout the recent election campaign, and obviously are either not aware of its seriousness or do not understand it, or do not care. The Australian Democrats do care about this matter and will use their influence to have this injustice rectified if at all possible. I thank the Council for its forbearance during my speech. I would like to convey to His Excellency the Governor, Sir Donald Dunstan, my best wishes for a pleasant and successful tour of office. I support the motion.

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

[Sitting suspended from 5.42 to 7.45 p.m.]

TRANSPLANTATION AND ANATOMY BILL

Adjourned debate on second reading.

(Continued from 22 March. Page 494.)

The Hon. R.C. DeGARIS: I am pleased to support this Bill and I am also pleased that the Minister has introduced the recommendations made by the Australian Law Reform Commission, but with some changes. During the Select Committee on Natural Death—a private member's Bill introduced by Frank Blevins—it became clear that a modern definition of death needed to be included in that Bill. The select committee after careful consideration adopted the recommendation of Mr Justice Kirby for the definition of death (A.L.R.C. Report No. 7 on Human Tissue Transplants). It became clear to the select committee that the present transplant legislation and the Anatomy Act needed to be examined urgently to update the law governing both live and cadaver donation.

From 1950, considerable activity legislatively has been evident throughout the world on the subject of human tissue transplants. Legislation now exists in all the States of Australia and in all Western countries, although the approach to the problem of transplantation legislation varies considerably from country to country. In 1974 a Legislative Council select committee considered a Bill to introduce the first Transplant Act in South Australia. That select committee dealt only with the question of cadaver tissue and at that time it was clear to the select committee that a further examination of all the issues involved would need to be undertaken in a very short time.

In both the United States of America and Canada, human tissue transplant legislation has been adopted uniformly in all States and Provinces. If this Bill passes as it is, the legislation will not be uniform in Australia, although most of the important sections will be covered uniformly. Up to the present, all legislation in Australia has been based on the English Corneal Grafting Act of 1952. Until the recent adoption of the A.L.R.C. recommendations in Queensland, A.C.T. and Northern Territory, there was no legislation in Australia regarding living donors. The transplantation of tissue from one human being to another (whether from a person alive or dead) and the use of human tissue for other types of therapy, or for education and research activities, are of benefit to the public.

As technological advances take place, greater use is being made of human tissue, both regenerative and non-regenerative. Transplantation of human tissue now includes skin, bone, marrow, kidneys, corneas, hearts, bone ear parts, glands (thyroid, adrenal, pituitary and thymus), livers, lungs, cartilage, intestines and blood vessels. As modern technology has advanced, the legislative process has been left lamenting. There are a number of extremely important issues that should have been handled before this time: there are still a

large number of issues that need further examination and inquiry.

Six years ago the A.L.R.C. put forward its recommendations. I will illustrate two points. We are only now legislatively defining death (not in this Bill but in a following Bill) with what is an acceptable definition in modern society. A serious difficulty could have arisen if the old definition had continued. The second point is the fact that there is no legislation dealing with live donors, a matter which could have had serious complications on the question of informed consent. I am not sure, even in this Bill, whether we have covered satisfactorily the existing bounds of informed consent. I believe there are still problems that need close examination and study.

I intend putting my views on several parts of the Bill, the first part being the basis upon which the tissues of a dead person may be used. This point prompts several questions. First, should there always be reference to the wishes of the deceased or, where those wishes are not known, to the family or relatives of the deceased? Secondly, should the community be empowered, unless the deceased has directed otherwise, to remove needed tissue from all cadavers without reference to the family or relatives of the deceased? Thirdly, should the tissue only be removed where the deceased has prior to death donated his body or parts of his body for therapeutic, medical, scientific or any other purpose?

The Bill follows the general principle with variations to the first point, while point two is usually referred to as 'contracting out' and point three is usually referred to as 'contracting in'. I make quite clear to the Council that I believe in the 'contracting out' procedure. A recent Gallup poll in Australia indicated that 82 per cent of Australians would, if a contracting out procedure was adopted, not 'contract out'. At present certain organisations canvass for cadaver tissue. The car stickers one sees occasionally 'I am a kidney donor' show what I mean. I would understand that the card carried by that person would permit the removal of kidneys only.

The Hon. Frank Blevins interjecting:

The Hon. R.C. DeGARIS: I did not know that. In England, a kidney donation could be a kidney donation only and nothing else. I accept the fact that the use of human tissue for transplantation, storage, scientific, drug production, or any other purpose is desirable and should be encouraged. One easy way of encouragement is the adoption of the 'contracting out' procedure. We must understand that there is an insufficient supply of human tissue, and one means of improving that supply is the adoption of a contracting out procedure.

A number of European countries have now adopted this procedure and a select committee of the House of Commons on a private member's Bill to introduce a 'contracting out' procedure expressed a majority view in favour of the procedure. It is interesting to note that the reason for the move in the United Kingdom Parliament was legal opinion expressed in the House of Commons that donor cards or donor bracelets had no legal validity. Although the committee's report has been made on the private member's Bill, the Parliament has not yet passed the Bill. But I have no doubt that it will eventually do so.

There could be arguments against the 'contracting out' procedure—that there would need to be a computerised register of those who had not contracted out, which can be referred to on a 24-hour basis. I would suggest that the easy way to use such a system in this State would be the use of the Electoral Rolls. This does not, to me, appear to be an expensive way of using this system. In America, where a number of tissue plants and organisations are involved and where there is a uniform 'contracting in' procedure (that is, throughout America and Canada), a national register is being considered for those who 'contract in'. Whether we eventually go to a 'contracting in' procedure or a 'contracting out' procedure, eventually there will have to be a State-wide register for either one of those procedures.

While the European approach appears to favour 'contracting out', the States of America and Canada have all passed uniform legislation on a 'contracting in' basis, giving legal status to donation by will, card or other document, which has been duly witnessed. Where no donation has been made, such donation may be made after death by written document, orally or by telegraph or telephone from next of kin. There is a considerable movement in the United States and Canada to establish a national register for those 'contracting in'. However, several non-profit organisations, hospitals and tissue banks have set up their own registers of donors but, on what one can read, the system is cumbersome and inefficient. Having examined the ways of improving the supply of human tissue from cadavers, I strongly support the procedure of 'contracting out'.

I now turn to the question of live donors. With the exception of Queensland, which recently adopted the A.L.R.C. recommendations, no State has legislation governing live donors. Persons over 18 years of age, of sound mind and on independent medical advice, may give tissue after signing a written consent.

The important point that needs clarification is the question of informed consent for the donation of non-regenerative tissue. One of the common law tests to define an informed consent is that a benefit must accrue to the person consenting to the assault upon his person. Any surgeon performing an operation probably commits an assault upon a person but, if an informed consent is given, and the assault is to the advantage of the person giving consent, then the assault is permitted.

From this it can be seen that the need for legislation to cover the question of live donors is of some urgency. We should provide that the live donor should give consent based on independent medical advice, but that this should not apply to blood donations. The donor consent should be in writing and once again, it should not be applicable to blood donations. The donor should have power to revoke. A 'cooling off' period should apply for removal of non-regenerative tissue over a certain period of time. Independent medical advice should be given by a medical practitioner who takes no part in the transplant process, and the donor's consent should be given free of duress in the absence of family and friends. Once again, this should not apply to blood donations.

I think that the Bill follows fairly closely, if not exactly, this view. However, there are two points I would raise with the Council. The Hon. Anne Levy introduced a private member's Bill, dealing with the age of consent for medical and dental treatment. The Council agreed to introduce the age of 16 years for such consent. I would favour the age of 16 years in this Bill for the donation of regenerative and non-regenerative tissue.

The second point is that the donor should be of sound mind. Whether or not the Bill is specific enough on this point I ask the legal experts in the Council to answer. Clause 9 (1) *(b)*, for example, states:

> In the light of medical advice furnished to him understands the nature and effect of the removal.

I would like the legal people to look at whether or not that is sufficient to cover the question of mental incapacity. So those two questions I put to the Council for consideration. The question that now needs to be examined is live donation from minors. I have already said that I favour the age of 16 years as the age of consent for any medical procedure. Whether or not the Council accepts 16 years or 18 years,

we still have to examine the procedures we adopt for those under the age of legal responsibility.

The question of those under age, and the consent required for the donation of regenerative or non-regenerative tissue, is extremely complex. I believe that a distinction must be drawn between non-regenerative and regenerative tissue as far as 'under age' people are concerned.

The Bill follows this course but, in my opinion, is too restrictive. I would advocate that removal or donation by a living person who is below age should be lawful if the following conditions are fulfilled: first, that the under age person is of sound mind and agrees to the removal; secondly, that parental consent has been given in writing; and, thirdly, that independent medical advice is given by a qualified medical practitioner who takes no part in the transplantation. From this point there should be special safeguards for the removal of non-regenerative tissue from those under age, and it has to be handled with extreme caution.

The Bill really imposes absolute prohibition on the non-regenerative tissue donation from a person under 18 years of age. I cannot accept this position. At the same time, neither is it just to allow a parent to consent on behalf of a person under age, with all the family pressures that may be applied to a sibling. I take the view that in relation to regenerative tissue there is no reason for a committee of a doctor, lawyer and psychologist to intervene at all. I believe that all that is required is that medical advice has been provided to the child and the parent, and that the child has the mental capacity to understand the nature and effect of the removal, and the child has agreed to the removal.

In relation to non-regenerative tissue, great caution needs to be applied. First, there must be medical advice that a person is in danger of dying unless specified non-regenerative tissue is removed from another person and transplanted; secondly, that there is medical advice regarding the nature and the effect of the removal; thirdly, that a member of the family of the person is a child who has the mental capacity to understand the nature and the effect of the removal and has agreed to the removal; fourthly, that there are consents in writing from the parents of the child. The committee proposed by the Minister must then examine the case and, if that committee unanimously agrees to the removal of the non-regenerative tissue, it can authorise such removal.

I would like to put this particular case to the Council which I know is one case that illustrates the point. I cannot see how we, as a legislative body, should have a Bill in which it is not possible for a child under 18 years of age to make any donation of non-regenerative tissue. Take the case of twins aged 17½ years. On medical advice they are advised that one of the twins needs a kidney transplant if he is to have any chance of survival. On medical advice the best chance would be to transplant from one twin to the other. The donor twin and parents are willing. Yet, it cannot be undertaken. Perhaps we can advise that if the donee twin can only survive for six months then it can be undertaken. It is clear to me that this procedure for non-regenerative tissue donation is quite a reasonable procedure for minors, provided there are sufficient safeguards and investigations for that to take place.

The next question I wish to put to the Minister for his consideration is the indemnification of donors. This is a different question from commerce in human tissue and deals with the bank in human tissue with which I agree. I support the Bill's provision in relation to commercial trading and will be briefly speaking to it at a later stage. It has been lobbied in the United States with a great deal of support, that all live donors should be covered by insurance. In Italy, the law covering kidney transplants provides that the donor is eligible for sickness benefits and is insured against immediate and future risks of the operation. In Denmark the State indemnifies donors for loss of salary due to transplant donation operations. In Norway and Sweden national health indemnifies the donor. As in South Australia we are not involved in the question of health insurance, the question should probably not be raised.

In Australia the use of live donors is small compared to other countries, but if overseas trends are followed there will be a substantial increase in live donors in Australia. Do our present insurance schemes cover a person for an operation in which non-regenerative tissue is being donated? Should we consider indemnification of donors, not only for the cost of removal but for also loss of wages or salary and other losses that may occur? Perhaps the Minister may give some thought to this in his reply. I am not sure that a tissue donor is covered by the present health insurance schemes. I have been informed that they would be, but I am not quite clear on whether or not a person making a donation is covered by his insurance. I think that that is a question we need to examine.

Commercial trading in human tissue is covered in Part VII of the Bill and I give my support to this Part. The trade in human tissue is small in Australia (unlike the position in the United States) and what trade is conducted can and should be condoned. Any charging for tissue should only be allowed for reasonable costs in processing, storage and supply.

What is happening in Australia is quite acceptable and we should allow for charging for human tissue where services are provided in its supply. We do not want the position that applies in the United States, where people advertise for donations at a certain price and people actually live from blood donations alone.

I would like now to examine as shortly as possible other matters that have not been included in the Bill but which need careful examination in the near future. That sounds almost like the first Select Committee Report of 1974 when we did examine the question of cadaver tissue in considering that Bill and said then that the position needed to be examined in several areas very quickly.

The first point is the storage for future use of human tissue. As we know, in South Australia the Red Cross for many years has acted as the collector and supplier of blood, and the system has worked extremely well. We know now that there are commercial operations in the collection, processing and supply of human tissue, and those operations are permissible under this Bill. The question that arises in my mind is whether we should be establishing, by licence, or by authority, a human tissue bank or banks. I believe that where possible, the Red Cross organisation should be used as the repository in the same way as it is presently handling the collection and storage of human blood. I do not know that the Red Cross is capable of doing that; nevertheless, we should look at the question of how we control and utilise the question of human tissue banks.

I have said for some years now that the present law is out of date and needs updating, but this step is now out of date and needs updating. In that, I am not making a criticism of the Minister of the Government. The Bill, for example, excludes foetal tissue, spermatozoa and ova. Recent embryo transplantation in Australia, and the recent statement that approximately 1 000 women are presently in line for such a programme, indicates the urgency of such a review, because ovum transplants are still in relation to this Bill human tissue transplantation. While embryo transplanting in Australia is increasing, the legal problems implicit in the impregnation of a female ovum (other than her own) and subsequent implantation, or the reverse situation, can be seen without much difficulty. Apart from *in vitro* fertilisation or embryo transplants, the certainty of successful fallopian tube transplants or ovary replacement raises further delicate legal

problems. These matters involve human activity of primary importance, not only in the development of the techniques, but also in the significant problems for the community and the Parliament. Any form of fertilisation of the ovum of a woman, whether *in vitro* or *in utero*, in which the semen used is not her husband's, raises substantial problems, such as legitimacy, matrimonial and family law and, I would say in some circumstances, inheritance and property.

These questions extend beyond this Bill, but not beyond the general matter of tissue transplantation. Immunological research being undertaken demonstrates that the human body does not reject or attempt to reject foetal tissue with the same vigor as it rejects other tissue. Aborted foetal tissue, therefore, provides a first-class source of transplant tissue.

Three Government reports have been made on this topic: United Kingdom (1972), United States (1975) and New Zealand (1977). In each case a code of behaviour for medical practice has been recommended, but no legislation has been adopted. The use of aborted foetal tissue raises questions involving public policy, morality and religious attitudes, and legal problems. The legal problems involved appear to me to be greater in the States that do not have abortion legislation. The problems should not be as difficult in South Australia. It is clear to me that the question of using foetal tissue should be adopted in South Australian legislation.

I have already referred to the question of informed consent and do not wish to enlarge to any great degree on that matter, except to add that the common law offers no rule or principle in dealing with human tissue transplants, nor for that matter with surgery or medical examination. Surgery amounts, as I said before, in law to an assault, thus falling under the law of trespass, based on the inviolability of the person. The surgeon has a defence that an informed consent was given for the assault. But one of the tests for an informed consent is that a benefit must derive to the person granting the consent before it can be deemed an informed consent. The question of informed consent can be carried further into the area of emergency and an unconscious patient, or a patient who lacks legal capacity. While the Bill goes some way to change the law relating to informed consent, there is still a lot of research to be undertaken on this puzzling question.

The last point I wish to make is that both the Bills passed by this Council, but which did not pass the House of Assembly—the Hon. Anne Levy's Bill and the Hon. Frank Blevins' Bill—should be introduced and passed as soon as possible. The Hon. Anne Levy's Bill is related to the question of 16 years being the age for decision for medical and dental treatment, which is more related to this Bill than the Hon. Frank Blevins' Bill, but I do ask the question if the Hon. Anne Levy wishes to introduce that Bill again, whether there would be a particular exclusion from her Bill of a 16-year-old being able to make a donation of non-regenerative tissue.

Finally, I would commend to the Council that, as far as law reform is concerned, a Council committee keeping this matter under constant scrutiny and attention would be of immense value to any Government, of assistance to any Health Minister, and of benefit to the whole South Australian community. While this Bill is a start in the medico-legal field, the changing technological scene must convince us of the need for constant examination of the existing law. Otherwise, we may be delayed in making prompt legislative changes that are required in this technological age. I support the second reading.

The Hon. ANNE LEVY: I, too, support the second reading of this Bill. As has been indicated by other speakers in this debate, it is certainly an important measure and it is based on the Australian Law Reform Commission's recommendations in this area, although it differs from those recommendations primarily in the area of donations of non-regenerative tissue by minors, which was suggested as being permissible by the Australian Law Reform Commission but would not be possible under this legislation before us.

A couple of points need to be made regarding this. As I understand it, only the Australian Capital Territory permits donation of non-regenerative tissue by minors. Other States do not approve donation of non-generative tissue by minors, and have implemented legislation in this area to not permit such donation. States which have not yet brought in legislation are, I understand, proposing not to follow at this stage the Australian Law Reform Commission's proposals in this area.

I am sure that honourable members will agree that there is some great benefit in having uniformity across the country in this area. Without wishing to pretend that the principle of uniformity could override a strongly held principle on the part of this Parliament, I certainly can see value in having uniformity throughout Australia as much as possible in such a sensitive area. Furthermore, to include an ability by minors to donate non-regenerative tissue is likely to raise a good deal of controversy for probably very little advantage. In this respect, I would like to quote from a letter written by the Director of the Renal Unit at the Queen Elizabeth Hospital which, of course, is a unit very much concerned with transplantation of tissue both from cadavers and from living donors. The letter states, *inter alia*:

> I have been asked to write to you concerning the provision in the above Bill which precludes minors from becoming living donors of non-regenerative tissues. In current medical practice (and in my view for the foreseeable future) this preclusion pertains only to the giving of kidney tissue.
>
> The original recommendations of the Law Reform Commission on human tissue transplantation were that such donation should be allowed to proceed with careful and rigorous safeguards being established to protect the donor. The strongest argument in favour of this would be the case of a 17-year-old mature identical twin.

Interestingly, this is the same example that was quoted by the Hon. Mr DeGaris, although I do not know that he stressed that they were identical twins. If they were not, the genetic similarity is no greater than for any pair of siblings. The letter continues:

> Here, if the twin with kidney failure is in danger of dying despite dialysis and other medical treatment, it was argued that it was unfair (and possibly deleterious to the mental health of the would-be donor) to preclude donation, as the operation would not only be life saving but would offer virtually 100 per cent chance of success. The likelihood of this situation is remote (only two identical twin transplants of any age have been performed in the first 2 500 renal transplants in Australia) and with modern technology virtually no-one fails to thrive on one or another form of dialysis.
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> The argument against minors offering non-regenerative tissue centre on the difficulty of being certain that the minor fully understands his actions and in avoiding pressures which might be brought to bear on the minor to proceed with such a donation. As siblings are usually clustered together within a decade it is pertinent to look at the incidence of renal disease in children where this question of minors offering non-regenerative tissue would accordingly most often arise. The incidence (Australian and world wide) of renal failure is accepted to be approximately 3/million/year. This contrasts with the adult presentation rate of 35-40/million/year. As living donors are possible in about one case in three it is likely that approximately one child a year in Adelaide might be slightly disadvantaged by this preclusion. In the absence of his/her siblings being able to offer a kidney, transplantation would occur from parents or from a cadaver source. These are perfectly satisfactory alternatives to sibling donation.

I add that, in terms of genetic compatibility, a parent-child transplant has a much greater genetic similarity than that between any two siblings who are not identical. Siblings on average have only a quarter of their genes in common, whereas a parent and offspring have half their genes in common. The letter continues:

The net effect is, in my view, that little disadvantage will come to South Australian patients with this preclusion. To proceed along the lines of the original Law Reform Commission recommendations would be to guarantee the stimulation of considerable criticism from paediatricians and others which may adversely affect the passage of the overall legislation.

I would not like to offer comment on the likely occurrence of that last-mentioned difficulty, but it is certainly clear from the letter from the renal unit that, by not permitting donation of non-regenerative tissue by minors, it is most unlikely that any child in the community will be disadvantaged.

There are a couple of other matters in the legislation which I would like to consider. One relates to donation of regenerative tissue from children. Under clause 13 regenerative tissue from a minor can be used in a transplantation under several conditions, one of which is that a parent of a child must have consented to such a donation. Personally, I would be happier if the clause provided that a parent with custody gave consent for the donation of the regenerative tissue.

There are circumstances where there is not joint custody of children, and it would seem to be desirable, where one parent has custody and the other does not, that it should be the parent with custody who must give the consent rather than a parent who does not have custody. This leads on to the further question regarding a child where the parents have joint custody, either in a family where the parents live together (where joint custody is taken to be the case), or even in the case of separated parents who have joint custody of children, which certainly occurs.

The Hon. R.C. DeGaris: Are you suggesting that one parent might agree and the other does not?

The Hon. ANNE LEVY: There could be cases where one parent is in favour and the other is not. The legislation does not state that both parents must consent where there is joint custody, and in some ways it could be a further safeguard if it did. However, I suppose the safeguard in the situation is the existence of the Ministerial committee, which has to be unanimous in recommending that the donation can occur.

The Hon. R.C. DeGaris: Do you think that a committee would be needed for non-regenerative tissue?

The Hon. ANNE LEVY: There is a committee in the legislation, and I have no quarrel with its existence. It would seem to me that, although the method of operation of the committee is not set out in the legislation, I certainly hope that the committee would ensure that the other parent has been informed at least of the consent of the first parent, particularly in situations where the two parents do not live together, so that the other parent who has not given his or her consent can have the opportunity of either approving or making representations to the Ministerial committee to object to the donation by the child.

As I say, this is not written into the legislation, but I imagine that any committee that is established will follow such a procedure and would at least ensure that the other parent was informed if there was no evidence of that parent having given consent.

As the legislation stands, we must rely on the good sense of the committee, and it is probably not asking an inordinate amount to ask it to behave in what I regard as a responsible way in this matter. I am also greatly concerned about the provisions of this Bill which relate to the donation of blood, that is, clauses 18, 19, 20, and 38 (1) *(b)*. The donation of blood by minors can occur for the purpose of transfusion to another person or for other therapeutic purposes or for medical or scientific purposes. Once again, that requires the consent of a parent—not both parents—and a recommendation by a medical practitioner that the removal of the blood will not be prejudicial to the health of the child.

I am concerned because of a common practice which occurs amongst thousands of students in biology classes in this State. I am referring to the biology practical class, where students produce a drop of blood, by pricking their thumbs, for blood grouping. That occurs in every biology practical class throughout this State, and it would also occur in first year university biology classes and in other educational institutions. The taking of that blood could be regarded as being for a scientific purpose and, therefore, it would come under the aegis of this legislation.

I would not want the situation to arise whereby to take that one drop of blood from the ball of a student's thumb would require both parental permission (written or oral) and advice from a medical practitioner for each child that the taking of that blood would not be deleterious to that individual. That seems to be carrying the matter to absurd lengths and would be detrimental to the study of biology in this community.

I would like the Minister to assure me that no possible interpretation of clauses 18, 19 and 20, taken together, could prevent what is a normal procedure in biology practicals throughout this State. One does not have to reach the age of 18 years to learn about blood grouping. What could be termed 'educational uses', the educational donation of one drop of blood, could be prevented by this legislation, and that would seriously affect what are harmless and interesting educational classes for thousands of students.

The Hon. R.C. DeGaris: Should the legislation refer to blood taken from a vein?

The Hon. ANNE LEVY: It does not say that, but if it did that would obviously cover the situation. I certainly hope that the Minister will address himself to this question to ensure that this Bill does not jeopardise what is already occurring throughout the State and has done so for many years.

The Hon. R.J. Ritson: Do you think that the word 'donation' implies that the situation regarding a recipient might be different to the mere letting of blood for purposes where there is no recipient? Otherwise, the diagnostic haematology question in small children would have to go before a committee before blood could be taken.

The Hon. ANNE LEVY: No, not a committee. The donation of blood only requires the consent of the child, consent of a parent and a recommendation by a medical practitioner. The donation of a sample of blood for diagnostic purposes is obviously supervised by a medico and a parent is present. I see no problems there at all. I am referring to the production of one small drop of blood forced into the ball of one's thumb, which is then pricked with a pin.

The Hon. R.J. Ritson: You are referring to 17-year old university students doing biology I?

The Hon. ANNE LEVY: Yes, but blood grouping is also carried out in Matriculation classes. I am concerned that that practice should not be inhibited by this legislation. The Hon. Mr Burdett referred to clause 29, which deals with the donation of cadavers for anatomical purposes. In some ways I agree with his comments, but it does raise the question of whether we should be more chary about bodies for anatomy classes than we should about bodies for organ donations. I suppose it can be said legitimately that organ donations are to benefit the life of another more immediately than does the study of anatomy by medical and other students. It may be that the next of kin would regard these two uses of the body differently, though obviously it would not matter to the dead person.

I suggest that the safeguard is in clause 29 itself, which insists that before a body can be used for anatomical purposes the designated officer of a hospital must make such inquiries as are reasonable in the circumstances. The reasonable circumstances for a donation for anatomical purposes would

be different to the reasonable circumstances for organ transplants. There is nowhere near the same urgency for a decision to be made in relation to donation for anatomical purposes, and much greater time can be taken. Decisions do not have to be made within a time span of, say, 20 minutes, as is the case for organ transplants from a cadaver to a patient. There would be time for letters to be written, for cables or telexes to be sent around the world, and for inquiries to be made to find the next of kin.

I am sure that any court would say that the reasonable circumstances applying to the cadaver donation for anatomical purposes are very different from the reasonable circumstances in the case of organ transplants from a cadaver to a living person. Clause 38 (2) makes that quite clear and imposes stiff penalties for not taking reasonable steps in the circumstances. It seems that, because of this, one need not equate the situation of cadaver donation for anatomy schools as coming into the same category as organ transplants from a cadaver to a living patient.

Finally, I would like to draw attention to clause 13 (4), which provides that the composition of the committee which is appointed by the Minister and which must give permission for any regenerative tissue donation by a minor must be a medical practitioner, a legal practitioner, and either a social worker or a psychologist. Both sexes must be represented on this committee. I regard this latter point as very important, as the committee will be dealing with children of both sexes. Not only may different sexes on the committee have different points of view, for instance with respect to the scarring that may result on a child, but also a child or a parent may wish to talk to the committee and feel that they can speak with complete trust and confidence to a member of their own sex, should they wish to do so. This composition will ensure that the children or parents affected will have complete confidence in any decision that is made by the committee.

I reiterate that this is a very important measure. It will regularise what has been occurring in any case in our community, and it will remove the fears that some practitioners may have felt regarding possible legal challenges to their activities, despite their belief that their practices are both ethical and moral. This legislation does not come before us with urgency to correct abuses that are occurring: no-one suggests that there have been abuses in this matter in our community. However, the legislation is designed to give legal approval and to prevent challenge to the ethical and responsible behaviour of the medical profession in this very challenging area of medical practice. I support the second reading.

The Hon. R.J. RITSON: I intend to speak on this Bill briefly this evening to hasten the passage of the second reading stage. I do so on the understanding that the matters that I may canvass at this stage will be taken up further in Committee. The first point that I believe everyone should understand about this Bill is that there is a basic common law position which involves non-therapeutic and harmful assault on the person. That position is fundamentally different to the question of consent to a therapeutic measure.

This issue began to develop with the case of Donovan, in which some *obiter dicta* expounded the principle that, no matter how full and informed consent might be, the law would not regard consent as valid if it was consent to oneself being seriously harmed. Donovan's case was, in fact, a case involving sado-masochism, in which the victim willingly submitted herself to serious injury. Therefore, one cannot start to talk about donating parts of the body in terms of informed consent. One must start from the position that the law would probably regard all such non-therapeutic physical invasions of the body as unlawful, regardless of the consent or the desires of the person who permitted or requested his body to be so invaded.

It is probable that from that point of view all living donor transplants are 'assaults', but, as the Hon. Miss Levy stated in her concluding remarks, it is a testimony to the wisdom, sincerity, and professional ethics of the people who have been involved in these procedures that no-one has ever sought to invoke the law at that level. Nevertheless, this Bill creates a particular statutory position whereby one can consent to non-therapeutic invasion of one's body, and with a consent that is valid.

The Bill changes the law in that regard (but with respect, of course, to the matters in this Bill only and not with respect to the sorts of circumstances that gave rise to Donovan's case), I believe it is useful to state that position in order to consider the question of minor donors. On this point, I must support the Government Bill in its present form and differ with the Hon. Mr DeGaris. The question of whether or not the Statute shall make lawful the consent of a young person is in this instance determined within the Bill by reference to a statutory age. Everyone knows that statutory ages are generalisations that do not take account of individual variations in actual competence to understand or to really consent.

I am sure that the Hon. Miss Levy, through her interest in this subject, has done more reading than perhaps I have done in this area. Nevertheless, before discarding a statutory age as a useful cut-off point, I believe that it is pretty important to know what might be the case if one were to use alternative yardsticks. The two other levels at which one could legislate with regard to consent for young people would be, rather than having a statutory age, to have some sort of provision actually to determine the competence to consent. Thus, it may be that a 17 year-old youth with a poor education and low intelligence may have little competence, but a 12 year-old child may have great competence.

As one goes down the age scale, it becomes not merely good enough to demonstrate that the child agrees or that the child can recite back to an older person his or her expectations or understanding of what is to be done, because children of varying ages have very varying capacities in regard to the kind of adult knowing that involves empathy for others, social conscience, or realisation of the consequences to oneself. The criminal law, indeed, has a statutory age limit of, I think, nine years, below which it presumes that a child cannot form criminal intent.

Clearly, a child of eight can often tell a person that they know such and such to be illegal and can state that they might go to gaol if they do it, but they do not really know what going to gaol means and have no social concept of law and legality. So, those children have a different and more limited kind of knowing.

Once one departs from the question of statutory age and gets into the question of trying to determine whether or not a person has that particular kind of knowing which should be present before a kidney is given up, it becomes very difficult. Perhaps it could be done with a suitably wise committee, but I see many dangers in that. I was very much persuaded by the remarks of the Minister when he referred to the improbability of the life of a twin being lost due to the lack of availability of its twin sibling's organ. The Minister gave a figure in the order of one in 3 000 000 as the probability of that happening.

If one were to abandon a statutory age and were to go to a system of attempting to determine that kind of knowing possessed by a child faced with the question of consent, then obviously the ages of some children operated on would be quite low. Then, a different sort of problem would arise with some parents finding that a committee had found that

their 10-year-old child did know enough to consent and another set of parents being told that their 10-year-old child did not have the kind of knowing necessary to consent.

The question would then arise as to whether or not some instrument of the State should satisfy that other parent's demands to have the procedure carried out without the full knowledge of that child. That is a difference in kind. That immediately raises the principle of whether or not the State should provide the legal mechanism for harmfully invading somebody's body without their consent.

The Hon. R.C. DeGaris: That is in the Bill now.

The Hon. R.J. RITSON: I was going to come to that when I talked about regenerative tissue, which I will do in a moment. It is my view that once one departs from the statutory age and creates a system of attempting to determine real capacity to consent, there will be such a variation in the ages of the children so adjudged to be capable of consenting that there may be community ill feeling on such a very emotional issue as the removal of tissue without consent.

Sir Charles Bright had something to say about this principle, not in relation to donor organs, but in relation to compulsory sterilisation of people with developmental intellectual deficiencies and, in particular, the question of whether or not parents could or should have legal rights to have such 'children' sterilised. Sir Charles Bright came out very strongly against such measures and defended the principle of the inviolability of the person, against all pragmatic arguments. I tend to side with him and accept the Minister's statement that the probability of harsh cases under this Bill will be remote, given the distribution of real disease, the incidence of twinning, the success rate of cadaver transplants and the availability of dialysis.

I pass now to the question of donations from children whose parents wish them to donate regenerative tissue, other than blood. Two common types of tissue that come to mind would be skin in the form of a split skin graft and bone marrow. It does not follow that it is no disability to give such tissue, and the Hon. Miss Levy referred to this when she referred to scarring. Certainly, the taking of split skin grafts, whilst not giving a true full thickness scar, produces an area of skin of different texture and pigmentation. It is often taken from the buttocks or the thigh. To take such tissue from a female child without her consent—

The Hon. Anne Levy: In the legislation the child's consent is always necessary. The child must consent, as well as the parents and the committee.

The Hon. R.J. RITSON: What I am arguing about is the possible extension if statutory age is abandoned. Again, the question of what type of knowing is necessary for this type of consent is important, which is why we have the appointment of this committee by the Minister. I feel that that is necessary to ensure that one has true consent. As I say, if tissue is taken without the true consent of the child, it could leave a situation where a young woman could deeply resent the skin changes on the thigh after she had bought her first bikini.

The Hon. Anne Levy: Or when she goes to Maslins.

The Hon. R.J. RITSON: Yes. On the one occasion I went to Maslins I saw the melanoma removal scars, and the people there were trying to get another one.

The Hon. J.R. Cornwall: Was that a purely clinical observation?

The Hon. R.J. RITSON: I was only able to make a clinical observation. The days have gone when I was able to think in any other way.

The Hon. L.H. Davis: This is not a grievance debate.

An honourable member: That is the short answer.

The Hon. R.J. RITSON: If it is any consolation to my friends and well wishers, I can still remember. It is not a harmless procedure to give regenerative tissue. For example, the taking of bone marrow is a procedure which involves pain, anxiety and risk of infection. I applaud the Government on the provisions in the Bill and the obvious concern which the Bill expresses for the rights of young people.

Finally, I want to deal with the question of cadavers for anatomical study. The wording that is under discussion involves the powers of the designated officer to act in the absence of knowledge of the desires of the next-of-kin after making reasonable inquiries. The wording is similar in several clauses of the Bill dealing with other matters, and in the other parts of the Bill it is quite clearly an expediency clause. I wish to argue that this is a matter in which there is no expediency. To my knowledge, there has always been a reasonable supply of cadavers for the Medical School which have been willingly bequeathed by responsible, community-minded people. The requirement is seasonal and related to the academic year.

The effect of such a donation of one's body to the university is to alter the funeral arrangements considerably. I find it difficult to see any need for an expediency clause. The Hon. Miss Levy did make the point that, quite clearly, because there was not the expediency in this case, 'reasonable inquiries' would probably be interpreted as 'more exhaustive inquiries'. My rejoinder to that is that, because of the lack of expediency and the adequacy of the present supply, why bother at all with an expediency clause and then say that it is not very expedient? I would like to see it go, because I feel that 'reasonable inquiries' are subject to administrative interpretation within hospitals and institutions.

What matters is not what a judge might decide, because it is very unlikely than an unwise decision by a designated officer in this matter would result in damages that would go before a court. What would happen could be that an administrative officer, making inquiries which to him were reasonable would perhaps overlook a relative overseas who may be deeply aggrieved by the alteration in the funeral arrangements and other consequences. I feel that if there were only one or two cases of deeply aggrieved relatives any Government would have great difficulty in explaining the need for the legislation which caused that grievance.

If there is any shortage of cadavers for anatomical study, I am certain that the citizens of this State are sufficiently community minded to respond to a small advertisement or call by the university and the need would be rapidly filled. As I say, the requirements are seasonal; they are predictable months in advance. So, I support the Hon. Mr Burdett's contention that that provision would be better removed from the Bill. I will conclude my remarks there and I assure the Council that, having made them this evening, I will be brief in Committee and support the rapid passage of this Bill.

The Hon. L.H. DAVIS secured the adjournment of the debate.

DEATH (DEFINITION) BILL

Adjourned debate on second reading.

(Continued from 22 March. Page 494.)

The Hon. R.J. RITSON: I commend the Government for bringing in this Bill. When I sought leave to conclude my remarks I said that, whilst in some respects the Bill is adjunctive to the question of tissue transplants, it also has some implications in terms of the general law of the State. Indeed, when it was included in the earlier Natural Death Bill, whilst parts of that Bill relating to living wills were drafted for purposes of that Bill, the part dealing with the definition of death was drafted for the general purposes of the law of South Australia.

As honourable members probably recall from the previous debate, the process of dying is not something that happens suddenly. A series of degenerations occurs and at some stage in this series of degenerations the heart ceases to beat and the respiration ceases. At this point the majority of the cells of the body are still alive. The brain will die within minutes of cessation of circulation, but the kidneys will survive for perhaps half an hour or two hours, the muscle tissue longer, and the skin for several days. So, I suppose that the only ultimate diagnostic sign of the completion of this process is the putrefaction process, and in some cultures that is required as evidence of death. In our society we have traditionally regarded the stopping of the heart as the point of no return in this gradual process of total cellular death of the organism.

It was never thought necessary to define it legally, but progress in medical science has produced a state of the art whereby hearts might be restarted and respiration and, indeed, circulation artificially maintained. Therefore new practices arose which again were not legally defined or recognised. A new practice as regards the recognition of death came to be the death of the whole of the brain, because hearts can be restarted. One finds, particularly in large teaching hospitals, that people will be admitted in states of extreme illness or injury without respiration or heart beat; the respiration or heart beat will be restarted or artificially sustained, and then may become obvious that the brain has died, but the patient is still artificially sustained in an appearance of life. So, for quite a number of years now the medical colleges and members of the medical profession have been adopting the practice of withdrawing treatment once this state of brain death is recognised.

The question of giving legal status to this practice of recognising brain death as the point of no return is of some importance in relation to transplants. It is not of practical importance, as the Hon. Anne Levy pointed out, because the practice has been conducted so conscientiously that it has not led to ethical complaints.

However, it has led to legal confusion in some cases. I think that the Hon. Miss Levy will recall a newspaper clipping submitted to the Natural Death Select Committee where a person in England was charged with murder of a person whose heart was still beating because brain death had occurred.

Mr Justice Kirby, in an address to the medical profession in the Eastern States, referred to Potters case, a case in which a man was acquitted entirely of the consequences of killing a person because, after brain death and whilst the appearance of life was being artificially maintained, the kidneys were taken. The jury found that the Crown had not proved beyond reasonable doubt that it was not the doctor rather than the assailant who killed the victim. That is not to say that that decision (which is not binding in our jurisdiction anyway) was one that said that the doctor did kill the patient. It just said that the Crown had not proved beyond reasonable doubt that it was the assailant rather than the doctor who caused the victim's death.

So, questions like Potters case will continue to arise unless that matter is cleared up legally. Apart from the question of causation, either by a criminal or medical practitioner in circumstance of either withdrawing treatment or removing organs from a person who has suffered brain death, certain civil consequences could arise concerning dates and times of death.

In society today a number of people carry very large amounts of cheap term insurance. These term insurance policies have expiry dates beyond which they are not renewable. The date and time of death could indeed affect such policies. The question of the line of inheritance is another aspect of great concern to lawyers. It is not all that uncommon for people from the same family involved in a vehicular accident to be taken to hospital and for more than one of them to die, and a whole line of inheritance can be altered, depending on the order in which people predecease one another.

So, the question of altering the line of inheritance because one victim is selected as an organ donor and artificially sustained until the next day and the other person is not artificially sustained and therefore dies a day earlier creates a discrepancy which causes criticism to be levelled at the clinical judgment of the practitioner who made that decision. It could be a matter on which a large inheritance may hang. Clearly, members of the professions should not be subject to pressures like that.

With the passage of this Bill, what would happen would be that, on diagnosis of brain death in the patient, the death certificate would be written, or at least case notes would be completed in a way enabling the death certificate to be written certifying death at the time of diagnosis of brain death. It would then be irrelevant to other matters, such as inheritance, as to which victim was chosen to be a donor, and which was artificially sustained and which was not.

It does close a loophole or avoid what could otherwise be a difficult situation if brain death were not recognised as a matter of law. This brings me to another matter of concern. In that part of the previous Natural Death Bill which dealt with brain death, there was a clause which provided for a death certificate to constitute evidentiary presumption that death had occurred at that time and on the day specified in the certificate. The drafting of the words was similar to other provisions in, for example, legislation dealing with drivers licences, where a director's statement is, in the absence of proof to the contrary, proof of the existence or the absence of a driving licence.

The brain death legislation previously before this Chamber had a provision that in the absence of proof to the contrary a certificate issued by a medical practitioner stating that a person died on a particular day and time shall be taken as proof of the date and time of death. That avoids the problem that would arise if one had an administrative requirement to establish the time of death. It would avoid the need to produce the case notes and witnesses for this purpose.

At this stage I do not intend to move a specific amendment along those lines, but I do ask the Minister to consider the point and discuss it with draftsmen to ascertain whether he can see his way clear to deal with the question that I have raised. Having said that, I express my support for the second reading.

The Hon. L.H. DAVIS secured the adjournment of the debate.

STATUTES AMENDMENT (COMMERCIAL TRIBUNAL—CREDIT JURISDICTION) BILL

Adjourned debate on second reading.
(Continued from 22 March. Page 492.)

The Hon. K.T. GRIFFIN: I support the Bill which, as the Hon. Mr Burdett and the Attorney have said, does ensure that the commercial tribunal established by the Commercial Tribunal Act of 1982 becomes the tribunal referred to in the Consumer Credit Act. Presently, the Consumer Credit Tribunal under the principal Act does have power to initiate an inquiry of its own motion. I have always been concerned about *quasi* judicial tribunals having not only a *quasi* judicial responsibility but also what amounts to an executive responsibility.

I am pleased that under clause 10 the Commercial Tribunal when exercising functions under the Consumer Credit Act

will now only be able to hold an inquiry when a complaint has been lodged with the tribunal by any person, including the Commissioner for Consumer Affairs or the Commissioner of Police. That means that the tribunal is now recognised as a *quasi* judicial body. Honourable members may remember that when the Handicapped Persons Equal Opportunity Act was debated in the last Parliament provision was made for the Handicapped Persons Discrimination Tribunal to make limited inquiries. The amendments proposed for the Sex Discrimination Act in the last Parliament, but not proceeded with because of prorogation, provided that what was to be the Sex Discrimination Tribunal had power to make an inquiry on application of the Commissioner for Equal Opportunity.

The then Government was anxious to ensure that those two tribunals were *quasi* judicial tribunals and not also acting as executive bodies. For a tribunal to initiate an inquiry on its own motion without any application or complaint abuses the responsibility of the tribunal by mixing and confusing its functions. I am pleased that this matter has now been attended to. I am also pleased that the Bill adopts the Commercial Tribunal as the body responsible for the functions of the Credit Tribunal and that it is also covered by the right of appeal to the Supreme Court. I think it is generally important that, where there are *quasi* judicial tribunals, rights of appeal to the established courts should be provided. This Bill conforms to that view. They are the only two matters on which I wish to express an opinion. I support the Bill.

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

COMMERCIAL TRIBUNAL ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 March. Page 493.)

The Hon. K.T. GRIFFIN: I support this Bill, because I believe it makes some important improvements to the legislation passed last year. Clause 5 defines more specifically the powers of the Commercial Registrar. I was concerned about the somewhat open-ended delegation of functions provided in section 10 of the principal Act, but clause 5 certainly tightens up that power of delegation. I am also pleased that clause 7 ensures that the tribunal has power to deal with matters brought before it in a frivolous, vexatious or improper manner. That was an omission from the principal Act and I support the tribunal having that jurisdiction.

Section 25 of the principal Act provides for rules to be made as to the enforcement of judgments and orders of the tribunal. I am pleased that clause 9 provides for the issuing of a certificate of judgment for a money sum where that has been ordered by the tribunal and for registration in the local court, specifically referred to in clause 9 (3). I am pleased that the Bill now provides for regulations to provide for the proceedings of the tribunal and also for other matters relevant to the administration of this legislation. I had some reservations about the tribunal being able to make its own rules and deal with a variety of other matters, but now that there is to be provision for regulations, I think that is an improvement. I am pleased to support the Bill.

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

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL

In Committee.

(Continued from 16 March. Page 361.)

Clause 2—'Criminal liability in relation to suicide.'

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

Page 1—Leave out subclauses (3) and (4) and insert subclause as follows:

(3) If upon the trial of a person for the murder of another the jury is satisfied that the accused killed the other, or was a party to the other being killed by a third person, but is further satisfied that the acts or omissions alleged against the accused were done or made in pursuance of a suicide pact with the person killed, then, subject to subsection (12), the jury shall not find the accused guilty of murder but may bring in a verdict of manslaughter.

New section 13a (3) provides that the jury may bring in a verdict of attempted manslaughter against a person who is involved in an unsuccessful suicide pact. New subsection (4) provides that the penalty for the offence of attempted manslaughter shall be imprisonment for a term not exceeding 12 years. There is controversy as to whether there is an offence of attempted manslaughter.

In a 1975 South Australian case, *R. v Scott* (as I indicated in the second reading explanation), the trial judge ruled that evidence of provocation is admissible on a charge of attempted murder, and that, if the jury finds provocation but is otherwise satisfied of the defendant's guilt, the proper verdict is attempted manslaughter. As I indicated in the second reading explanation, there is some controversy as to whether that offence really exists in the law. One view, as I indicated, comes from Mr Justice Wells in the Supreme Court, and that is that a notion of attempt in a manslaughter charge is inconsistent with the principles embodied in manslaughter. However, despite the views of Mr Justice Wells, the Mitchell Committee suggested that there should be an offence of attempted manslaughter.

In 1975 it was deemed that there could be an offence, and while there is some dispute about the matter it is probably reasonable that it be clarified by inclusion specifically in this Bill of a definition of attempted manslaughter, which can be brought down by a jury in the case of an unsuccessful suicide pact. My amendments have the effect of inserting in the Bill the definition of attempted manslaughter and clarify the position in regard to this topic, the reason being, as I have outlined previously, that, at the time this Bill was drafted for the previous Government, this matter was not dealt with. Therefore, it was not included in the Bill introduced by the Hon. Mr Griffin. Nevertheless, I am advised that it will assist the Bill if this matter of attempted manslaughter is clarified. In my opinion, the amendment does that.

The Hon. K.T. GRIFFIN: I support the amendment. I would not say that there has been controversy about whether or not there is an offence of attempted manslaughter. I believe it is better to place it on a lower level, and say that there has been a debate on the question. Certainly, there is some debate about whether or not there is an offence of attempted manslaughter. If there is such a debate, I believe that it is appropriate to ensure that the matter is put beyond question.

Whether the lesser offence is called attempted manslaughter or some other name, it can be agreed that in certain circumstances what would otherwise be attempted murder should be a lesser offence; for example, by virtue of provocation, excessive self-defence, or a suicide pact. Therefore, whether the offence is called attempted manslaughter or some other name is largely irrelevant. However, in the circumstances of this Bill, I am certainly prepared to accept the amendment, which gives that offence the description of

'attempted manslaughter'. I am prepared to agree to the amendment and I intend to agree to a further two amendments that relate to the same matter.

Amendment carried.

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

Page 2, line 27—Leave out ', or manslaughter or attempted manslaughter,'.

This amendment is part of the package of amendments that deal with attempted manslaughter, as I have outlined.

The Hon. K.T. GRIFFIN: I merely place on record that I support this amendment for the reasons that I have already outlined.

Amendment carried; clause as amended passed.

New clause 3—'Attempted manslaughter.'

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

Page 3, after line 5—Insert new clause as follows:

3. The following section is inserted after section 270a. of the principal Act:

270ab. (1) Where—

(a) a person attempts to kill another or is a party to an attempt to kill another;

and

(b) he would, if the attempt had been successfully carried to completion, have been guilty of manslaughter rather than murder,

he shall be guilty of the felony of attempted manslaughter.

(2) The penalty for attempted manslaughter is imprisonment for a term not exceeding 12 years.

(3) If, upon the trial of a person for attempted murder, the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied that the accused is guilty of attempted manslaughter, the jury shall acquit the accused of attempted murder but may find him guilty of attempted manslaughter.

I indicated in the second reading stage that there was some doubt (and I do not believe that I could put it any higher than that) about the practice that existed for many years of lesser pleas being accepted in superior courts than pleas in regard to the original charge. This new clause clarifies a position that has existed in practice for many years, but it also overcomes a problem that might have arisen in relation to the offences dealt with by the Bill introduced by the Hon. Mr Griffin.

The new section allows a person to be convicted on a plea of guilty to an offence other than that on which he was charged, as a survivor of a suicide pact charged with murder can plead guilty to manslaughter. I point out that, while it is common for a person to plead guilty to a lesser offence, there have long been doubts about whether that is possible. What I am moving to insert clarifies what I think will be generally accepted as practice.

The Hon. K.T. GRIFFIN: I am prepared to accept the amendment. As the Attorney-General said, there has been some doubt about whether or not an accused could plead to a lesser offence not charged in an information, even though the jury could find that accused person guilty of the lesser offence if the matter proceeded to a completed trial. I am told that in practice the matter has been resolved in one of two ways: either the lesser offence has actually been included as a separate charge in the information, or a plea of guilty to the lesser offence has been made, the prosecution has accepted it and the court has turned a blind eye to any lack of power it had. To ensure that in future there is no doubt about this, I am prepared to accept the amendment. However, I have an amendment to the amendment.

The CHAIRMAN: The honourable member is talking to an amendment to new clause 4. We have yet to put new clause 3.

The Hon. K.T. GRIFFIN: I will complete the remarks I was making. I was really picking up the observations made by the Attorney-General. At the appropriate time I will move an amendment to the Attorney-General's new clause 4.

New clause inserted.

New clause 4—'Conviction on plea of guilty of offence other than that charged.'

The Hon. C.J. SUMNER: I move to insert the following new clause:

4. The following section is inserted in the principal Act after section 285a:

285b. Where a person arraigned upon an information pleads not guilty of an offence charged in the information but guilty of some other offence of which he might be found guilty upon trial for the offence charged and the plea of guilty is accepted by the prosecution with the approval of the court, then (whether or not the two offences are separately charged in distinct counts)—

(a) the person may be convicted on the plea of guilty and his conviction shall operate as an acquittal of the offence charged;

(b) if he has been placed in the charge of the jury, the jury shall be discharged without being required to give a verdict (unless the trial is to continue in respect of further counts that are unaffected by the plea);

and

(c) he shall be liable to be punished for the offence of which he has been convicted in the same manner as if he had been found guilty of the offence upon trial for the offence charged.

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

That the new clause be amended by leaving out of the proposed new clause 'with the approval of the court'.

As the provision is drafted, it appears that it is a prerequisite to the acceptance of a plea of guilty to a lesser charge that the approval of the court be obtained, that is, that it is in fact a condition precedent to the acceptance by the prosecution of a plea to a lesser offence. As I understand it, that has never been the case in South Australia and I think that that is undesirable. As a matter of practice the prosecutor and defence counsel often seek the judge's view informally or, alternatively, the lesser plea is accepted after the judge has been given an intimation that that would be more appropriate than proceeding on the more serious charge. However, there will be cases where the acceptance of a plea may be based on pragmatic reasons which may not be known to the judge and which, with respect, may not be any of his business.

So, I take the view that the acceptance of a plea to a lesser offence should remain a part of the discretion of the Attorney-General, who has, in the past, been responsible for this decision finally and that the approval of the court should not be necessary. They are the reasons why I believe those words should be removed from the new clause.

The Hon. C.J. SUMNER: I understand that those words were placed in the proposed new clause because there had always been a discretion with the judge to refuse to allow a plea to a lesser offence than the one charged to be accepted under the general common law principles; that is, although it was basically a matter for the Crown to determine whether or not it would accept a lesser plea, there was a discretion with the court to say that the lesser plea should not be accepted.

I am advised that this new clause was supposed to clarify that position. Nevertheless, if the words are struck out I do not believe that it will alter the position which operates in practice. The primary responsibility will still rest with the Crown as to its attitude to a suggestion of a lesser plea and it is probable that there will still be some discretion with the court under the new clause anyway. I do not object to the amendment moved by the Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: I agree with what the Attorney-General has said. I think that the retention of any residual discretion in the court is really picked up in paragraph *(a)*, where it provides that a person 'may be' convicted. So, it is not a mandatory requirement that the court proceed to conviction. There remains some residual discretion with the

court, whether that be under the Offenders Probation Act or on some other basis for exercising that discretion. I agree that, whatever discretion there has been with the court, to accept a lesser plea is not prejudiced by the removal of the words or the enactment of this clause as amended.

Amendment carried; new clause as amended inserted.

Title passed.

Bill reported with amendments. Committee's report adopted.

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

That this Order of the Day: Private Business be now made an Order of the Day: Government Business.

The Attorney-General indicated that consequential upon the Bill being reported he would be prepared to adopt it as a Government Bill to ensure its passage at the earliest opportunity through the House of Assembly.

I appreciate him giving that indication during the second reading explanation of the Bill. I am pleased, also, that at last on this Bill both Parties in the House are of one mind about the value of eliminating from the Statute Book the centuries old offence of suicide and adopting, after some 13 years, the recommendations of the Law Reform Committee made back in 1970. So, let me record my appreciation for the Government taking over the Bill and being prepared to make Government time available in the House of Assembly to enable its passage.

The Hon. C.J. SUMNER (Attorney-General): I support the motion. The Government indicates that it is prepared to make time available in the House of Assembly to have this issue debated and disposed of during Government business. It is an important and significant reform. It probably is a pity that it was not addressed before now, given the length of time that the authorities have had the report of the Law Reform Committee. Nevertheless, the Hon. Mr Griffin took up the matter as Attorney-General, substantially developed the Bill during that period and has now introduced it as a private member's Bill. I would like to thank him for his work on it. The Bill will now be taken up by the Government and should be passed in the Assembly without any difficulty.

Motion carried.

CO-OPERATIVES BILL

Adjourned debate on second reading.

(Continued from 15 December. Page 153.)

The Hon. C.J. SUMNER (Attorney-General): I do not wish to detain the House in the second reading debate on this Bill. The Government supports the second reading of it, although I wish to move some amendments in Committee. I do not believe that they are amendments in principle. It is high time that the legislation dealing with co-operatives was up-dated. This legislation was prepared during the period of the previous Government, and the Hon. Mr Griffin has now introduced the Bill as a private member's Bill following the election. As the Hon. Mr Chatterton pointed out, the initiative to perform in this area came about initially, I understand, by a committee established by the Liberal Government.

It has been some time in its gestation, and let us hope that we can now resolve the matter and everyone can take credit for their respective contributions to this legislation. I should indicate that the Government is prepared to provide Government time in the Assembly for its passage. I do not wish to make any further remarks on the second reading except to say that the Bill is supported and that in Committee I will give attention to some fairly minor amendments.

The Hon. K.T. GRIFFIN: I thank the Attorney-General for his indications of support for the Bill, which has taken a considerable period to develop. This reform is long overdue. I am pleased that we are almost at the stage where we can say that reform has been achieved. As the Attorney said, there are some amendments, but they are relatively minor and should not unduly delay the passage of this Bill.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Interpretation.'

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

Page 2, line 38—Leave out definition of 'financial year' and insert new definitions as follow:

'executive officer' of a co-operative means any person, by whatever name called and whether or not he is a director of the co-operative, who is concerned, or takes part, in the management of the co-operative:

'financial year' means—

(a) in relation to a registered co-operative that is incorporated after the commencement of this Act—a period commencing on the date of incorporation of the co-operative and expiring, by determination of the co-operative, on either—

(i) the next succeeding thirtieth day of June:

or

(ii) the anniversary of the date of the incorporation of the co-operative,

and thereafter any period (not exceeding twelve months) determined by the co-operative to be its financial year:

(b) in relation to a registered co-operative which was registered under the repealed Act immediately before the commencement of this Act—any period (not exceeding twelve months) determined by the co-operative to be its financial year;

or

(c) in any event, in the absence of a determination by the co-operative of a period as its financial year—any period of twelve months commencing on the first day of July and ending on the next succeeding thirtieth day of June:'

There are two amendments in this part of the Bill: to leave out the definition of 'financial year' and, at the same time, to take the opportunity to insert a new definition not only of 'financial year' but also of 'executive officer'. During the period that this Bill was tabled in the Council a number of people who had some experience with the operation of co-operatives commented on various parts of it. One of them was the fact that there was no provision for an executive officer of a co-operative to have some liability in addition to that of a director and secretary. So, it is important to cover that possibility by including a provision which ensures that executive officers would take their places alongside the secretary and director in respect of the liability that attaches to directors and secretaries in the management of the co-operative. So, that is why a new definition of 'executive officer' has been included.

The definition of 'financial year' has been amended. Several accountants to whom I sent the Bill expressed some difficulty in comprehending the existing definition of 'financial year'. What is now before us in my amendment is a clarification of what is meant by 'financial year'. It means that in relation to a co-operative that is incorporated after the commencement of this Act—a period which commences on the date of the incorporation and expires either on the next succeeding thirtieth day of June or the anniversary of the date of the incorporation of the co-operative. Provision is made for subsequent periods not exceeding 12 months which can be determined by the co-operative to be its financial year.

In relation to a co-operative registered under what will in effect be the repealed Act, the financial year is to be any period which is not to exceed 12 months determined by the co-operative to be its financial year or, where there is no

determination by the co-operative of a period as its financial year, then any period of 12 months commencing on the first day of July and ending on the next succeeding thirtieth day of June. That definition is more comprehensive and certainly clarifies it for the sort of people who will be working with the provision on a day-to-day basis, both within the structure of co-operatives and their accounting and legal advisers.

The Hon. C.J. SUMNER: The insertion of a definition of 'executive officer' is consequential to a proposed amendment to the definition of 'officer' of a registered co-operative to include executive officers as part of this definition. The amendment seeks to bring the definition of 'officer' closer to the definition appearing in the Companies Code. It is now thought that the present definition, providing that the holder of any office established by the rules of the co-operative is an 'officer' of the co-operative should, generally, be sufficient to encompass executive officers, but the proposed amendment conclusively settles the issue. If it makes the honourable member feel happier about the Bill, then I do not wish to argue with him about it.

It is also proposed that the definition of 'financial year' be amended. The honourable member has experienced some difficulty with the definition presently appearing in the Bill, and the proposed amendment is an attempt to sort out his difficulties by providing a more detailed definition. Although the Parliamentary Counsel has no difficulty with the definition as it now stands, once again, as it is really a matter of clarification, I am willing to accede to the honourable member's wishes.

Amendment carried.

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

Page 3, after line 5—Insert new paragraph as follows:

(ba) the executive officer (if any) of the co-operative;

My amendment relates to the comments that I have already made about the definition of 'executive officer' in the previous amendment. It is a consequential amendment.

Amendment carried.

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

Page 4, after line 4—Insert new subclause as follows:

(2a) Nothing in subsection (2) *(c)* (ii) shall prevent the rules of the society, in imposing limitations upon the interest payable to members on share capital, from providing that, within those limits, such interest may be fixed by the members of the society upon the recommendation of its directors.

This amendment is designed to give a little more flexibility to co-operatives in respect of fixing interest payable to members on share capital. The concern that was expressed to me by the Co-operative Federation was that the existing subsection (2) *(c)* (ii) did not give flexibility to the society, particularly in these times of significant fluctuating interest rates. My amendment will ensure that limitations are placed upon interest payable to members on share capital, and those limitations will be proposed by the rules of the society. However, within those limitations interest can be varied by members of the society at the recommendation of its directors.

The Hon. C.J. SUMNER: As the Hon. Mr Griffin has indicated, the insertion of a new clause 4(2a) is requested in order to clarify that although the rules of a registered co-operative must impose limitations on the amount of interest payable to members on share capital, the exact rate of interest may be fixed within such limitations by the members in general meeting. The imposition of some restriction on the amount of interest payable on share capital is considered to be a necessary element in a co-operative society. However, all the Bill seeks to do is to require that a maximum rate of interest be fixed. It is feared that the provision also looks to regulate how the actual rate is to be fixed, within the prescribed parameters and, hence, the amendment has been requested.

I am not sure that I share the fears of the Hon. Mr Griffin. Provided that the co-operative stays within the limits fixed by its rules, the actual rate can be fixed in whatever way the co-operative chooses. Nevertheless, the honourable member has sought to clarify the situation by providing that the co-operative and its members may within that limit fix in its rules a lower rate. Once again, if the honourable member has any difficulties with it (although I am not sure that it is strictly necessary), I raise no objections as the amendment is of a clarifying nature.

Amendment carried; clause as amended passed.

Clauses 5 to 26 passed.

Clause 27—'Disclosure of interest.'

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

Page 15—

Line 4—Leave out 'or'.

After line 5—Insert new paragraph as follows:

or

(d) a beneficiary of a trust of which the director is a trustee.

This clause deals with the responsibilities of a director where he has a pecuniary interest in a contract or proposed contract under consideration by the management committee.

The amendment relates to subclause (2), which defines when a director is taken to have a relevant pecuniary interest. The purpose of the amendment is to include as an interest under this clause an interest of a beneficiary of a trust of which the director is a trustee. The amendment broadens the ambit of the provision in the Bill introduced by the honourable member and is a desirable extension. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: I support the amendment. I have always had some concern about provisions that require the disclosure of pecuniary interest, because they do not in the recent past appear to have dealt with the question of a trust.

Trusts, although well used in the 19th century, have only come back into vogue to any great degree in the past 10 years. It is important in considering the question of conflicts of interest and the obtaining of direct or indirect pecuniary benefits that some attention is given to the position of a director who has an association with a trust, either as a beneficiary or as a trustee. I believe that this important amendment closes a gap that exists at the moment.

Amendment carried; clause as amended passed.

Clauses 28 to 30 passed.

Clause 31—'Prospectuses and registration of charges.'

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

Page 16, line 46—

Leave out '(1)' and insert '(1) *(a)*'.

I do not believe that the Commission should allow an exemption in relation to the registration of charges. Therefore, it is appropriate to limit the powers of subclause (1) *(a)*, which deals with prospectuses, so the provisions relating to exemptions will apply only to prospectuses and will not apply in the case of registrations.

The Hon. K.T. GRIFFIN: I support the amendment. It is quite appropriate, and I certainly would not expect any exemption to be given in relation to the requirements of the Companies (South Australia) Code relating to the registration of charges. That power to grant exemptions could theoretically be used to extend the time within which charges should be lodged for registration. That has significant ramifications for creditors and for the general public. Therefore, it is inappropriate to confer power on the Corporate Affairs Commission to grant an exemption from that sort of provision dealing with the registration of charges.

Amendment carried; clause as amended passed.

Clause 32—'Registered office.'

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

Page 17, line 7—Leave out 'in accordance with the rules' and insert:

'in accordance with—

(a) the rules;

and

(b) any relevant regulation'.

I am not really sure that this amendment is necessary. The Co-operatives Federation pointed out that there should be minimum hours within which the registered office of a co-operative ought to be open to members of the public. Accepting that principle, I believe that the amendment will allow prescribed minimum times during which the registered office of a co-operative will be open to the public.

The Hon. C.J. SUMNER: Whether that power is utilised will depend on the commission. Once again, I have no objection to the amendment.

Amendment carried; clause as amended passed.

Clauses 33 to 35 passed.

Clause 36—'Sale of substantial assets.'

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

That consideration of clause 36 be postponed until after consideration of clause 81.

Some difficulties have arisen in relation to this clause, and I would like to discuss them with the Hon. Mr Griffin and with representatives of the Co-operatives Federation. I suggest that this clause be considered tomorrow and that we complete all other clauses tonight.

The Hon. K.T. GRIFFIN: I am prepared to support the Attorney's motion. This is a very difficult clause which does have significant ramifications for co-operatives. I am perfectly happy to have it deferred until tomorrow and also to have discussions with the Attorney-General.

Motion carried.

Clause 37—'Interpretation.'

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

Page 19—

Line 1—After 'documents of prime entry' insert, 'and books and records which record such entries,'.

After line 26—Insert new subclause as follows:

'(2) Section 544 of the Companies (South Australia) Code relating to the form and evidentiary value of books shall apply in relation to the keeping and preparation of accounting records or accounts under this Part as if a reference in that section to books under the Code were a reference to accounting records or accounts under this Part.'

My two amendments to clause 37 are related to some extent. The present definition of 'accounting records' may be adequate, but some doubt about this definition has been raised by an accountant who has a substantial practice in the corporate area as well as in the area of co-operatives. My amendment will clarify the definition. It is a very fine point whether books and records into which one transcribes details of invoices, receipts, orders and cheques are documents of prime entry. I expect that those books and records are not, but my amendment will ensure that there is no doubt. My other amendment to clause 37 relates to the form of the records that are kept.

In this modern day and age, accounting records may be kept either on microfilm or by computer. A difficulty was perceived in not extending the clause to include those records. This clause picks up section 544 of the *Companies (South Australia) Code* to ensure that computer records, microfilm and other records are permitted by the provisions of this Bill.

The Hon. C.J. SUMNER: These two amendments are of a clarifying nature, and accordingly I do not wish to object.

Amendments carried; clause as amended passed.

Clauses 38 to 47 passed.

Clause 48—'Lodgment of periodic return.'

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

Page 30—

Lines 11 and 12—Leave out 'more than fourteen days' and insert 'later than one month'.

Line 14—Leave out 'more than fourteen days' and insert 'later than one month'.

These amendments are identical to the amendments that the Attorney-General has on file. Obviously, we both agree that the time within which returns of directors should be lodged can quite happily be extended from 14 days to one month. The amendments relate to the Co-operatives Federation which, because of the nature of co-operatives and the fact that they are spread throughout South Australia, believes that 14 days within which to lodge the return is somewhat restrictive but that one month is a much more appropriate time.

The Hon. C.J. SUMNER: This alteration brings the provisions of the Co-operatives Bill into line with the Companies Code, and I am happy to support it.

Amendments carried; clause as amended passed.

Clause 49 passed.

Clause 50—'Qualifications of auditors.'

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

Page 32, after line 6—Insert new subclause as follows:

(2a) The commission may, upon application of a registered co-operative or a person authorised by a co-operative to make an application under this subsection, grant an exemption from the requirements of either subsection (1) *(e)* or subsection (2) *(d)*.

(2b) An exemption under subsection (2a) may be granted upon such conditions as the commission thinks fit and may, at any time, by instrument in writing, be revoked or varied by the commission.'

This amendment will allow the Corporate Affairs Commission to grant to a co-operative an exemption from the provisions of what will be subsection (2) *(d)* and also subsection (1) *(e)*. This clause deals with the qualifications of an auditor and the accounts of a registered co-operative. The Bill provides that the auditor of a co-operative is ordinarily to be a resident in the State, and, in regard to a firm of auditors, at least one member of the firm must ordinarily be resident in South Australia.

I certainly support the local auditing and accounting profession obtaining jobs, but perhaps because of some interrelationship between a co-operative in South Australia and a co-operative in another State, or for some other reason, it may be important to allow a non-resident auditor to audit the accounts of a co-operative in South Australia. The amendment provides a discretion to the commission, which I am sure would not exercise the discretion lightly. Nevertheless, this amendment will provide the flexibility that may be necessary perhaps in some remote circumstances.

The Hon. C.J. SUMNER: I support the amendment. Originally, the reason behind this clause was that it was thought that the legislation for South Australian co-operatives was fairly unique to South Australia. The practices in relation to co-operatives vary quite widely from State to State, and therefore it was believed that the auditor should be familiar with the South Australian legislation. However, this provision was probably too restrictive as it was, and the amendment will allow the commission to provide exemption in certain circumstances. I support the amendment.

Amendment carried.

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

Page 33, after line 25—Insert new subclause as follows:

'(12) For the purposes of this section—

'officer of a co-operative' includes—

(a) an employee of the co-operative;

(b) a receiver, or receiver manager, of the property or part of the property of the co-operative;

(c) an official manager or deputy official manager of the co-operative.'

This amendment will ensure that an employee cannot be an auditor of a co-operative, and this involves a receiver, a receiver manager, an official manager, or a deputy official

manager of a co-operative. It is quite wrong that any one of those people be eligible to be the auditor of the co-operative. Accordingly, the amendment ensures that that will not occur.

The Hon. C.J. SUMNER: This amendment brings the provision into conformity with the Companies Code and it is accepted.

Amendment carried; clause as amended passed.

Clauses 51 to 55 passed.

Clauses 56—'Powers and duties of auditors as to reports on accounts.'

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

Page 37, line 38—Leave out '41' and insert '40'.

Clause 56 (3) *(a)* (i) refers to section 41—it should refer to section 40.

Amendment carried; clause as amended passed.

Clauses 57 to 73 passed.

Clause 74—'Evidentiary provision.'

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

Page 44, line 16—After 'and to be' insert 'a copy of an acknowledgment of registration under the repealed Act or'.

This clause is an evidentiary provision. Subclause (1) provides that a certificate of incorporation be accepted in any legal proceedings in the absence of proof to the contrary. The amendment inserts an acknowledgment of registration under the repealed Act, used under this Act instead of certificates of incorporation. The amendment will improve the effectiveness of the provision as suggested by the Corporate Affairs Commission.

The Hon. K.T. GRIFFIN: I accept the amendment. It is technical, but necessary.

Amendment carried.

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

Page 44—
Line 17—After 'co-operative' insert 'under this Act'.
Line 19—Leave out 'certificate' and insert 'document'.

Amendments carried; clause as amended passed.

Clause 75 passed.

Clause 76—'General penalty for contravention of Act.'

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

Page 45, line 7—Leave out 'one' and insert 'two'.

This is a general penalty provision for offences under the Act. The penalty presently appearing is $1 000. Other provisions in the Act provide for far greater penalties, and the commission considers that a general penalty of $2 000 is more in keeping with the standards appearing in the Bill.

The Hon. K.T. GRIFFIN: I agree to the amendment.

Amendment carried; clause as amended passed.

Clauses 77 and 78 passed.

Clause 79—'Fees to be paid to the Commission.'

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

Page 45, after line 39—Insert new subclause as follows:
(2) Notwithstanding subsection (1), the Commission may—
(a) waive or reduce, in a particular case or classes of cases, fees that would otherwise be payable under this Act; and
(b) refund, in whole or in part, any fee paid under this Act.

The proposed amendment is the insertion of a new subsection to allow the commission in appropriate circumstances to waive or reduce fees payable under the Act or to refund fees. A similar provision is to be found in the Companies (South Australia) Code, and provides a degree of flexibility for the commission in relation to this aspect of its administration of the Act. I commend the amendment to honourable members.

The Hon. K.T. GRIFFIN: I support the amendment. It is consistent with the Companies (South Australia) Code where the Corporate Affairs Commission has exercised, sometimes with great generosity to practitioners and companies, the remission of fees, particularly for the late lodgment of documents. Accordingly, I agree that it is a most appropriate provision.

Amendment carried; clause as amended passed.

Remaining clauses (80 and 81) passed.

Progress reported; Committee to sit again.

CONSTITUTION CONVENTION

The House of Assembly transmitted the following resolution in which it requested the concurrence of the Legislative Council:

That whereas the Parliament of South Australia by joint resolution of the Legislative Council and the House of Assembly adopted 26 and 27 September 1972 appointed 12 members of the Parliament as delegates to take part in the deliberations of a convention to review the nature and contents and operation of the Constitution of the Commonwealth of Australia and to propose any necessary revision or amendment thereof and whereas the convention has not concluded its business now it is hereby resolved:

(1) That all previous appointments (so far as they remain valid) of delegates to the convention shall be revoked;
(2) That for the purposes of the convention the following 12 members of the Parliament of South Australia shall be appointed as delegates to take part in the deliberations of the convention: the Hons J.C. Bannon, F.T. Blevins, M.B. Cameron, G.J. Crafter, B.C. Eastick, E.R. Goldsworthy, K.T. Griffin, T.M. McRae and K.L. Milne, Mr Olsen, the Hon. C.J. Sumner and Mr Trainer;
(3) That each appointed delegate shall continue as a delegate of the Parliament of South Australia until the House of which he is appointed otherwise determines, notwithstanding a dissolution or a prorogation of the Parliament;
(4) That the Premier for the time being as an appointed delegate (or in his absence an appointed delegate nominated by the Premier) shall be the Leader of the South Australian delegation;
(5) That where, because of illness or other cause, a delegate is unable to attend a meeting of the convention the Leader may appoint a substitute delegate;
(6) That the Leader of the delegation from time to time make a report to the House of Assembly and the Legislative Council on matters arising out of the convention, such report to be laid on the table of each House;
(7) That the Attorney-General provide such secretarial and other assistance for the delegation as it may require;
(8) That the Premier inform the Governments of the Commonwealth and the other States of this resolution.

The Hon. C.J. SUMNER (Attorney-General): I move:

That the resolution of the House of Assembly be agreed to.

The Fifth Plenary Session of the Australian Constitutional Convention which will be held in Adelaide from 26 to 29 April 1983 will, I believe, be one of the most important sessions of the convention. It has the potential to effect great and substantial changes to the political life of Australia.

The convention had its first session in Sydney 10 years ago. At that time it was agreed between the Commonwealth and the States that there were a number of areas of the Commonwealth Constitution that needed revision and change. There was great enthusiasm in those early years of the convention, but that early energy and enthusiasm has unfortunately not been sustained. We now have the opportunity to pick up on that energy and go forward with the optimism that many of the issues which were being canvassed 10 years ago have now had a substantial airing in the community, in Parliaments, in political Parties, and have also been the subject of articles in magazines and academic journals.

South Australia has led the way over many years in a number of areas of Parliamentary and legal reform. It is these matters which will attract most attention when the convention meets here next month.

The agenda for the Fifth Plenary Session covers a number of areas related to an integrated system of courts, specific items that ought to be included in the Australian Constitution

and perhaps, most importantly, the issue of fixed terms of Parliament, the conduct of elections and the role of Upper and Lower Houses. It will also deal with a number of matters relating to the legislative power of the Commonwealth and the nature of future meetings of the convention.

This motion determines the delegation from the South Australian Parliament. The composition of the delegation is six Government members, five members from the Opposition and one member from the Australian Democrats. The composition of this delegation is similar to the delegation which the former Government had nominated in that it also sent six Government members. Given the results of the last election and the fact that there are now two members of the Australian Democrats in the Legislative Council, it was considered appropriate that they be represented at the convention. The delegation from the South Australian Parliament will be supplemented by the three delegates nominated from local government.

I am pleased with the composition of the delegation and I believe that the members of it will do justice to the South Australian community at the convention. May I also indicate that I am pleased that the delegation local government will be sending to the convention has people on it with long and varied experience and background in that area who will contribute greatly to the discussions and debate that will take place.

There are a number of issues on the agenda of the convention which attract bipartisan support. There are others that have a lesser degree of consensus, but I believe that the spirit in which the convention is being called and the climate of expectation building up about the convention, particularly in respect of the decisions it will make about elections and the conduct of Parliament, will make it the most important mile stone in the history of Australian Federation.

There is no doubt that this convention will provide clear guidelines as to the sort of constitutional and Parliamentary reforms necessary to take us into the twenty-first century. There will undoubtedly be more sessions of the convention, possibly in some modified form. One of the items which will be considered will be the composition of future delegations. There is a proposal that the composition of the delegates to future plenary sessions extend beyond the existing membership and allow for much greater community participation in the activities and debates of the convention. This is an issue which has a great deal of merit and deserves a great degree of attention. I am sure that like all of the other topics it will receive it. I am pleased that Adelaide is the venue for this convention and I ask honourable members to lend their support to this motion.

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

ALSATIAN DOGS ACT REPEAL BILL

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

SOUTH-EASTERN DRAINAGE ACT AMENDMENT BILL

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

MOTOR VEHICLES ACT AMENDMENT BILL (No. 2)

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

ADJOURNMENT

At 10.40 p.m. the Council adjourned until Thursday 24 March at 2.15 p.m.