## LEGISLATIVE COUNCIL

Tuesday 29 March 1983

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

## PAPERS TABLED

The following papers were laid on the table:

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

*Pursuant to Statute—*

Racial Discrimination Act, 1976—Regulations—Aboriginal Teachers.

State Theatre Company of South Australia—Report, 1982.

By the Minister of Agriculture (Hon. B.A. Chatterton)—

*Pursuant to Statute—*

Metropolitan Milk Supply Act, 1946-1980—Regulations—Cream Prices.

Milk Prices.

By the Minister of Health (Hon. J.R. Cornwall)—

*Pursuant to Statute—*

Local Government Act, 1934-1982—Regulations—Register Book of Burials.

Parks Community Centre Act, 1981—General Regulations.

Planning Act, 1982—Crown Development Reports by South Australian Planning Commission on—

Proposed erection of a 33 kV transmission line and a 33/11 kV substation near Kingscote.

Proposed erection of two transportable classrooms at Strathalbyn High School.

Proposed land acquisition for Panalatinga Road.

Proposed land acquistion for Ocean Boulevard.

Proposed quarry and crushing plant at North Shields.

District Council of Mount Gambier—By-law No. 26—Fences, Hedges and Hoardings.

## QUESTIONS

### TAXATION

**The Hon. M.B. CAMERON:** I seek leave to make a brief explanation before asking the Minister of Agriculture a question about the tax liability of recipients of drought relief and bushfire relief.

Leave granted.

**The Hon. M.B. CAMERON:** A number of recent press reports and constituent contacts have indicated that South Australia's farm bushfire, flood and drought victims may have to pay tax on relief subsidies and grants. Naturally, this possibility has caused considerable anguish throughout the rural communities affected. In an article on 18 March the *News* highlighted the problem and confirmed that the Australian Taxation Office was investigating the matter. The report states:

> The Australian Taxation Office in Canberra confirmed today relief grants could be considered assessable income. The prospect has alarmed the United Farmers and Stockowners' Association and sent shock waves through the rural community. The subject emerged as a major issue at meetings of fire-affected farmers in the South-East this week. The Taxation Department has launched an urgent review of legislation to decide which can and cannot be considered assessable income. Relief measures under the taxation cloud include drought aid subsidies which were extended to cover fire victims after Black Wednesday and this month's floods. Fodder, freight, slaughter and fencing subsidies or grants are all under question.

Similar concern had already been expressed in the *Stock Journal* a day earlier. It indicated that payments received from the Commonwealth's special drought fodder and interest rate subsidy schemes would be considered as assessable income and would therefore be taxable. The *Stock Journal* quoted a Mr Kevin Hoctor, a senior tax officer, as saying that this would be the case. As this matter is of prime importance to the many South Australian farmers affected by the State's various natural disasters, the Minister's efforts to assist are important. What representations has the Minister of Agriculture made to the Commonwealth concerning tax liability on relief subsidies and grants? If no representations have been made, will the Minister of Agriculture raise the matter immediately with the Federal Government, urging it to ensure that those who have already been seriously disadvantaged by the drought and fires are not penalised when receiving their much needed assistance?

**The Hon. B.A. CHATTERTON:** Yes, I am aware of the issues raised by the honourable member. In fact, they were raised at a meeting that I attended at Furner last Friday with people who had been affected by the bushfires in the South-East. I think that there is legitimate cause for concern in relation to the subsidy that is available for the replacement of fences along public property. The honourable member has referred to other areas where subsidies are available and, quite clearly, they are tax deductible items. Therefore, the fact that the income from a subsidy is taxable is of no significance to primary producers, because it is completely offset by the claim for expenditure (I refer to the freight subsidy, the fodder subsidy, and so on).

All those items are fully tax deductible and, therefore, any income received by farmers (and that is happening all the time in relation to the drought) is completely offset against completely deductible expenditure. So, the farmer does not have any tax liability arising from those subsidies. The real point at issue is whether the fencing destroyed by the bushfires can be written off as completely tax deductible. There is some contention about that issue.

Officers from my department believe that that cost can be offset as a complete tax deduction, and that is the argument we will be putting to the Taxation Department. The interpretation in the past was that the repair of any fence was fully tax deductible. The contention is that the fences that have been burned down must be repaired, because it is the restoration of something that existed previously: it is not a new fence in the sense of a new subdivision or an addition to a capital asset. The Taxation Department considers only those additions to capital assets as being capital investment and, therefore, depreciable over a period of time. My departmental officers believe that there is no tax liability.

We will certainly take up the matter with the Taxation Department because, if it does tax the fencing grants without allowing farmers full tax deductibility for their expenditure, they will be worse off and will suffer unfair treatment. I will certainly be making representations if that is the situation. However, the situation has not been clarified and we will be seeking further clarification from the Taxation Department to see whether it has a different interpretation.

**The Hon. M. B. CAMERON:** I seek leave to make a further explanation before asking the Minister of Agriculture a supplementary question.

Leave granted.

**The Hon. M.B. CAMERON:** I assume that the assistance mentioned by the Minister is the $1 200 per kilometre fencing grant that has been offered. I understand that that $1 200 is not so much a grant but is money to offset the situation where farmers had fencing that faced public lands, requiring the farmers to meet all the costs associated with replacing that fencing. The purpose of the assistance is that the farmers will not be at a disadvantage in comparison with farmers who share fences with neighbours.

This amount is not really a grant but, as I understand, is off-setting what the Government would have to pay for the fencing of areas such as national parks. I would be concerned if this type of grant (which I do not regard as a grant,

anyway) were taxed. Is it the Minister's understanding that this amount replaces what would normally be a 50 per cent costing by Government authorities, and, if so, will he take up this matter urgently with the appropriate people?

**The Hon. B.A. CHATTERTON:** What the honourable member has said is correct, that the purpose of the grant of $1 200 per kilometre was to contribute roughly a half share of the cost of such fencing. The point I am trying to make is that if the grant is taxable (and I think it will be) it will be no burden to the farmer if he can offset an equal amount against his taxation. The real issue is not whether the grant is taxable, but whether the fencing erected will be fully tax deductible. If it is, and the grant is taxed, there is no net tax burden on the farmer.

**The Hon. M.B. Cameron:** Many farmers will not have an income next year.

**The Hon. B.A. CHATTERTON:** That is another issue. That is the way in which other subsidies have been treated because they have been spent on farming costs which have been fully tax deductible. So, there is no net tax paid on those particular subsidies. If that method is applied to boundary fencing along public properties, then there will be no net tax burden on the farmer. That is the matter we have to clear up so far as definition is concerned. I think that that is the point at issue rather than the question of whether grants are taxable. So long as grants are spent on items of expenditure which are fully tax deductible there is no burden on the farmer. That is what we have to be sure about: that the net effect on the farmer is neutral.

## JULIA FARR CENTRE

**The Hon. J.C. BURDETT:** Has the Minister of Health issued a communication to the board of the Julia Farr Centre setting out conditions of its future operation and, if so, what are those conditions in detail? Has the acting administrator put in by the Minister recently indicated the termination of a number of jobs at the Julia Farr Centre and, if so, how many, and why?

**The Hon. J.R. CORNWALL:** The honourable member's first question was whether I issued a communication to the board of the Julia Farr Centre concerning conditions of subsidy.

**The Hon. J.C. Burdett:** No, I asked about conditions of future operation.

**The Hon. J. R. CORNWALL:** Honourable members will recall that when I made a statement in this Chamber a couple of weeks ago I said that I would be recommending to Cabinet that the Government accept conditions of subsidy which ought to be passed to the Julia Farr Centre as conditions of its subsidy for 1983-84 and for subsequent years.

The reason that I gave was that I found it intolerable that the situation should persist where almost $77 000 000 of South Australian taxpayers' money was going towards the conduct of the Julia Farr Centre without our exercising some perfectly legitimate interest in how that money was spent, whether it was spent efficiently, in which areas it was spent, and so on, in exactly the same way that we have a check on every other incorporated health unit in the State. A copy of those conditions was hand-delivered last Thursday with an accompanying letter from me. I have had no official communication in reply from the Chairman of the board, but I understand that at its meeting last week the board accepted those conditions. I am awaiting official confirmation of that. I believe that the board will accept the conditions in a responsible way and, once that is confirmed, I for one will be absolutely delighted, as I am sure will every other member of this Parliament.

The other question involved the termination of several jobs. I am quite nonplussed about that. I am in pretty constant communication with Dr Michael Jelly, whom I appointed Acting Administrator. I know nothing about the termination of several jobs. I can tell the honourable member that there was a mass meeting of employees and residents yesterday, at which calls for the dismissal of the Director of Nursing were renewed. A number of bans were also imposed in the administrative area, but I have been told that those bans have been very carefully devised not to impact on the well-being of patients or residents. I am further advised that the board has subsequently suspended the Director of Nursing on full pay for three weeks. That was the last information I received when I arrived back from Port Pirie at lunchtime. I have no knowledge that the Acting Administrator dismissed people, and I believe that to be incorrect.

**The Hon. J.C. BURDETT:** Supplementary to my previous question, will the Minister give further details, if he can? Will he table the letter referred to as being hand-delivered to the board last Thursday? Will the Minister investigate the question concerning termination of jobs?

**The Hon. J.R. CORNWALL:** I would be delighted to table the letter. I am heavily into open government. There would be no problem about my tabling the letter. In any case, it is now a semi-public document. Adelaide is a small town, in which there can be open government either because the Government does it willingly or, as the gentlemen opposite ought to know, by default, as in regard to the previous Liberal Government. There would be no problem at all in my tabling the letter. If I am to investigate dismissals, I must have details. I really have no knowledge of what the honourable member is talking about. Perhaps he could give me more details.

**The Hon. J.C. Burdett:** I am asking you for details.

**The Hon. J.R. CORNWALL:** What classes of job are involved?

**The Hon. J.C. Burdett:** I have asked the Minister a question.

**The Hon. C.M. Hill:** That is a rebuke.

**The Hon. J.R. CORNWALL:** It is not a rebuke. It is an act of sheer stupidity. If the Hon. Mr Burdett has some details, he should tell me. Thank God for John Burdett. Long may he be the shadow Minister of Health.

## CO-OPERATIVE COMPANIES SCHEME

**The Hon. K.T. GRIFFIN:** I seek leave to make a brief explanation before asking the Attorney-General a question about the co-operative companies scheme.

Leave granted.

**The Hon. K.T. GRIFFIN:** The co-operative companies and securities scheme that is now in operation in South Australia involves significant co-operative federalism—an achievement of the Federal Liberal Government—in co-operation with all the State Governments, both Liberal and Labor. Those who are familiar with the co-operative scheme will know that the responsibility for its operation rests with the Ministerial Council comprising Federal and State Attorneys-General, who are responsible for corporate affairs in their respective jurisdictions.

Both Federal and State Labor Party policies are for the central Commonwealth Government to take over responsibility for corporate affairs matters, which is in stark contrast to the federalism concept of the Liberal Party.

As there are now a majority of Labor Attorneys-General on the Ministerial Council, can the Attorney-General say, first, whether or not he and his Labor colleagues will continue the co-operative scheme and continue to make it work?

Secondly, will the Attorney-General and his Labor colleagues opt for the Commonwealth ultimately taking over sole responsibility for corporate affairs, thus abdicating the rights and responsibilities of the States? Thirdly, will the Attorney-General and his Labor colleagues be moving to include in the companies legislation such radical proposals as the establishment of shareholders tribunals, requiring companies to disclose all donations made for political purposes and using the companies legislation to provide for employee participation in the management of companies? Fourthly, what changes, if any, in the co-operative scheme legislation has the Attorney-General proposed, or is contemplating proposing, other than the amendments in the 1983 amending Bill which is currently available for public comment?

**The Hon. C.J. SUMNER:** I thank the honourable member for his question. The position, as far as the Labor Party is concerned regarding the co-operative scheme on companies and securities regulation in Australia, was made clear by the present Commonwealth Attorney-General, Senator Evans, prior to the last election. It has long been the Labor Party view that the most effective way of achieving uniformity and efficiency in the regulation of the companies and securities industry in Australia is by national legislation. That was recognised in 1975 when the then Attorney-General, Senator Murphy, introduced a Bill to provide for a national scheme.

It would be true to say that one of the major problems that the business community has in this country is dealing with separate laws in each State which impinge on them, whether that be in the company area or, indeed, in such areas as consumer legislation. So, if we can move towards uniform legislation throughout Australia in this area where there is free trade between the States, given that we have the one market, it is surely desirable that there be one law dealing with that market. That was the proposition put forward in 1975 by Senator Murphy when, I believe, a Bill was introduced into Parliament but not proceeded with.

Following that, in 1978 the co-operative scheme was established by the Fraser Government in conjunction with the States, including South Australia and New South Wales, and that agreement was finally approved at Maroochydore in Queensland. That is another means of achieving uniformity, although I think that it would be true to say that it is a fairly unwieldy means of achieving it. The Ministerial Council is in some ways an unwieldy body and presents diffficulties.

To give the Council one or two examples, the current Chairman of the National Companies and Securities Commission was engaged almost three years ago by the Ministerial Council to head that commission, yet, up until Friday his salary, the manner in which he was to be paid and his superannuation had not finally been determined.

**The Hon. K.T. Griffin:** Haven't you fixed that yet?

**The Hon. C.J. SUMNER:** It was fixed last November and confirmed on Friday. All I am saying is that a Ministerial Council of seven Ministers sitting around took 2½ years to determine what this man should be paid and what his superannuation entitlement should be.

I should say that the superannuation entitlements have not yet been determined, although the principles by which they should be determined have been. All I do is provide some indication to the Council that the Ministerial Council system is an unwieldy one, and that is one example. However, there are constitutional problems with a scheme that is based entirely on Commonwealth constitutional power; that is recognised by the Labor Party, and Senator Evans made clear during the election that the Labor Party would continue with the co-operative scheme, at least in the immediate future. Evidence of that was quite clear on Friday when there was a meeting—indeed a very objective meeting—of the Ministerial Council. Most people agreed that under my chairmanship the meeting took a number of decisions that had been hanging around for a long time. A firm decision was made to establish a Company Law Reform Committee. A firm decision was also taken on the Accounting Standards Review Board. Both were significant matters.

**The PRESIDENT:** Order! I see, I presume, a Minister's assistant or whatever coming within the precincts of the Chamber, and I ask him not to do that again.

**The Hon. C.J. SUMNER:** It was, I believe, quite a successful meeting on Friday, and a number of significant matters, such as the two that I have mentioned, were advanced. So, specifically, yes; it is Labor policy to continue with the co-operative scheme for the immediate future but, of course, we will have to keep the scheme under review to ensure that it is effective and not too unwieldy, as I believe it has the tendency to be.

Secondly, for the immediate future we will not opt for sole Commonwealth responsibility in this area. Thirdly, the question of what changes will occur to the co-operative scheme will be the subject of discussion in the Ministerial Council. The Bill that was more or less settled last year has not to my knowledge had any major changes made to it. Certainly at the November meeting no basic or substantial policy changes were made to it.

In the meeting on Friday, although I understand that some drafting matters were attended to, there were no substantial changes. On behalf of South Australians, I pursued very vigorously the question of disclosure by beneficial shareholders and nominee shareholders, which is one of the current weaknesses because there can be levels of holdings in companies which the companies cannot ascertain accurately because the holders of the shares hide behind nominee companies or trustees. That needs to be fixed up.

**The Hon. K.T. Griffin:** That is in the 1983 Bill.

**The Hon. C.J. SUMNER:** Yes, but I was concerned that if the 1983 Bill were to be delayed that matter should be dealt with as quickly as possible, because it is of concern to a number of South Australian companies and obviously has implications for take-overs; that action was reported in the *Advertiser* on Saturday. So, at this time there have been no substantial changes in the Bill that is proposed to be introduced later this year. The future changes to the companies law will be carried out after discussion in the Ministerial Council and presumably will also be based on reports that will be forthcoming from the Company Law Reform Committee which, I hope, is soon to be established.

## FIRE BRIGADES

**The Hon. R.C. DeGARIS:** I seek leave to make a brief explanation before asking a question of the Leader of the Government in this Council about the funding of fire brigades.

Leave granted.

**The Hon. C.J. Sumner:** Why ask me?

**The Hon. R.C. DeGARIS:** Because it is a policy matter but, if the Attorney-General believes that someone else is better able to answer the question, he can redirect it. Governments throughout Australia have been examining the question of fire brigade funding for some time. I point out to the Council that many States have already made changes in this procedure. For example, a Bill is now before the Queensland Parliament and, although it has not yet been debated, that Bill will be debated in the present session. It provides that 87.5 per cent of the cost of funding fire brigades will come from a State Government levy on municipal rates and that 12.5 per cent will come from the Government.

Some time ago Tasmania made a change in relation to the funding of fire brigades, and I believe that the new Western Australian Government intends to make a change to the funding procedures in that State. The Council will recall that in South Australia a committee which reported on the funding of the fire brigade in South Australia recommended considerable changes. Has the Government any intention of following in this State the procedure of other States? Will there be changes to the funding of the fire brigade in South Australia?

**The Hon. C.J. SUMNER:** To my knowledge, no decision has been taken on this matter at this time. The question of the funding of fire brigades is a very vexed one. The matter was addressed by a select committee from another place last year. Beyond that, I do not have any specific information on Government policy. Certainly, at this time no decision has been taken, but I will endeavour to obtain further information for the honourable member.

## SCHOOL DENTAL SERVICE

**The Hon. ANNE LEVY:** I seek leave to make a brief statement before asking the Minister of Health a question about the school dental service.

Leave granted.

**The Hon. ANNE LEVY:** Last week the Government announced an extension of the current school dental service to provide free dental service to secondary schoolchildren who are in receipt of free books. I understand that this plan has been criticised by some dentists and the Hon. Mr Burdett, the Opposition spokesman on health. Can the Minister tell the Council the relative costs of providing this service for schoolchildren under the plan proposed by the Government as opposed to a plan of using private dental practitioners?

**The Hon. J.R. CORNWALL:** I thank the honourable member for her question, which is a very good one and which shows her deep concern, unlike that of some members opposite. I was most happy to be able to announce last week the extension of the school dental service to secondary schoolchildren in receipt of free books. I am only sorry that the original idea was not mine—it was put up by senior officers in the department, and I think it is an absolutely brilliant idea. The cost is about 13 000 27 cent postage stamps—no more.

*The Hon. J.C. Burdett interjecting:*

**The Hon. J.R. CORNWALL:** We are doing it. I will speak slowly, because I know that the honourable member has trouble understanding the health area. I know that he does not understand it.

**The Hon. L.H. Davis:** What's your motto—

**The PRESIDENT:** Order!

**The Hon. J.R. CORNWALL:** The honourable member is one of the weakest things ever to come into this Parliament. He should stay out of it, for God's sake! What has happened is that 13 000 children are on the Education Department's free book list, as the honourable Miss Levy rightly said. One gets on that list only if one is from a very low income family.

So, immediately, we are providing a free service to 13 000 secondary school students from low income families. As I started to say before I was rudely and inappropriately interrupted, the cost is that of notifying those families by letter from the list held in confidence by the Education Department.

The service will be delivered at the existing primary school clinics by existing personnel, that is, dentists and therapists within the school dental service, so it will cost nothing—literally nothing—apart from the cost of notifying students that they are eligible to participate, and processing their application. It will cost nothing as dental health will continue to improve because of a variety of factors. We are extending from 9.4 months to 10 months the re-examination period of primary schoolchildren. By just that relatively short extension we can take on board 13 000 additional patients and keep their oral health as good as it was when they left primary school.

These are the class of kids who have no hope whatever of going to a private dentist. Their parents simply cannot pay on a fee-for-service basis. Let me make that absolutely clear: to provide a comparable service, as some dentists and the shadow Minister of Health want through private fee-for-service practice would cost more than $350 000 a year. I ask the Council to consider the difference. On the one hand, there is no additional cost, while on the other hand the cost is $350 000. They are the relevant costs. In regard to the shadow Minister's additional criticism—my God, may John Burdett never, never, never, no matter what political accidents we have, be Minister of Health. That would be a tragedy, a political tragedy.

*Members interjecting:*

**The PRESIDENT:** Order! I ask honourable members to cease interjecting.

**The Hon. J.R. CORNWALL:** The interjections are making me lose my train of thought, Mr President. Further, to make the position absolutely clear, I indicate that as part of our policy we said that we would extend a dental service—not the existing service necessarily—to secondary school students. What we have done rapidly (I could not wait, it had to be put in place this year) is extend the existing service to all the kids from low income families.

I am very proud of that because it is the most significant initiative that I have been able to take in Labor's first four months in office. I have extended that, and I have appointed Dr David Barmes, a distinguished Australian dentist, currently with the World Health Organisation, who will be assisted by the immediate past Federal President of the Australian Dental Association, from Sydney, in reviewing—

**The Hon. J.C. Burdett:** What about—

**The Hon. J.R. CORNWALL:** What about the eight reviews—I can give the honourable member many details of that. I am proud, because they have cost us about a third of what the Government to which the honourable member belonged spent on consultants in the health area. Close to $750 000 a year was spent on consultants in the health area alone during the three years of the Liberal Government. If the honourable member wants some day to talk about the costs of inquiries and consultants, he should please bring it up. Dr David Barmes and the immediate past Federal President of the A.D.A. will be conducting a review of the school dental service to put to rest, I hope for all time, the sort of distortions that are pedalled by some dentists and the shadow Minister. If there are any difficulties in the area, they will highlight them, and I will move rapidly to fix them.

As a matter of interest, this world authority whom we are bringing to Australia and who is keen to come here will be assisted by one of the most senior people in the profession, namely, a dentist from Sydney, and this will be at a total estimated cost of $11 000. It is enormous value for money.

## ENTERPRISE FUND

**The Hon. M.B. CAMERON:** Has the Attorney-General a reply to the question that I asked on 16 December last year about the South Australian Enterprise Fund?

**The Hon. C.J. SUMNER:** The South Australian Enterprise Fund is a major policy commitment of this Government. Comprehensive investigations were initiated immediately following the State election and are continuing. Due to the

complexity of the financial concepts involved, considerable time is required to examine the issues thoroughly before establishing the fund. Announcements regarding the precise structure and nature of the fund's activities will be made when appropriate.

## HEALTH COMMISSION CHAIRMAN

**The Hon. R.I. LUCAS:** I seek leave to make a brief explanation before asking the Minister of Health a question about the appointment of the new Chairman of the Health Commission.

Leave granted.

**The Hon. R.I. LUCAS:** Earlier this year the Chairman of the Health Commission, Mr B. McKay, resigned his position. Since that time I understand that there has been an Acting Chairman, Mr Brenton Kearney.

**The Hon. J.R. Cornwall:** Dr Brenton Kearney.

**The Hon. R.I. LUCAS:** Yes, Dr Brenton Kearney. He has been the Acting Chairman of the Health Commission while the Government has contemplated a new appointment. In fact, last week the Minister introduced legislation to amend the Health Commission Act to enable him to offer the new Chairman a seven-year term rather than the unexpired portion of Mr McKay's term. I have been informed by several members of the Health Commission staff that the new Chairman is likely to be Dr Sidney Sax, who is currently Chairman of a group conducting an inquiry into hospital services in South Australia. Of course, Dr Sax has a long history of involvement in health matters and is a visiting Fellow at the Australian National University, Canberra, and Chairman of the Visiting Committee of the School of Health Administration at the University of New South Wales. Will the Minister say when the appointment of a new Chairman of the Health Commission is likely to occur, and will he confirm that Dr Sax is likely to be the new Chairman of the Health Commission?

**The Hon. J.R. CORNWALL:** I would be delighted if I could do that. Sid Sax will not be the new Chairman. He is a very distinguished fellow, and we would have been delighted to have him. Dr Sax is 62 years of age and officially retired (although, possibly, he has never worked harder in his life than he is at the moment). I asked Dr Sax about the possibility of his becoming Chairman, and he told me that it would result in a divorce, because he has a long suffering wife (I say that lightheartedly). I assure the honourable member that Dr Sax will not be the new Chairman.

I will briefly run through the series of events in relation to the appointment and when it will occur. First, we had to clear up the matter of Mr McKay. I would have been very happy to have Mr McKay stay on—he did well and was one of the better appointments made by the previous Government.

**The Hon. K.T. Griffin:** We made many good ones.

**The Hon. J.R. CORNWALL:** The previous Government made one or two and, I believe, the appointment of the Director of Correctional Services was also outstanding. However, that is not directly relevant to my answer.

**The Hon. K.T. Griffin:** No, it's not.

**The Hon. J.R. CORNWALL:** Do not interrupt me, Trevor. We then had to assist with transfer arrangements, particularly in relation to superannuation, and so on, to expedite Mr McKay's transfer to New South Wales. That could not be done until January. We then advertised the position nationally and received a large number of replies. In some ways, the field of applicants, although it was Melbourne Cup size, was perhaps a little disappointing, so we then searched to see whether there were one or two people of outstanding quality who might have been missed in the original application call.

We then drew up a short list, put it to the panel, and so on. We now have a very short list of applicants. Just about everyone on all floors of the Westpac building believes they know whom we will be recommending, but I am surprised that the honourable member picked up Sid Sax. We now have the contract virtually sealed, if not signed and finalised. Within the next two weeks I will be putting to Cabinet a recommendation concerning who might be the next Chairman.

Concurrently with that, I will be recommending who should be the new Director of the Institute of Medical and Veterinary Science. I am sure that they will be the two most important appointments that I am likely to make in my Parliamentary career, so I have taken a little time to make sure that I have got it absolutely right. I assure honourable members that both appointees will be most distinguished in the medical field. If members opposite bear with me for a week or two, I am sure that they will be as happy as I am with the people that are selected for the jobs.

## PRIVATE SCHOOL GRANTS

**The Hon. ANNE LEVY:** I seek leave to make a brief statement before asking the Minister of Agriculture, representing the Minister of Education, a question about grants to private schools.

Leave granted.

**The Hon. ANNE LEVY:** Successive Governments have received reports from the Advisory Committee on non-government schools in South Australia on the distribution of State per capita and needs-based grants. As far as I know, recommendations from this committee have been followed by all Governments in relation to the grants allocated to private schools. The committee publishes each year a report showing the grants that have been awarded to the various private schools in this State. However, that report is not widely circulated and is not sent to members of Parliament. Although it is a public document, it is not widely available.

Many members of Parliament may not know that last year St Peters Boys College, for example, received $400 156 from the State Government, that Pembroke school received $455 698, Prince Alfred College $410 960, Scotch College $375 780, Westminster School $380 590, Loretto convent $389 410, or that Pulteney Grammar received $388 410. This is all public information, and I am sure that members opposite would not be aware of it.

**The Hon. L.H. Davis:** Are you going to give us the full facts?

**The PRESIDENT:** Order! Let the honourable member ask her question.

**The Hon. ANNE LEVY:** In other States similar committees make recommendations to their Governments regarding the distribution of grants to non-government schools. I understand that in Victoria this year the Government has published in the press details of the sums allocated to the various non-government schools, as a means of providing the community with information. I further understand that the New South Wales Government is considering following the same course.

Has the Minister considered following the example set by the Victorian Government in publishing in the press details of grants awarded by the South Australian Government to non-government schools in this State?

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

**The Hon. R.J. RITSON:** I desire to ask a supplementary question. Will the Minister also provide parallel figures showing comparative statistics for schools and per capita figures in the State education system?

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

## MINING EXPLORATION AND EMPLOYMENT

**The Hon. L.H. DAVIS:** I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Mines and Energy, a question about mining exploration and employment.

Leave granted.

**The Hon. L.H. DAVIS:** As a result of the Government's recent decision to stop the mining of uranium at Honeymoon, I have been advised that 14 men previously engaged on that project are now out of a job.

I have also heard from several sources that mining companies, both large and small, engaged in exploration in South Australia have expressed dismay and amazement at this decision. There is widespread agreement in the industry that this decision will lead to a shortfall in mining exploration licences next year. Mining companies advise me that a company searching for and finding copper in South Australia may also discover uranium, as was the case with the Western Mining Corporation at Roxby Downs.

In view of the Government's recent decision, any exploration for minerals would be a waste of both time and money. My questions to the Minister of Agriculture, therefore, are as follows: first, is he aware that 14 men have lost their jobs as a result of his Government's decision to stop uranium mining at Honeymoon; secondly, does the Government have any intention of finding jobs for these people, who will be unemployed as a result of the Government's action; and thirdly, is he aware whether mining companies operating in South Australia, and other companies contemplating mining in this State, will scale down or cease exploration with a consequent loss of investment to South Australia?

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

## RAMSAY TRUST

**The Hon. I. GILFILLAN:** Has the Attorney-General an answer to my question of 15 March about the Ramsay Trust?

**The Hon. C.J. SUMNER:** If the Ramsay Trust wished to re-enter the market, it would have to issue a new prospectus. Government guarantees are given after consideration of the recommendations of the Industries Development Committee. The Government regards the recommendations in this case as specific to the conditions pertaining to the issue and would feel bound to refer any future application to the committee for consideration in the context of conditions applicable at the time.

## SALVATION JANE

**The Hon. H.P.K. DUNN:** I seek leave to make a brief explanation prior to asking the Attorney-General a question about setting up a tribunal to investigate the release of biological agents for control of Paterson's curse.

Leave granted.

**The Hon. H.P.K. DUNN:** There has been an almost complete lack of activity in trying to resolve the Paterson's curse biological control issue. No-one seems to quite understand the procedure subsequent to the Supreme Court decision in South Australia to set up a three-person tribunal to hear and collect evidence on the pros and cons of Paterson's curse. Even though the setting up of this tribunal was recommended last year, the tribunal has not yet been established (as far as I am aware). This is quite intolerable as the farming community has been waiting to have this issue of 'to release or not to release' a biological control agent cleared up for some months. Is the Minister aware of the slow progress being made on this issue and, if so, what measures has the Minister taken to have the tribunal selected and set up to resolve the above problem? If not, will the Minister have this matter investigated with the intent of carrying out the Supreme Court direction?

**The Hon. C.J. SUMNER:** The main trouble is that, although many pastoralists desire that salvation jane be eradicated, the bee keepers want it retained. As I understand, the Supreme Court action mentioned was a private one in which the State had no interest. This matter was referred to me by the United Farmers and Stockowners and I had some inquiries made. However, because this matter involved a private action between proponents and opponents of the control of salvation jane, there is nothing that the Government can do directly to intervene to ensure that any terms of settlement are carried out.

A suggestion was made to me by the United Farmers and Stockowners that I could, somehow or other, take contempt proceedings because the terms of settlement have not been carried out. That is not something within my power as Attorney-General, given that this involved a private action. It would be open to one of the parties to that action to take proceedings if terms of settlement have not been complied with. However, there is nothing I can do directly about the matter. As the honourable member has raised this matter, I will attempt to obtain the most up-to-date information about the court proceedings for him. If it has been agreed between the parties that a tribunal should be set up (in other words, that there should be some independent referee brought into the proceedings), that is a matter for the parties to resolve. If they cannot resolve that matter, presumably the action has to proceed. I will attempt to obtain an up-to-date report and advise the honourable member of my findings.

## CONTEMPT OF COURT

**The Hon. DIANA LAIDLAW:** I seek leave to make a short statement prior to asking the Attorney-General a question about contempt of court.

Leave granted.

**The Hon. DIANA LAIDLAW:** In a letter to the Editor printed in the *Advertiser* on 24 March, M. Williams of Aberfoyle Park wrote, and I quote:

> Your cartoon ... depicting an oafish builder's labourer using a reluctant Mr Hawke as a battering ram with which to free Norm Gallagher from gaol, cannot go unchallenged. Gallagher is serving three months imprisonment for uttering one ungrammatical, poorly formulated sentence which was solicited by the Press and given wide media coverage.
>
> He said [Mr Gallagher]: 'I'm very happy to the rank and file of the union who have shown such fine support for the officials of the union and I believe that their actions in demonstrating, in walking off jobs ... I believe that has been the main reason for the court changing its mind.'
>
> I am of the opinion and I can probably get three months gaol for saying this—that Gallagher's public image as a thug, his stupidity in accepting employers' money for personal gain, and the fact that he is a known Communist, created an atmosphere in which his gaoling could serve as a pre-election stunt on behalf

of an embattled, anti-union Government. He was gaoled, in fact, on the day Mr Fraser launched a public tirade against the unions as a key part of his election strategy . . . Mr Hawke may not like Gallagher, but he can't leave him in gaol as a legacy of the politics of his predecessor, or because of the prejudices of a cartoonist.

Mr Gallagher was gaoled by the Federal Court of Australia for contempt of court because of remarks he made. He subsequently appealed to the High Court of Australia but his appeal was dismissed.

Does the Attorney-General believe that the statement by M. Williams implies that judges of the Federal Court were acting in collusion with Mr Fraser as a part of the former Prime Minister's pre-election tactics and that judges of the High Court, by refusing Mr Gallagher's appeal, were condoning such collusion? If so, does the Attorney-General, being responsible for judicial affairs in this State (and since the letter was printed in this State), believe that he should bring this matter to the notice of the Registrars of the Federal Court and High Court, since it brings into contempt the integrity of the judges of both courts?

**The Hon. C.J. SUMNER:** I have not studied in detail the letter mentioned. I would have thought that, if there were any problems involving contempt of the High Court or any other Federal Court, then that contempt would be a matter to be dealt with by those courts, or by the Federal authorities. I believe that all the matters that the honourable member raised were really matters within the province of the Federal authorities and I do not think that it is appropriate for me to take the matter any further.

**The PRESIDENT:** Before calling on the Orders of the Day, I point out that it is a rule of the Council that people should not be permitted to write when they are sitting in the galleries. I am sure that that occurs at times because of ignorance of that rule. I have not made the rule: it is a rule of the Council, and I make the point so that Ministers' assistants or other people in the galleries observe the rule.

## EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 March. Page 367.)

**The Hon. K.T. GRIFFIN:** The policy of the Liberal Party with respect to the right of an accused person to make an unsworn statement from the dock without being liable to cross-examination is clear and unequivocal, and has been since before the 1979 State election. Consistently the Liberal Party both in Opposition and in Government has been committed to abolition of the right of an accused person to make an unsworn statement. Contrast that with the stance of the A.L.P. Before 1979 its policy was abolition of the right of an accused person to make an unsworn statement. Since 1979 there has been an 'about face' by the Labor Party—retention of the right of an accused person to make an unsworn statement with some window-dressing to firm up on the rules.

The Liberal Party went to the 1979 State election committed to abolition and twice in the last Parliament attempted to abolish the unsworn statement. On both occasions the Bill was laid aside because of the attitude of the Australian Labor Party and of the lone Australian Democrat, the Hon. Lance Milne. The A.L.P. and the Australian Democrat combined to appoint a select committee, on which the Liberal Government refused to serve, holding firmly to the view that there had been enough talking in South Australia, in other States and in other Commonwealth countries, and that it was then time for action.

Before the 1979 State election, it was the clear policy of the A.L.P. to abolish the unsworn statement. On 7 November 1978, in reply to a question by the Hon. J.C. Burdett to the then Leader of the Council (Hon. D.H. Banfield), the Hon. Mr Banfield said:

I have been informed by the Attorney-General that the recommendation of the Criminal Law and Penal Methods Reform Committee that 'unsworn statements in criminal trials be abolished' will be included in legislation that is currently being drafted. It is unlikely that a Bill will be ready for introduction this year.

Even the Hon. Anne Levy was in favour of abolition at that time when, on 20 July 1978 in the Legislative Council, she said:

I know that the Mitchell Committee has recommended that the practice of giving unsworn statements from the dock on which cross-examination is not available be abolished, not just for rape trials but for all trials. I hope that this recommendation can be implemented as soon as possible.

Even the then Women's Adviser in the Premier's Department, Ms Deborah McCulloch, was in favour of abolition when, in December 1977, she wrote to the then Attorney-General urging quick action on the Mitchell Committee Report.

In the context of the debate about the unsworn statement, it would be as well to remember that the Mitchell Committee, as long ago as 1974, recommended the abolition of the unsworn statement. In Western Australia and Queensland, the unsworn statement has been abolished, as in New Zealand. In the United Kingdom a recommendation has been made for abolition. In Victoria, two reports have been presented in the past few years, one in favour of abolition and one recommending retention but with some tightening of procedures.

It is interesting to note that the present Victorian A.L.P. Government has indicated that, while it adheres to the law as it presently stands in Victoria, it will consider two reports, one by the Australian Law Reform Commission and another by the Victorian Law Reform Commission, when those reports, in regard to the abolition of the unsworn statement, become available. Victoria has not closed the door to abolition. It should also be noted that in the Northern Territory a new criminal code is to be introduced, containing a provision that will abolish the right of the accused person to make an unsworn statement.

Where the right of an accused person to make an unsworn statement has been abolished, no injustice is reported. The suggestion has been made that the unsworn statement is used more in South Australia than in any other State in Australia where the right remains. In the United Kingdom I understand that the right to make an unsworn statement is used only infrequently. When I first introduced the Bill to abolish the unsworn statement in August 1980 I said:

The main purpose of this Bill is to abolish the right of an accused person to make an unsworn statement of fact in his defence. The right of an accused person to make such a statement is a vestigial consequence of an old rule, long since abolished, under which an accused person was prevented giving evidence in his own defence on the ground that, if he were permitted to do so, the temptation to commit perjury would prove irresistible. The right to make an unsworn statement represented a relaxation of the previous uncompromising rule, but when the rule was itself abolished the right to make an unsworn statement, rather anomalously, survived.

The rule serves no useful purpose in the administration of justice in South Australia. Immediate and positive action to abolish the unsworn statement is the only proper course. Those who have argued in favour of retention of the unsworn statement have claimed principally that the legal system would not protect Aboriginal defendants and others who give evidence on oath and thus become subject to cross-examination. The Mitchell Committee put that concern to rest when it said:

We have been concerned particularly with the case of the unsophisticated type of Aborigine who tends to give the answer which he believes will please his questioner. We think, however, that the judge and jury, in their respective ways, can be relied upon to appreciate and make allowances for the witness who may be at a disadvantage for lack of education or lack of comprehension. One danger with the illiterate or semi-illiterate witness is always that he may answer a question as he did not intend to answer it merely because he did not comprehend all the words in the question. It is for the judge and counsel for the accused to be alert to appreciate any difficulties which the witness may have in understanding what is put to him and to see that such difficulty is corrected.

Of course, whether it seeks to protect Aborigines or any other person, the question arises why persons of other ethnic origins, the disabled and people who are illiterate or semi-literate should not also be protected. If one is looking to protect classes of people on the basis of what I would suggest is a false presumption that they would not be looked after by the courts, that creates further difficulties in determining the ambit of any amendment to the Evidence Act.

The Mitchell Committee's assessment obviously applies equally to these groups of people. It should also be remembered that the trial judge has certain discretions that would allow him to ensure that accused persons have adequate protection from unfair or unreasonable treatment by counsel.

No good argument has yet been presented since 1980 in the course of debates in this Council for the retention of the right of an accused person to make an unsworn statement. It is a sop to provide for the retention of the unsworn statement but with some 'tightening up' and providing the right for the prosecution to rebut statements made in an unsworn statement. What is required is not the right to rebut, but the right to test an accused's statement by cross-examination.

There are a number of groups and individuals in the community whom I understand are concerned about the Bill before us in that it retains the right of an accused person to make an unsworn statement. I understand that groups like the Rape Crisis Centre, the Victims of Crime Service and the Women's Electoral Lobby have all expressed concern about the retention of the right of an accused person to make an unsworn statement.

The Government's Bill elevates the unsworn statement almost to the status of evidence. It is clearly not evidence, and the anachronism of an unsworn statement should no longer be enshrined in our law. During the Committee stage of the Bill I will be moving amendments appropriate to the abolition of the right of an accused person to make an unsworn statement and providing some safeguards for an accused person against cross-examination as to his character and previous convictions except in circumstances to be specified in the amendments. That picks up the principle of the Mitchell Committee's recommendations, although it does so in a different form.

During the Committee stage I will also be raising the question of the way in which new section 18a is to be administered in the courts and how the courts are likely to establish procedures to ensure that material included in an unsworn statement which does not accord with the rules does not come before a jury. I will also be raising the question of the proposed amendment to new section 68 because it seems to me that the drafting would extend to unsworn statements beyond the criminal jurisdictions of the Supreme Court and the District Court to Magistrate's Courts, to courts of summary jurisdiction.

**The Hon. M.B. Cameron:** That would make it worse.

**The Hon. K.T. GRIFFIN:** That is my understanding of the drafting. I will also ask the Attorney-General about it during the Committee stage because if, even inadvertently, the right to make an unsworn statement is to be extended to Magistrate's Courts I would very much oppose that extension.

The choice, with respect to the right of an accused person to make an unsworn statement, is clear—abolition or retention. The Liberal Party maintains its integrity and consistency by clearly and unequivocally proposing abolition.

**The Hon. M.B. Cameron:** In 1979 the Labor Party did.

**The Hon. K.T. GRIFFIN:** That is correct. The Labor Party prevaricates and now introduces legislation which can only be described as the weak option in the face of dissent among its ranks and supporters. To enable me to move my amendments during the Committee stage of the Bill, I support the second reading.

**The Hon. ANNE LEVY:** I support the second reading of the Bill. I utterly refute any charge made by the Hon. Mr Griffin that there is dissension in the Labor Party on this matter. The honourable member quoted from remarks I made in 1978, but did not choose to quote from remarks I made in 1980, 1981 or 1982. The fact is that I have changed my mind during that five-year period and, to me, that is not something to be ashamed of. It proves that I have an open mind and that, if facts are marshalled and presented to me accurately, I am prepared to listen and not to adopt fixed, unchanging positions.

Concerning the question of the unsworn statement, it is true that many women's groups have, for a long time, felt that the solution to one of the problems which faces women witnesses would be the abolition of the unsworn statement. However, what the women's groups have objected to is the use which has been made of unsworn statements by accused persons, particularly individuals accused of rape who, in the course of an unsworn statement, make all sorts of allegations concerning the principal witness for the prosecution (in other words, the woman who has been raped).

It is certainly true that the unsworn statement has been used to cast all sorts of slurs and innuendoes which would never have been permitted in sworn evidence. What convinced me to change my mind was the realisation that the problem was in preventing people making an unsworn statement from abusing this right and getting away with saying things which they could not get away with if they were giving sworn evidence. This had to be prevented, and the Bill before us does that. It does not remove the right of an accused person to make an unsworn statement, but will mean, when it becomes law, that unsworn statements will be subject to exactly the same rules as sworn evidence.

The principle of section 34i of the Evidence Act will apply. I remind honourable members that that section of the Act refers to the previous sexual history of the victim of a rape. The whole content of the unsworn statement will not be able to be any different from what could be said in sworn evidence. The principles of rebuttal will apply to unsworn statements as apply to sworn evidence. In terms of content the same rules will apply for unsworn statements as apply to sworn evidence.

On occasions it has also been said that the current rules of court enable a judge to prevent people saying things in unsworn statements which go beyond the bounds of what can be said in sworn evidence. That may or may not be the case, but it is certainly true that judges have not exercised this discretion and that people have said things in unsworn statements which they would not be able to say if they were giving sworn evidence. This Bill provides that accused persons cannot report hearsay and cannot make allegations about the previous sexual history of the victim and so on.

When this Bill becomes law it will make clear to the Judiciary that exactly the same rules should apply to unsworn statements as apply to sworn evidence. The only difference is that the giver of the unsworn statement is not able to be cross-examined. The points of view which the Hon. Mr Griffin alleged to have been covered by various women's

groups have been covered by this legislation, but women's groups who objected to the unsworn statement were not necessarily objecting to the unsworn statement *per se* but to what had been got away with by people using the unsworn statement. With this legislation the unsworn statement will not be able to be abused as it has been in the past. Defendants making use of it will not be able to say anything which they would not have been able to say if giving sworn evidence.

One does not remedy one injustice by creating another. There have been injustices in the use of the unsworn statement as it has applied up to date. We could remedy that injustice by abolishing the unsworn statement. This may, however, be rather like throwing the baby out with the bath water and we may be in danger of creating another injustice in its place.

The legislation before us is very careful to avoid this possible pitfall. The abuse of the unsworn statement will be prevented by the passage of the legislation while retaining the value of unsworn statements for some defendants who, as agreed by the Hon. Mr Griffin, have difficulties with the situation of cross-examination. It would be a shame to transfer injustice from one group in the community to another merely to remedy the injustice imposed on the first group, whereas the measure before us removes that injustice without creating another one.

I would be the last to pretend that the legislation before us is the only amendment necessary in the Evidence Act to prevent abuses which are unnecessarily degrading and humiliating for victims of sexual crimes like rape, but the answer is not to remove the unsworn statement: it is to review section 34i, which is apparently not working in the way that Parliament intended when that section of the Evidence Act was enacted. The select committee report, to which frequent reference has been made on this topic, not only recommended the outline of the legislation which is now before us, but also recommended that there should be a thorough review of section 34i; it is this review which may hopefully remove the further injustices which still occur in certain trials. However, if the unsworn statement were to be abolished and section 34i remain as it is, injustices would still occur because section 34i, from many reports, is not working in the way that we intended. This further review of section 34i, I hope, will prevent the abuse and humiliation of rape victims which was not removed when section 34i was enacted, although it was intended to be removed.

I will not speak further at this stage. In the unlikely event that members of the public wish to know the full debate on the matter of unsworn statements, I can only suggest that they read earlier debates on this topic in *Hansard,* where not only my views but those of many other members of this Chamber have been expounded at much greater length. I support the second reading.

**The Hon. DIANA LAIDLAW** secured the adjournment of the debate.

## TRANSPLANTATION AND ANATOMY BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 644.)

**The Hon. J.R. CORNWALL (Minister of Health):** I thank honourable members for the attention that they have given to this Bill. It is particularly gratifying to see what is substantially a bipartisan approach on an important issue such as this. It is bipartisan in many ways because the initial authorisation to proceed was probably given by either the Dunstan or Corcoran Cabinet. It was certainly carried on throughout the life of the Tonkin Government with the support of my predecessor, and we picked it up as soon as we came into Government and brought it into the Council as soon as it was reasonably possible. So, there is a very substantial degree of agreement on the matter between the major Parties. Contributions from various members have ranged from comment on medical and scientific advances to moral and ethical issues involved in tissue donations through to laws in other States and other countries and statistical detail on renal transplantation and dialysis. Many comments could be made in reply to matters raised by the various members who contributed to the debate; however, I do not really want to delay the progress of this Bill unduly and I believe that it would be more appropriate to respond to those matters as they arise during the Committee stages.

I would say just a few things. The Hon. Mr Burdett has an amendment on file to clause 29, which refers to bodies for anatomical purposes. I have had correspondence from the Anglican Archbishop of Adelaide on the same subject. The points that have been made are good ones and I intend to take them on board. The fact is that it just does not seem to be necessary to have the proposed legislation as presented to the Council for that purpose. The Hon. Mr Burdett and the Archbishop both make the point that we are referring there, quite possibly in many cases, to people who die without relatives and who for various reasons may have fallen on very hard times. They are often alone in the world and have enough problems leaving the world with dignity without our being seen, perhaps in some circumstances, to be body snatchers.

The point I would make there is that in reality we are offered more bodies for anatomy schools than we can handle, anyway. One practical consideration is that it saves funeral expenses. It is common for people to offer their bodies to anatomy schools and, as I said, we have more than we need. I indicate now that it is my intention to accept the Hon. Mr Burdett's amendment to clause 29.

The Hon. Mr DeGaris raised many interesting points. This subject is near and dear to his heart. He has done much thinking, writing and speaking on it over more than 15 years. I do not intend to canvass all the points that he raised now, with the exception of three of them. This is not the appropriate Bill in which *in vitro* fertilisation and artificial insemination should be canvassed. I will be referring to the donations by minors of non-regenerative tissue, opting out rather than opting in, and informed consent.

I cannot support the Hon. Mr DeGaris's comments in regard to opting out. At this time, South Australian society is not ready to accept that. To insert something along those lines would take us into unnecessary controversy and might well delay unreasonably the passage of this Bill. I do not intend to support anything along those lines at this time. However, it is a matter that the Hon. Mr DeGaris may wish to pursue in the public arena and I, for one, would not discourage him. I have to put to the Council at this time that the Hon. Mr DeGaris, at least, would be substantially ahead of the majority of public opinion.

In regard to the donation of non-regenerative tissue by minors, again I really cannot support that concept at this time, for some of the same reasons. It would cause unnecessary controversy and might delay the passage of the Bill. There is no doubt that we would get objections from paediatricians, amongst others, and from a wide range of groups and individuals in the community, ranging from church to community groups. Personally, I cannot support it in any way. I have some difficulty in coping with the notion that minors should give non-regenerative tissue. It is a very big step and I believe one that ought to be taken only by an adult who can give genuine informed consent.

The next major point that was raised by the Hon. Mr DeGaris involved informed consent, particularly statutory informed consent. This is an area of the law in the medical and health field generally which, at this time, is quite unsatisfactory. It is a question that has concerned me for some time—so much so that, shortly after I became Minister of Health, I asked our senior legal services officers in the commission to convene a working party to begin looking at the precedents and legislation around the world that might be applicable.

It seems that even that has not produced anything at this moment that is terribly constructive. In fact, we may have to give some consideration to setting our own precedents if we are to move on the border areas of statutory forms of consent rather than merely relying on the common law. That working party is working closely with the Sax committee of inquiry into South Australian hospitals. I am looking forward to getting recommendations on that towards the end of the year. In the meantime, I would be interested if the Hon. Mr DeGaris could help the working party or the Sax committee in any way. If he wished at any time to give written or oral evidence, either formally or informally, I would be delighted if he did so.

I conclude my remarks by paying a tribute to the work which the Hon. Mr Blevins has done on the Natural Death Bill. Of course, it is not directly related to the Bill now before the Council, except that the definition Bill has some overlap with a small part of the Hon. Mr Blevins' Bill. I hope that that will go through in this session. The work that has been done on that by the Hon. Mr Blevins is a substantial monument to his time in this place. Frankly, if he never achieves anything in the future, if his political enemies were to say that he had never achieved anything in the past—although I would reject that strongly—the Natural Death Bill, when it becomes an Act, will stand as an outstanding achievement of his political career.

*The Hon. R.C. DeGaris interjecting:*

**The Hon. J.R. CORNWALL:** The way the Hon. Mr Blevins was able to walk down a middle line and find consensus was a tribute to his great skills as a negotiator.

**The Hon. R.I. Lucas:** He should be a Minister.

**The Hon. J.R. CORNWALL:** I believe that the honourable member may well be right, but I do not believe that the Hon. Mr Blevins should be Minister of Health. Having said that, I thank honourable members for their contributions. I hope that we are able to expedite the passage of this Bill through Committee.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Interpretation.'

**The Hon. R.C. DeGARIS:** As I have an amendment being drafted which is not yet on honourable members' files, I ask that we postpone consideration of this clause until the amendment is available.

Consideration of clause 5 deferred.

Clauses 6 to 10 passed.

**The Hon. R.C. DeGARIS:** There is a problem with clauses 11 to 14. I suggest that consideration of them should be postponed.

Consideration of clauses 11 to 14 deferred.

Clauses 15 to 20 passed.

Clause 21—'Authorities to remove tissue after death.'

**The Hon. J.C. BURDETT:** In his second reading explanation the Minister of Health referred to my amendment to clause 29 and a letter from His Grace, the Catholic Archbishop of Adelaide. In part, that letter refers to this clause. I think it is proper that the letter be placed on the record. The letter which is addressed to me, is dated 23 March, and reads as follows:

Thank you for your letter of 16 March 1983, and the enclosed copy of the Transplantation and Anatomy Bill and the Death (Definition) Bill. A meeting was held on Friday 3 September 1982 to discuss the proposed Bills. My representative at that meeting made the point that it seemed improper that there be only one person ('designated officer') to have the power to authorise a post-mortem or allow the deceased to be used for anatomical studies (clause 29). It was recommended that a committee be established to fulfil this function, as in the section dealing with minors.

This same point is recommended in relation to clause 21 and clause 25. Thank you for this opportunity to present these points to you. I am also writing to Mr Cornwall, making these same points.

In my second reading speech I referred to the donation of organs from deceased persons for transplantation and to post-mortem examinations. I said that I was not disturbed by the provisions of the Bill because of the need for these practices. However, I said that I was disturbed in regard to donations for research purposes because I believed that there was no need. His Grace has said that he has the same reservations in relation to clauses 21 and 25, and has suggested that a committee be set up, similar to the committee provided in relation to the transplantation of non-regenerative tissue for minors.

I certainly take the points made by His Grace. I have referred to the sensitive nature of these issues, and I think the Minister has done the same. I believe that a committee procedure under clauses 21 and 25 would be too heavy-handed. There is no need for a committee procedure under clause 29, because donations will be restricted to cases where the deceased or the senior next-of-kin have given consent. I felt that I should bring the views of His Grace to the Committee's attention.

**The Hon. J.R. CORNWALL:** I thank the Hon. Mr Burdett for raising this point. I, too, received a letter from the Catholic Archbishop. I understood that there was widespread consultation with all churches during consideration of the draft Bill last year. For that reason, I did not consider that further consultation was necessary. Clearly, the various denominations have been consulted and, in fact, there were widespread discussions. I considered the points raised by His Grace Archbishop Gleeson and decided that, on balance, I could not really accept them. I did not do that to be confrontationist or dogmatic.

A committee in a hospital situation is too cumbersome. Mr Acting Chairman, you, as a medical practitioner, would know better than any of us that there is a need to act expeditiously and responsibly. That is not possible in a hospital situation where the committee might have to meet at, say, 2 a.m. or on weekends and at other strange, out-of-hours times. It would also be difficult to get a committee together in a busy hospital, anyway. I also considered who would be the designated officer. Remembering that this procedure will only affect major hospitals in the metropolitan area, it is clear that the designated officer will be a senior, responsible medical officer who in almost all circumstances will not be involved in direct clinical work—almost certainly, he will be involved in medical administration. That allows not only the advantage of great experience and medical background but also someone directly removed from a clinical situation.

It is extremely unlikely that the designated officer would have a vested interest in a clinical or surgical unit. When all those things are considered on balance (the seniority, the administrative skills and the removal from direct contact with clinical or surgical units), I believe that quite adequate safeguards are provided in using the designated officer. The other important fact is that we have the degree of expertise and flexibility necessary to ensure that we can have the best of all worlds.

Clause passed.

**The ACTING CHAIRMAN (Hon. R.J. Ritson):** It has been drawn to my attention that there was an indication that a member would be moving an amendment to a clause in Division III. Consideration of Division III was therefore deferred. The amendment now before the Chair is to clause 17, which has already been passed. I invite the honourable member to have clause 17 reconsidered after the Bill has been dealt with.

**The Hon. R.C. DeGARIS:** That may not be necessary, Mr Acting Chairman. Clauses 5 and 12 are the main amendments and if those amendments are not carried, it will not be necessary to recommit clause 17.

Clauses 22 to 28 passed.

Clause 29—'Authorities for anatomy.'

**The Hon. J.C. BURDETT:** I move:

Page 11, lines 36 to 43 and Page 12, lines 1 and 2—Leave out all words in these lines and insert 'and is satisfied that the senior available next of kin of the deceased person has no objection to the use of the body of the deceased person for such a purpose,'.

The Minister has been kind enough to say that he agrees to this amendment, which will clarify the position if, after the first line, the word 'and' is inserted. Parliamentary counsel has informed me that the words 'or leave out words in this line' in the second line relate back to the first line. He agrees that it may clarify matters if the 'and' is inserted at the end of the first line. The amendment has been moved because there appears to be no reason to provide that bodies of deceased persons be made available for medical purposes unless the deceased person or the senior next of kin has indicated consent to such a happening.

**The Hon. J.R. CORNWALL:** I have indicated my consent to this amendment.

Amendment carried; clause as amended passed.

Clauses 30 to 41 passed.

Clause 5—'Interpretation.'

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

Page 2, line 13—Leave out 'eighteen' and insert 'sixteen'.

This Council expressed a view about the appropriate age for consent to medical and dental treatment when discussing the private member's Bill which was introduced into this place by the Hon. Anne Levy and which went to the House of Assembly. That Bill mentioned 14 years as the age at which a person could consent to medical and dental treatment without parental consent.

A select committee appointed by the Council to investigate this matter came back with a recommendation that the age of consent be 16 years. Although it may be argued that the donation of tissue is not in the same category as normal medical and dental treatment, I do not accept that argument because, had that previous Bill passed the Parliament, it would have shown 16 years as the age for giving consent for medical or dental treatment.

I have no doubt that the Hon. Anne Levy's private member's Bill would have allowed permission for tissue transplantation to be given at 16 years of age. The Council having expressed that view about a previous Bill, we should now change this Bill to coincide with that expression of opinion given some years ago.

**The Hon. J.R. CORNWALL:** The Government opposes the amendments, but does not do so in any spirit of one-upmanship or lack of co-operation. I submit that the broader moral and ethical issues raised by the Hon. Mr DeGaris in his amendment could be more appropriately canvassed elsewhere. I said when summing up the second reading debate on this Bill that we are examining in depth the whole question of statutory informed consent. It seems to me that there might be a more appropriate vehicle for canvassing these matters. I have received correspondence from Dr Tim Mathew, Director of the Renal Unit at the Queen Elizabeth Hospital, in which he strongly urges that the age of consent in this matter be left at 18 years.

This matter of the age of consent is a vexed question. I think that to insert this amendment would raise matters of controversy that would make it difficult for this to be accepted out in the world where we want it to be accepted. I believe that this matter can be more appropriately canvassed elsewhere, and for that reason I do not support this amendment.

**The Hon. J.C. BURDETT:** I support the remarks made by the Minister. I will refer to the Hon. Mr DeGaris's amendments as a whole, because they are inter-related. The question of age does relate to the question of non-regenerative tissue. If the age of consent in this matter was reduced from 18 years to 16 years, as proposed in this amendment, we would be talking (if other amendments are carried) about consent given by minors for transplantation of non-regenerative tissue—things like kidney transplants which to a donor, particularly a child donor, would be most adverse to that donor. It seems to me that the procedures outlined in the Bill are reasonable ones with regard to the transplantation of non-regenerative tissue from minors. For these reasons I support what the Minister has said and oppose the amendment moved by the Hon. Mr DeGaris.

Amendment negatived; clause passed.

Clause 11 passed.

Clause 12—'General prohibition against removal of tissue from children.'

**The Hon. R.C. DeGARIS:** Justice Kirby, who took a certain view in relation to the form of this Bill, recommended that the age of consent should be 18 years, and not 16 years as I have suggested. I was taking into account the view of this Council that has been expressed in regard to a previous question. Where regenerative tissue is involved, there is no need for any reference to the statutory committee. Where the child has a mental capacity to agree and where the parents agree, regenerative tissue could be removed from a minor.

Mr Justice Kirby and the A.L.R.C. recommended that the process in regard to non-regenerative tissue should continue but that a statutory committee should make a decision in regard to that question. I fully appreciate the difficulties involved, and I believe that other members of the Council would agree that there are difficulties. However, I do not believe that it would be just to impose an absolute prohibition on non-regenerative tissue donations from a person under 18 years of age. While it is not just to allow parents to consent on behalf of a person under 18 years of age, with all of the family pressures that may be applied to a sibling, nevertheless we as a Council should not look at the vast amount of legislation in which there is an absolute prohibition in that regard.

We have talked about this matter in regard to the attitude of the churches and people involved in certain units in the hospitals, but I suggest that, if these people are concerned, let them be on the committee. For example, if paediatricians are concerned about the matter, let us ensure that a paediatrician is on the committee. I cannot bring myself to the point where I believe that we as a Council are placing virtually an absolute prohibition on the donation of non-regenerative tissue people under 18 years of age. I know that very few cases may be involved, but nevertheless it could happen and, if there is prohibition, there is no way that that transfer can take place.

I would suggest that, where the under-age person has the mental capacity and agrees, where the parents agree, where the family doctor agrees, where the doctor who is outside that group also agrees, and where members of a committee that has been established are almost unanimous in agreeing,

there is absolute protection for this process. I suggest that that should be done.

I cannot bring myself to say that there will be an absolute prohibition on the transfer of any non-regenerative tissue from a minor to, probably, another minor in a family. Therefore, I suggest the deletion of clause 12 which, will change the law in regard to the transfer of tissue of minors, not only of a regenerative type but also of a non-regenerative type, with all the means that we have to ensure that no injustice is conducted.

**The Hon. J.R. CORNWALL:** I must tell the Council that some members of my Caucus health committee raised the same subject with me. They subject my legislation to very careful scrutiny before it ever sees the light of day in this place. This matter was raised seriously. I was not attracted to the idea, I must say, but I believed that it was my duty, as a Minister of the Crown, not to be swayed by my own prejudices or what might be perceived to be my own prejudices.

**The Hon. R.C. DeGaris:** I didn't know you had any.

**The Hon. J.R. CORNWALL:** I do not have many. Only the Pope in Rome is infallible, or as I was told when I was a boy. I certainly have no notions of my own infallibility. Because I wanted to check these matters and to be absolutely sure, I turned, naturally, to the person who I believe would be the number one expert in this field in South Australia. I contacted Dr Tim Mathew, Director of the Renal Unit at the Queen Elizabeth Hospital. I believe that his letter in reply to me says it all. In arguing against the amendment put forward by the Hon. Mr DeGaris, I will cite that letter in full. It is as follows:

Dear Dr Cornwall,

Re: Transplantation and Anatomy Bill

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. 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.

The arguments 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.

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.

For the reasons that were eloquently outlined by Dr Mathew, I oppose the amendment.

**The Hon. J.C. BURDETT:** I oppose the amendment. I had the privilege of reading the letter that was just cited. For the reasons outlined by the Minister, the reasons outlined in the letter, and the reasons that I outlined when speaking in regard to the previous amendment, I oppose the amendment. It appears to me that there is no reason at present to enable transplantations of non-regenerative tissue from minors.

**The Hon. R.C. DeGARIS:** The argument for the amendment has been advanced by the reading of the letter from Dr Mathew. I would not mind if Dr Mathew was on the committee. What we are doing in this Bill is providing an absolute prohibition—although it may only be one chance in a million—with the control that is there, where the sibling must have the mental capacity to agree and the parents, the family doctor, an independent doctor and the committee unanimously must also agree. I believe that we should not allow a Bill to pass that creates absolute prohibition of any transfer of non-regenerative tissue from minors. It might never occur. I do not mind if a paediatrician is on the committee and if this group mentioned by the Hon. Dr Cornwall is on the committee. I believe that this Council should not pass a Bill that prohibits, in all circumstances, the transfer of tissue from one minor to another minor.

**The Hon. I. GILFILLAN:** Are the conditions referred to by the Hon. Mr DeGaris set out in the Bill?

**The Hon. R.C. DeGARIS:** The conditions I am referring to are in Division III and concern donations from children. I am asking that there be the same protection for all tissue by the committee, parents and doctors. Division III only allows the transfer of regenerative tissue from a minor.

**The Hon. I. GILFILLAN:** Do I understand it that further amendments would be necessary for those controls to be in place if clause 12 is deleted?

**The Hon. R.C. DeGARIS:** The amendments I have on file delete clause 12 and alter other clauses to make it applicable for both regenerative and non-regenerative tissue.

**The Hon. J.R. CORNWALL:** I believe that, if we do not accept the prohibition on non-regenerative tissue from minors, then we would have to build in a lot more safeguards. At this particular moment in our history I am not inclined to support non-regenerative tissue transplants. If I believed that, personally, I was denying somebody access to life-saving non-regenerative tissue and that the case had been made out in black and white, then certainly it would affect my attitude dramatically, but I am not convinced, from the evidence that is available to me, that by restricting this to regenerative tissue from minors I am doing that. I received the letter from Dr Mathew, who is directly involved in transplants, and far more involved than any other person or group in this State. I am not convinced that the Government, by putting this legislation through, is denying people access to non-regenerative organs from minors which might be life-saving. As Dr Mathew says, '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.' For this reason at this stage in our history I am not prepared to take that step.

Clause passed.

Clauses 13 and 14 passed.

Title passed.

Bill reported with amendments. Committee's report adopted.

**The Hon. J.R. CORNWALL (Minister of Health):** I move:

*That this Bill be now read a third time.*

**The Hon. R.C. DeGARIS:** There are one or two matters I would like to mention at this third reading stage. I mentioned several matters during my second reading speech

which were not referred to by the Minister in his summing up but which, I believe, are important and on which I will enlarge during this third reading stage. I am sorry that we have not followed the recommendations of the Australian Law Reform Committee Report on the two areas in which I moved amendments. I believe that those matters are important and I am sorry that we have produced a prohibition in the Bill against any minor making a donation of non-regenerative tissue.

I would like to quickly touch on several other issues, the first being the question of the existing health funds in relation to payment for the removal of tissue from a patient. I do not know what the exact position is and whether or not the funds will pay for removal where a live donor is concerned. The position is that, where a person is treated for a disease and is insured with a fund, it will pay for that treatment. However, when one makes a donation of tissue the question is then raised as to whether or not that donation is covered by the existing health insurance fund, and will remain covered as the question of tissue donation continues.

The other matter which is most important is the question of ova, spermatozoa, and foetal tissue. The Minister did not reply to this during the second reading stage. It is an important issue that requires more attention. Concerning indemnification of donors, if there is no payment from health insurance funds for a person making a donation, should there be some indemnification applying elsewhere to those people who donate tissue for transplantation? All these questions are important. The question of a register for tissue donation is also important and is a matter we should look at. The question of whether or not there should be contracting in or contracting out is a point which is extremely important and deserves further consideration. During my second reading speech I said that I believed that there should be a continuing examination of these issues. The Minister raised the question of informed consent. This is a complex issue and one that needs examination.

Concerning all these matters, can the Minister say whether or not he has any views on asking a continuing committee of the Legislative Council to assist in these difficult areas of decision that need to be made? I do not believe that these issues are Party political. There will be divisions among the three Parties, and members could have differing views. There is a need for a consensus to be reached on these issues so that we can move for changes to the existing law. It is important to keep up with modern technology. I support the third reading of the Bill.

**The Hon. J.R. CORNWALL (Minister of Health):** The Hon. Mr DeGaris, of course, is technically out of order, as he well knows, in the matters that he has addressed. He should be addressing matters in the Bill as it has come out of the Committee. He has been here a year or two and I am sure that he knows that, but I am not inclined to take technical points. All the matters that he has raised are important and I will be very happy to canvass them with him, but not necessarily at this time and in this place. I will certainly take on board his remarks and I will get back to him with a considered reply. Since they are not directly relevant to the third reading of this Bill I do not intend to canvass them now.

Bill read a third time and passed.

## DEATH (DEFINITION) BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 576.)

**The Hon. L.H. DAVIS:** There are several medical centres in Adelaide with intensive care facilities, all providing artificial cardio-respiratory support. There is now general agreement in the medical world that the permanent functional death of the brain stem constitutes brain death when further support is pointless, although artificial support could be used to maintain cardiac function. The Hon. Mr Burdett, in speaking to this Bill at the second reading stage, referred to the Transplantation of Human Tissue Act, 1974, and observed that the select committee established at that time to investigate that matter felt that the time of death was best determined by clinical examination rather than by statutory definition, yet only nine years later we have a Bill before us, the sole purpose of which is the definition of death. That in itself says a lot for the rapidity with which medical science has advanced in that span of years.

In the second reading of the Transplantation and Anatomy Bill I referred to a code of practice for transplantation of—cadaveric organs, produced in August 1982 by the National Health and Medical Research Council, and that code is intended to provide a set of basic guidelines for the staff of hospitals involved in transplantation. Page 10 of that code refers specifically to the diagnosis of death. Paragraph 7.1 states:

> A person has died when irreversible cessation of circulation of blood in the body of the person or irreversible cessation of all function of the brain of the person has occurred.

That, of course, is the identical definition that we have before us in this Bill. This has now been accepted as a well-established criterion. This definition of death has been accepted by the Conference of Royal Colleges and Faculties of the United Kingdom, by the Conjoint Conference of the Australian Medical Association and the Joint Advisory Committee of the Royal Australasian College of Physicians, the Royal Australasian College of Surgeons, the Royal Australian College of Gynaecologists and Obstetricians and the Royal Australian College of General Practitioners. So, one can feel fairly safe in looking at the definition of death that we have before us in this Bill, not that that definition by itself is the end, as the code makes quite clear. There is a procedure to be followed by medical practitioners in diagnosing death which is well laid out in the code of practice itself—quite a variety of documents that are well accepted.

The final point that I would like to make in relation to this matter is again referred to in this code at page 11, paragraph 7.5, and I quote:

> The tests which are used to determine cessation of brain function and the procedures used to establish the irreversibility of that cessation will continue to change with the advent of new research and new technologies. For that reason it is inadvisable for guidelines to be established inflexibly. Competent medical authorities in each hospital are encouraged to review from time to time the particular items included in any checklist used in determining the cessation and irreversibility of brain function [and so on].

So, the definition of death that we have before us in this very simple and short Bill is the broad outline—acceptance that a person dies when irreversible cessation of circulation of blood in the body or irreversible cessation of all functions of the brain has occurred. The tests used for the establishment of cessation of brain function will change from time to time; we accept that. We should not legislate for that itself. I accept unhesitatingly the responsibility of and the very high standard set by the National Medical and Research Council. In this Bill all we are doing is codifying an existing and accepted definition of death. I support the Bill.

**The Hon. J.R. CORNWALL (Minister of Health):** I thank honourable members for their contributions to this debate, which has been conducted in the spirit in which I would like to see all debates conducted on Bills that I introduce into the Council. There is not much to say in reply except,

perhaps, to refer to a matter raised by the Hon. Dr Ritson—certification as to the time of death—which was a valid point. I am told that it was originally intended to include a provision similar to the natural death provision in this legislation; that is, that in the absence of proof to the contrary a medical certificate as to the time of death was proof as to the time of death. However, Parliamentary Counsel now advise that this provision needs to be considered in conjunction with the Births, Deaths and Marriages Registration Act, under which a medical certificate is not required in several cases, especially where the circumstances warrant coronial inquiry. Parliamentary Counsel are looking at this matter to see how best a provisionary certification as to time of death can be made to cover all situations, and will advise me in due course. At that time I will take whatever action, if any, is considered appropriate but, in the meantime, it is not a matter which in any way invalidates the proposed legislation before the Council, and I urge honourable members to support it.

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

## STATUTES AMENDMENT (COMMERCIAL TRIBUNAL—CREDIT JURISDICTION) BILL

Adjourned debate on second reading.
(Continued from 23 March. Page 577.)

**The Hon. C.J. SUMNER (Attorney-General):** I thank honourable members for their support of the Bill. It is now clear that Parliament has accepted the proposition that there is merit in a Commercial Tribunal which should have the responsibility for occupational licensing conducted under one umbrella tribunal, rather than a number of separate licensing authorities that presently exist. It will have not only a licensing role but also an adjudication role in certain disputes involving the Consumer Credit Act, the Second-hand Motor Vehicles Act and other areas that will come under the tribunal.

The proposition for the Commercial Tribunal Bill was first put forward in August 1979 by the Director-General of the Department of Public and Consumer Affairs, Mr Noblet, during the period of the Corcoran Labor Government. The basic proposition was one of rationalisation to ensure greater streamlining and efficiency in the granting of occupational licences. The proposal was adopted by the Liberal Government and the basic enabling legislation was passed by this Parliament during that time.

By this Bill the Credit Tribunal is brought under the Commercial Tribunal. Under another Bill that we will be debating later today, the Second-hand Motor Vehicles Bill, that tribunal will be brought under the Commercial Tribunal, and I hope that later this year all the legislation required to fully establish the Commercial Tribunal will have been passed.

The only substantial matter raised was by the Hon. Mr Griffin, who indicated his approval that the tribunal should not be able to take action of its own motion in pursuing, investigating or adjudicating upon issues. This power existed in regard to the Credit Tribunal, but it will no longer exist once that tribunal is subsumed by the Commercial Tribunal. I do not wish to embark on a lengthy reply to the honourable member's comments, although I should say that I do not think that it applies inevitably and in all cases that a *quasi* judicial tribunal should have no authority to pursue matters of some moment.

However, I accept that in this particular case it is appropriate, but I will certainly reserve my position in relation to any other *quasi* judicial tribunals that come before the Council for debate. I thank honourable members for their support and acceptance of the Commercial Tribunal, which is another step and which will be finally completed during the Budget session of this Parliament.

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

**The Hon. C.J. SUMNER (Attorney-General):** I move:
*That this Bill be now read a third time.*

**The Hon. J.C. BURDETT:** I wish to speak to the third reading. It is true that Mr Michael Noblet, Director-General, Department of Public and Consumer Affairs, did float the idea of the Commercial Tribunal during the time of the Corcoran Government, but that Government did not promote the idea in any way. Perhaps it did not have time. Indeed, it did not.

**The Hon. C.J. Sumner:** That's true.

**The Hon. J.C. BURDETT:** It was the Tonkin Government which introduced the Commercial Tribunal Bill and enabled the matter to go forward. This Bill provides the first opportunity for a full transference of power. The setting up of the tribunal through the procedures of the Commercial Tribunals Act was only the first step. That set up the legislation necessary before the concept could go further, that there be an actual transference of power, which is now being done.

There has been a bipartisan approach to the initial step taken during the time of the Tonkin Government, and the matter has been proceeded with in setting up the first of the Acts providing for the transference of power to make the Commercial Tribunal and its concept fully effective. For the time being, this will be the last opportunity that I will have to commend Mr Noblet, Director-General, Department of Public and Consumer Affairs, for this concept. I now do so. I know that he has drawn on the experience of the Victorian Market Court and the procedures in Sweden and elsewhere, but he certainly was the person who brought this concept forward.

Had it not been for him, we would not have had the Commercial Tribunals Act, which was passed in the time of the previous Government, and we would not have this Bill which is before us today, to achieve the first of the actual transferences of power which are necessary. I commend Mr Noblet for the concept, which I hope works. I believe that it will. I cannot see any reason at all why it should not. It appears to have had acceptance from commercial and industry groups.

Some of them had reservations about tribunals, but I am sure that they will be prepared to implement the concept of the Commercial Tribunal. Perhaps there are some matters that should be ironed out in relation to their concept of the tribunal. I am sure that the concept will work, and I wish it well. I support the third reading.

Bill read a third time and passed.

## COMMERCIAL TRIBUNAL ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 23 March. Page 577.)

**The Hon. C.J. SUMNER (Attorney-General):** Once again, I thank honourable members for their support of this Bill. The remarks I made in relation to the previous Bill apply in this case.

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

## OATHS ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 17 March. Page 432.)

**The Hon. K.T. GRIFFIN:** I support the second reading of this Bill, but I point out that I will be moving an amendment in Committee. At the moment, the Oaths Act and the Supreme Court Act make provision for the appointment of a commissioner for taking affidavits. Under the provisions of the Supreme Court Act any two or more judges, of whom the Chief Justice shall be one, may appoint such persons as they think fit to take affidavits. Section 37 of the Supreme Court Act provides that every judge, every master, registrar and chief clerk and every person appointed to take any evidence or make any inquiry in any matter before the court is authorised to administer oaths.

Section 28 of the Oaths Act provides that the Governor has power to appoint any justice of the peace or any practitioner of the Supreme Court or a clerk of the local court to be a commissioner for taking affidavits. That is the law as it stands at the moment. This Bill seeks to repeal section 28 and replace it with a new section that will automatically make all judges of the Supreme Court, all district court judges, all special magistrates and all legal practitioners who are not under suspension and any other person appointed by the Governor to be commissioners for taking affidavits in the Supreme Court.

The Bill widens the range of persons who may be commissioners for taking affidavits and also provides that every legal practitioner, whether or not appointed by the Governor or by two or more judges of the Supreme Court, will have authority to take affidavits. My main area of concern relates to the power to be conferred on all judges of the Supreme Court, all district court judges and all special magistrates. It should be remembered that, for the purposes of administering justice in their respective courts, they already have authority to administer oaths but unless they are also justices of the peace they do not have authority to take affidavits.

**The Hon. C.J. Sumner:** Most of them are justices of the peace.

**The Hon. K.T. GRIFFIN:** In that event, they probably have the necessary authority to take affidavits. The South Australian Oaths Act takes its origins from the 1872 Married Women's Acknowledgments Act. Although that Act deals with the right of the Governor to appoint justices of the peace, practitioners of the Supreme Court or clerks of the local court to be commissioners for taking affidavits in the Supreme Court, it also deals with the authority conferred on certain persons to take acknowledgments by married women to render conveyances made by them effectual.

If one traces the origins of commissioners back even before that, one finds an 1859 Act of Parliament in the United Kingdom which widened the range of persons who may be commissioned by the Lord Chancellor to take affidavits. Originally, an Act of Charles II in 1677 recognised the authority of the courts of Kings Bench, common pleas and Exchequer to authorise persons by way of commission to take affidavits. That authority was limited to commissions to legal practitioners to take affidavits outside an area of 10 miles radius of the City of London.

In 1859 the radius was eliminated, so the courts could appoint commissioners for taking affidavits in any area, not just an area outside a 10-mile radius of London. That was done largely to ensure that litigants and witnesses who desired to make affidavits, declarations or affirmations in matters before the courts in London were able to make those declarations, affidavits and affirmations before the commissioners. It is obvious from the Charles II Act and the subsequent 1859 United Kingdom legislation that the commissioners were to be essentially practitioners of the court.

A commission was not extended to judges of the court, so far as I can see, although judges were authorised to receive into their courts affidavits made before such commissioners. The commission issued by the judges was essentially to facilitate the business of the court, both within and beyond its jurisdiction. We have, in our own procedures, provision for evidence to be taken on commission, and that is evidence that may be given by a witness in any matter before the court, outside the jurisdiction of the court, or even, I suppose, within the jurisdiction of the court where it is not possible for the witness to come before the court for any reason.

Essentially, the present day commissioners for taking affidavits have their historical origins in the commissioners appointed under the Act of Charles II to take evidence on commission—in fact, to take affidavits relating to any matter before the court. I have no objection to all legal practitioners on the roll of the South Australian Supreme Court (other than those whose licence to practise has been suspended or cancelled) being commissioners for taking affidavits, but I do have some concern about the judges, both of the District Court and Supreme Court, and special magistrates, having similar commissions.

It seems rather curious that judges of the Supreme Court, for example, would in fact be commissioners of their own court for taking affidavits. It seems equally curious that a District Court judge exercising a different jurisdiction from a Supreme Court judge should hold a commission to take affidavits in matters before the Supreme Court. The same applies to special magistrates.

Also, it is possible that there may be special difficulties for judicial officers authorised as commissioners for taking affidavits to take affidavits outside the taking of oaths within the court on matters that are before them.

I will pose several problems that I see as potentially arising. Although they may be remote, they are nevertheless problems that I think must be considered, particularly in the context of the often raised issue of judicial independence and maintenance of the status of judicial officers. A case was referred to only a matter of weeks ago in the media where a person who had made an affidavit was to be prosecuted for perjury. Presumably, in the context of such prosecution, one may need to call the person who has taken the affidavit and, if it happens to be a judge of either the Supreme Court or the District Court, or a special magistrate, one could foresee one of those judicial officers being summoned to appear before the court to be cross-examined as to the state of mind of the deponent or about any other circumstances related to the making of the affidavit.

Similarly, commissioners for taking affidavits are authorised by the Real Property Act to witness the signatures of parties to Lands Titles Office documents. Periodically cases arise where the witness to those signatures is required to be called to give evidence about the identity of the person who has signed the document and the circumstances in which it has been signed. It may be that that is remote, but I still raise it as a matter that must be considered in determining whether or not it is proper for judges and magistrates to be made commissioners for taking affidavits in the Supreme Court.

The Attorney-General's second reading speech did not demonstrate a desperate need for such judicial officers to be authorised to take affidavits. If there was a compelling need (which, as I say, has not been demonstrated), I certainly would be prepared to give further consideration to the matter on the basis of historical development of the commission for taking affidavits and the possible practical difficulties to which I have referred. I am of the view that

those judicial officers should not, in fact, be commissioners for taking affidavits. I suppose that there are other practical difficulties, but they are essentially within the control of the commissioner for taking affidavits.

Commissioners for taking affidavits generally make themselves available, as do justices of the peace, to witness affidavits or declarations, affirmations, or Lands Titles Office documents. Is there a compelling reason why they should be appointed as commissioners for taking affidavits? Unless that can be identified, as I have said previously, I am inclined to move an amendment removing judicial officers from the ambit of this clause. However, for the purpose of considering the matter further in committee, I support the second reading.

**The Hon. C.J. SUMNER (Attorney-General):** I thank the honourable member for his contribution, although I must confess that I do not see the same problems with the Bill that he does, particularly the problem of having Supreme Court judges, District Court judges and magistrates appointed as commissioners for taking affidavits. The honourable member may think that there is something sinister or unusual in this.

**The Hon. K.T. Griffin:** Not sinister, unusual.

**The Hon. C.J. SUMNER:** Well, unusual. The history of this matter is that on 7 October 1982 the President of the Law Society wrote to the then Attorney-General putting up the proposition that all legal practitioners should automatically be commissioners for taking affidavits. As a result of that request, an approach was made to the Supreme Court because it did, to some extent, affect the policies of that court. Options were placed before the Chief Justice for his consideration. The first option was to amend either the Supreme Court Act or the Oaths Act to provide that the person whose name appears on the roll of practitioners of the Supreme Court is deemed to be a commissioner for taking affidavits. The Chief Justice replied indicating that he preferred that option as a means of dealing with the matter. He went on to say the following:

> It has been suggested by one of the judges that it would be advisable to insert a specific provision including judges amongst those who are deemed to be commissioners for taking affidavits. I agree with that suggestion.

Following the suggestion of the Supreme Court, it was made quite clear in the Bill that judges of the Supreme Court and, indeed, other judges and magistrates as well as legal practitioners should be deemed to be commissioners for taking affidavits. That is the simple history of the matter.

I appreciate the historical recitation that was made by the honourable member, but I do not really see that the practical difficulties that he has outlined are likely to materialise. It would rarely occur that a judge who acts as a commissioner then finds that there is some conflict about the document he witnessed and is therefore disqualified from adjudicating on that matter. In any event I imagine that the situation would be foreseen before proceedings were commenced: no doubt the judge would disqualify himself from hearing that case. I really do not see that that is a practical problem, given that circumstances often arise in other contexts where judges must disqualify themselves.

If I can anticipate the amendment which has been circulated by the Hon. Mr Griffin and which is on file, I am not sure that, in any event, it achieves the desired objective. The amendment refers to all persons on the roll of legal practitioners of the Supreme Court being deemed to be commissioners for taking affidavits. My understanding is that all the Supreme Court judges would, in fact, be on the roll of legal practitioners of the Supreme Court. The honourable member will recall that last year we had a debate when the question of the appointment of Justice Murray to the Sex Discrimination Board was queried by me in this Council because it was thought that she, as a Federal judge, was not qualified to be appointed Chairman of that board, as the requirement was for a Supreme Court judge, District Court judge or, I think, a practitioner of at least seven years standing to be appointed.

The Hon. Mr Griffin in response on that occasion stated that Justice Murray was a legal practitioner and that she was on the roll of legal practitioners of the Supreme Court despite the fact that she was also a Federal Court or a Family Court judge. The response that the Hon. Mr Griffin gave on that occasion indicated that there was no problem in regard to her appointment, because she was qualified as a legal practitioner. If that is the case, the amendment that the Hon. Mr Griffin has placed on file will not achieve his objective, because all the Supreme Court judges would be on the roll of legal practitioners.

I suppose that I could accept the amendment and I could achieve my objective in that way. However, I believe that that matter should be pointed out to the Council for further consideration if the honourable member wishes. All I can say is that I know the practical difficulties. The Supreme Court judges are apparently happy with the situation. The Chief Justice has indicated his support for the proposal and, apparently, he has had discussions with his brother judges. In any event the proposal may be of little practical import, because I understand that most, if not all, the Supreme Court judges have now been appointed justices of the peace, so that they would be able to take affidavits in any event.

I believe it was decided that it was desirable that all the Supreme Court judges should be justices of the peace. Certainly, I recently appointed a number of judges as justices of the peace at the request of the Chief Justice, but I cannot say categorically that all judges have been so appointed. It was certainly suggested that they should be appointed, and that has happened in regard to most of the judges. Therefore, I do not see that there is any justification in the fears expressed by the Hon. Mr Griffin. However, I would be prepared to report progress later to enable the honourable member to consider the matter and to enable me to obtain the comments of the people affected, namely, the judicial officers.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

**The Hon. K.T. GRIFFIN:** I appreciate the intimation by the Attorney-General that he would be prepared to report progress, because it is a complex question and the Attorney has far more resources available to him than I do to enable the matter to be researched properly. I have not consulted with any of the judges. If the Attorney proposes to contact the judges, I would certainly appreciate learning their response, and I would like to have an opportunity to consider the matter further when that response has been received.

I suspect that the request has been made without all the ramifications being examined. That is not a criticism of anyone who made the request. On the face of it, it would appear to be a good thing that the judges and the magistrates gather this additional responsibility or entitlement, but I would appreciate a further opportunity to consider the matter later, if the Attorney takes up the issue with the judges.

Clause passed.

Progress reported; Committee to sit again.

## MOTOR VEHICLES ACT AMENDMENT BILL

Second reading.

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

*That this Bill be now read a second time.*

The principal object of this Bill is to make some modifications to the probationary licence scheme, which came into operation on 1 June 1980. At that time, the Government gave an undertaking that the scheme would be reviewed after a reasonable period of time and amendment made where it was found to be necessary or desirable. That review has been carried out, and the review team concluded that the probationary licence scheme has overall been most successful in creating an awareness in a new driver of his responsibilities to himself and others on the road. It is pleasing to note that the majority of new drivers succeed in getting through their first year of holding a licence either offence free or with only one minor offence.

It has been found, however, that the penalty provision, that is cancellation of a licence for committing a breach of conditions or committing a minor traffic offence, has resulted in hardship in many cases. Many young drivers require a licence in their employment or to travel to and from their place of employment where it is not possible to use other forms of transport. It is apparent that some easing of the conditions can be made without detracting from the overall aims of the scheme.

The Bill removes the penalty of cancellation of a licence where a probationary driver breaches a probationary condition (other than the condition relating to blood alcohol levels). Where a breach of the conditions relating to carrying 'P' plates or not exceeding 80 kilometres per hour has been committed, the registrar will have the power to extend or re-endorse probationary conditions for an extra three months. It should be noted that learner drivers who breach either of those conditions will continue to be liable to have their permits or licences cancelled. Cancellation will also still be available where either a learner or probationary driver breaches the condition relating to blood alcohol levels.

The Bill also proposes a change in relation to the number of demerit points a learner or probationary driver has to incur before losing his licence. Instead of reference to the consultative committee and possible cancellation of the licence upon reaching a points demerit score of three or more, reference will be made when the points score reaches four or more. As the majority of offences attract three points, most probationary drivers will therefore have to commit two offences before consideration is given to cancellation of the licence. The Bill also seeks to correct an anomaly arising out of one of the 1981 amending Acts. 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. Clauses 2 and 3 amend the sections of the Act that deal with the probationary conditions attached to both learner's permits and driver's licences. The amendment seeks to correct an oversight that occurred in one of the 1981 amending Acts. The relevant provisions of the Road Traffic Act relating to alcotests and breath analysis were applied by that amending Act, but section 47e of that Act was omitted in error. If the probationary condition relating to blood alcohol levels is to be made fully effective, section 47e must be included in the list of applied sections.

Clause 4 provides that a probationary driver who breaches a probationary condition (not being the condition relating to blood alcohol levels) may have his probationary conditions extended for an extra three months, or if, by the time that he is convicted of or expiates the offence, he holds a 'clear' licence or does not hold a licence at all, those conditions may be endorsed on the licence for three months or on the next licence issued to him. Where a learner driver breaches any probationary condition, or where a learner or probationary driver breaches the blood alcohol condition, the existing situation will prevail, that is, the matter must be referred to the consultative committee for consideration of the question of cancellation.

Where a learner driver or a probationary driver incurs four or more demerit points, the matter must similarly be referred to the consultative committee with a view to cancellation. Subsection (3), which gave the court power to direct that cancellation not occur, is repealed, as cancellation will now only be available in more serious circumstances. Appeals still lie, of course, against cancellation on the grounds of hardship. The Registrar is given the power to require delivery up of a licence for the purpose of endorsement of conditions.

Clause 5 empowers the Registrar to require a licence holder to submit his licence for endorsement where the consultative committee exercises its power under section 82 to endorse probationary conditions upon the licence.

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

## SECOND-HAND MOTOR VEHICLES BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 559.)

**The Hon. J.C. BURDETT:** I support the second reading of this Bill. Like most of the legislation introduced by the present Government, this Bill follows fairly slavishly initiatives put in progress by the previous Government. In fact, this Bill follows the previous Government's proposed Bill but has a number of departures, some not very significant in substance. Broadly speaking, the departures have been made because, as the Attorney-General explained when he introduced the Bill after the change of Government, Parliamentary Counsel had a lot of time to consider the drafted legislation. Also, the new Government had the opportunity that the previous Government did not have of circulating the legislation in the industry.

The parent Act was a fair Act which was necessary at that time as there were abuses amongst dealers, and consumers were, in some cases, being ripped off. The industry was not able to rectify all those abuses, and it was therefore necessary that legislation be introduced. So, the parent Act was introduced and passed. Broadly speaking, that Act has been good legislation which has operated fairly well. The reason for this major overhaul, which is in the nature of a rewrite, is simply that, as one would expect, in the ensuing period of time anomalies have occurred due to changes in business and consumer practice. That was one of the reasons why the previous Government instituted the inquiry which forms the basis of the Bill.

I am pleased to note that the industry supports the Bill. It is my belief that legislation which regulates industry, as this legislation regulates the used car industry, is not likely to succeed unless it has the support of the industry concerned. The South Australian Automobile Chamber of Commerce supports this legislation in principle, as it supported in principle the legislation of the previous Government. The chamber's main concern has been to have credible and up-to-date legislation. That is not always easy to do. It is necessary for working parties to circulate proposals and for a considerable amount of consultation to take place before amendments can be made to complex legislation.

The Attorney-General outlined the provisions of this Bill at some length as, indeed, they were concrete proposals. I do not propose to go through them in detail. I support the proposals, which are basically the initiative of the previous

Government with some drafting amendments and which also include some amendments at the request of the industry. The compensation fund provided for in the Bill is important and was one of the initiatives of the previous Government, as was the indemnity fund in the Builders Licensing Act.

The previous Government realised that in this economic climate there are cases where businessmen in, say, the building industry and secondhand motor vehicles industry will become bankrupt or disappear, and consumers could be left lamenting and not have anyone from whom they can claim compensation, even though they could establish a claim in law. The initiatives of the previous Government have been carried out by the present Government in regard to both the indemnity fund in the Builders Licensing Act and the compensation fund in this Bill. Both initiatives will ensure that where consumers can establish a claim they will not be left lamenting simply because the supplier with whom they were dealing has been bankrupted, the company gone into liquidation or the person has disappeared.

I now address the question, as I propose to do during the Committee stage, of the notice required to be displayed on the windscreen of secondhand motor vehicles offered for sale. The proposal in the Bill is that that notice must contain the name and address of the previous owner, not being the dealer. The problem is that at weekends people will quite properly, look at cars in used car yards and will find the notice on the windscreen which provides both the name and address of the previous private owner. People inspecting used vehicles will not have the opportunity of consulting the dealer, as the dealer will not be there and, having an address, will go to the previous owner and ascertain that the car had a faulty gearbox or that there was something else faulty on the car. Those people will become disturbed about it, will decide not to go ahead with their inquiry and will not go back to the dealer.

The defect in question may well have been repaired by the dealer, and I suggest that it would be more just if the name only was there and if the prospective buyer, therefore, had to go to the dealer who had an obligation to disclose the name and address when the prospective buyer went there. In that way, the dealer would have the opportunity of explaining to the prospective purchaser what he had done to the vehicle and might or might not, depending on the views of the prospective purchaser after he had heard the explanation, be able to satisfy him.

An amendment along these lines to provide that the name only be on the windscreen and that the dealer be obliged on request to disclose the name of the previous owner is in line with the nature of this kind of business; the nature of any dealer, be it a dealer in land, any other secondhand dealer or a dealer in secondhand vehicles, is that he is the person who has the conduct of the matter. Particularly in the case of secondhand dealers, as opposed to dealers in land, the normal case is that the dealer has purchased the vehicle; it is his vehicle. Yet, if this clause goes ahead in its present form the prospective purchaser would have the opportunity of going to the previous owner behind the back of the dealer, who is the owner of the vehicle, finding out its previous history and not necessarily going back to the dealer to ascertain what he has done.

I have therefore placed on file an amendment which I will address in Committee and the purpose of which is to provide that the name only need appear on the windscreen and that the dealer be obliged on request to provide the prospective purchaser with the address of the last owner, and so on. I suppose that the objection to that could be that the dealer might use excuses so that he could not immediately come up with the address of the previous owner, that he will have to take time to find it out, and so on. It would seem fairly difficult if that was used as grounds for opposition to the amendment because the whole basis of the parent Act and of this Bill is to rely on the dealer carrying out his obligations and providing penalties where he fails to carry them out—which my amendment will not do. It is not fair comment to say that he will not do it, that he will not carry out the obligation that is imposed on him, that he is likely to fudge it, or to use some sort of excuse or something like that. The whole basis of the Act is that the dealer will carry out the obligation imposed on him and that where he does not do so he will be subject to a penalty.

I return to the principles of the Bill: the Bill, having been based on an initiative of the previous Government, which had taken a considerable time to develop it, followed a great deal of consultation, and is a good one. It brings what has been, broadly speaking, a good Act into line with modern practice. As the Attorney suggested in his second reading explanation, it strikes a fair balance because a balance must be struck.

Certainly, consumers are entitled to protection where there is a possibility of their being disadvantaged, and this can happen with regard to secondhand motor vehicles. On the other hand, the industry must not be subject to oppressive, heavy-handed regulation. It must be able to operate fairly and correctly. This Bill, the principle of which we initiated, strikes a fair balance. It is gratifying to find that the industry, in the form of the Automobile Chamber of Commerce, supports it. I have not heard any great voices that the consumers or their representatives oppose it. Therefore, it seems to me that it strikes a fair balance, and I support the second reading of the Bill.

**The Hon. K.L. MILNE:** I do not wish to hold up the debate very long, but I notice that the Hon. Mr Burdett has distributed an amendment to us which I propose to support in principle. I would rather it did not refer to 'the last owner of the vehicle'; it would have a sort of kiss of death about it. I think that he really means 'the previous owner'. That is a very simple drafting matter, but I would prefer that it be altered to 'the previous owner' because he has been talking of 'the previous owner' in his speech and then the amendment in print said 'the last owner'. I ask that that be altered. However, this matter has been discussed with the Automobile Chamber of Commerce, which contacted us on the matter.

**The PRESIDENT:** Is the honourable member dealing with the Bill or with the amendment, because we will deal with the amendment in Committee? Is he speaking in general on the Bill?

**The Hon. K.L. MILNE:** I seek the forbearance of the Council because I may not be here for the Committee debate unless it comes on quickly. I support the Bill, but I agree with the reasons advanced by the Hon. Mr Burdett in asking that the owner's address be taken off the windscreen schedule during weekends because the person could give the proposed owner a wrong impression and he might never return to the dealer. Also, there is some ingredient of privacy; the people may not want their address given, although it is probably in the telephone book. In looking at a Bill of this kind, we should avoid making business more difficult than it already is. The Bill itself is a good one, but the suggestion by the Hon. Mr Burdett is also a good one, subject to that very minor thing that I have mentioned. Subject to that, we propose to support the Bill.

**The Hon. C.J. SUMNER (Attorney-General):** I thank honourable members for their support of the Bill. It now becomes a Committee Bill, and it appears that not a great number of amendments will be moved during the Committee stages. However, as the Hon. Mr Burdett and the Hon. Mr Milne mentioned one matter that the Hon. Mr Burdett intends to raise in Committee, I would like to indicate the Government's attitude on that. The requirement to include

the address of the previous owner on the red sticker is in the current legislation; it has been in the legislation since 1971. It was proposed by the Liberal Government Bill that that requirement should be deleted, that only the name should appear on the red sticker and that the address should be given if it was requested by a potential purchaser. I am not convinced that any mischief or difficulty has been caused by the requirement in the current legislation, which has been in the legislation since 1971.

I believe that it is an important protection for consumers, the purchasers of secondhand motor vehicles, that if they wish they can make inquiries about the condition of a car before purchasing it. The suggested amendment would lead to a greater possibility of dealers evading the issue if a question is put to them by a potential customer as to the address of a previous owner. It is easier, simpler, more clear cut and desirable from a consumer's point of view for the existing practice to continue, that is, the practice of including not only the name but also the address.

If I could be convinced that there was some mischief or problem that has occurred as a result of this practice, which has existed for 10 years, I would reconsider the issue. I indicate that my firm position is that the existing practice should continue, but I will listen to the discussion in Committee when the amendment is moved. The other matter to which I wish to refer involves changes to the warranty provisions in the Bill. It was suggested in a *Sunday Mail* article—

**The Hon. J.C. Burdett:** That was not a very good report.

**The Hon. C.J. SUMNER:** No, it was not very accurate. The *Sunday Mail* report suggested that thousands of car buyers would lose their warranties under legislation now before Parliament. The exclusion from warranty for 15-year-old vehicles has, in fact, existed for some years through notices of exemption which have been published in the *Government Gazette*. The rationale behind the 15-year rule is that the Act as it is would catch veteran and vintage cars that might be over 15 years old and sold for over $500. The seller of the vintage car would therefore be caught by the warranty provisions of the Act, and it was to cope with that situation that there was an exclusion from warranty of 15-year-old cars, but that has existed for some time. The *Sunday Mail* report was incorrect.

The Bill enshrines in the law what has been the practice for the past few years. The *Sunday Mail* report also gave a misleading impression that under this Bill there will be obligations on dealers for all motor vehicles they sell, no matter what the price. For cars sold under $500 and under 15 years old there will be the requirement that they be roadworthy at the time of sale, which is not the situation at present. Roadworthiness will include such things as bald tyres and the like. That is an extension of the consumer rights under the existing law.

That was not conveyed accurately in that *Sunday Mail* report. However, the question of warranties and the period of time in which they should apply deserves further consideration and I intend giving it that further consideration before the Committee stage in view of the comments made in that *Sunday Mail* report. The question is whether there should be a 15-year limit. If the aim of the 15-year requirement is merely to exclude vintage or veteran cars, then that 15-year requirement catches up with many other vehicles that do not come within that category, and consideration should be given to the situation and whether there is another way to deal with that problem or whether the time limit should be extended beyond the 15 years.

They are the only issues that I wish to raise, apart from the fact that the Bill also updates the purchase price of a vehicle to attract a warranty to take into account inflation since 1971. I am not sure why this was not done in the previous Act, because I understand that there was the capacity for the Government to prescribe a value in excess of that obtaining in 1971. Apparently that was not done and, for some reason, it is in the Act to increase the value of vehicles which relate to the warranty provisions.

I thank honourable members for their support. I would like to report progress in Committee to consider those outstanding matters and to give honourable members the opportunity to consider the Hon. Mr Burdett's amendment, which I indicate at this stage the Government opposes.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

## CONSUMER TRANSACTIONS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 560.)

**The Hon. J.C. BURDETT:** I support this short Bill, which is identical to what was proposed by the previous Government. It is consequential on the Second-hand Motor Vehicles Bill, with which we have been dealing. It gives effect to the principle in that Bill, and I support it.

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

*[Sitting suspended from 5.57 to 7.45 p.m.]*

## SOUTH-EASTERN DRAINAGE ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 638.)

**The Hon. M.B. CAMERON (Leader of the Opposition):** The Opposition supports this Bill which, as I understand it, is an initiative of the former Government. One would have to say that it is a sensible move. It provides for a sensible system of election to the drainage board. I am not sure whether the drainage board is called on much these days: unfortunately, the days of big decisions in relation to South-Eastern drainage are over. The days when landholders wanted representation have long since passed; the days when they needed representation they did not have it. However, that is a matter of the past.

It is sensible that the election of members be staggered. At the present time, the two landholder representatives could go out together and, as the Minister said in his second reading explanation, all the expertise on the board could be lost if the two public servant members also left at the same time. It is possible for that to happen. It would be unfortunate if all members of the board left together. It is a sensible provision, which also provides for an opinion to be obtained from the board in relation to the election of its Chairman. I think that that is also a sensible move. It means that in the future we might see a landholder representative as Chairman of the board. We have been waiting for nearly 80 years to see that happen. I believe it would be desirable to see a person from the South-East as Chairman of the board. The Opposition supports the Bill.

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

## CO-OPERATIVES BILL

In Committee.

(Continued from 23 March. Page 582.)

Clause 36—'Sale of substantial assets.'

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

Page 18—Leave out this clause and insert new clause as follows:

36. (1) Where a registered co-operative or a subsidiary of a registered co-operative proposes to dispose of an asset and, if the proposal were carried into effect, the co-operative would cease to carry on a particular industry, business or trade or its capacity to carry on a particular industry, business or trade would be materially impaired—

*(a)* the disposal must be approved by special resolution of the co-operative;

and

*(b)* the notice of intention to propose the special resolution must be accompanied by—

(i) a memorandum prepared by the directors stating the reason for the proposed disposal;

and

(ii) copies of reports, valuations and other material from qualified, independent experts sufficient to establish that the consideration to be received for the asset is a fair consideration.

(2) Where the prospective purchaser of an asset to which subsection (1) applies is a member of the co-operative, the purchaser shall not vote on the question of whether a resolution approving the disposal should be passed.

This clause deals with the situation where a registered co-operative, or a subsidiary, intends to sell a substantial portion of its assets. The clause presently requires a special resolution of approval where the sale relates to an asset of a value equal to the total issued capital of the co-operative or subsidiary. It appears that this may be unworkable, as many co-operatives have a relatively low level of paid-up capital.

After lengthy consultation, including referring the matter to industry representatives, it is considered that the best way to regulate the sale of significant assets is to tie the matter to the disposal of an asset the sale of which would prevent or impair the co-operative from carrying on its industry, trade or business. The amendment provides that where this is proposed the special resolution must be obtained, and the notice of the resolution should be accompanied not only by copies of any relevant valuation and information, but also by an explanatory memorandum prepared by the directors. In this way members can be properly informed about the proposed course of action.

When this Bill was drafted, concern was expressed that a co-operative could be sold without adequate consultation with its members. The first proposal to deal with this difficulty is the clause which currently appears in the Bill, the substance of which ensures that, if there is to be a substantial sale of shares in the co-operative, particularly a co-operative's assets, members should be given adequate notice to enable them to arrive at an informed opinion on the subject. As I have said, the method designed to deal with this problem in the Bill is not considered to be entirely satisfactory because many of the co-operatives with which we are dealing have a total issued capital which is quite low. That means that the procedure in clause 36 would have to be gone through for comparatively minor disposals of assets.

For that reason, the new clause was moved. At one stage it was thought that, instead of having the benchmark as the total issued capital of the co-operative, the benchmark should be a certain portion of the value of the assets. However, in the end result it was decided that the best way was to relate it to whether or not the disposal of the assets would substantially affect the carrying on of the business of the co-operative, and it is for that reason that the new clause in this form has been moved.

**The Hon. K.T. GRIFFIN:** I am prepared to support this amendment. This clause has been subjected to a great deal of change, first in the drafting of the Bill. Until last Thursday there were tripartisan discussions, involving a number of people with an interest in ensuring that the clause was drafted in such a way as to operate fairly without being a burden on co-operatives. Essentially, clause 36 will require the directors of a co-operative seeking to dispose of certain assets to notify the members of the co-operative with as much information as possible about the proposed disposition and to give the members an opportunity to either support it or reject it.

There is no intention at all in this clause to hamper the operations of a co-operative. Accordingly, for those reasons, I support the new clause proposed by the Attorney-General. In its new form, the new clause will require the disposition to be approved by a special resolution of the co-operative, that is, a vote of two-thirds of those present. It will also require that a formal notice of intention to propose a special resolution be forwarded to members not less than 21 days before the meeting. Accompanying that special resolution should be a memorandum prepared by the directors giving reasons for the proposed disposal, together with accounts, valuations, and reports from experts, who must be independent, relative to the property that is to be considered by the meeting of members.

There is a framework under which the membership of the co-operative will be fully informed of the intention of the directors and will be able to play some part in the decision. If the members of the co-operative decide to authorise the proposal but subsequently it turns out that their decision was not a good business decision, no-one can complain, because all the information was available to the whole membership of the co-operative. The amendment is important. It will not hinder the day-to-day operations of the co-operative, and it will provide full information to members of the co-operative with respect to a very important decision affecting the future of the co-operative. For those reasons, I am prepared to support this amendment.

Existing clause struck out; new clause inserted.

Title passed.

Bill reported with amendments.

Bill recommitted.

Clause 4—'Interpretation'—reconsidered.

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

Page 2, line 19—Leave out definition of 'co-operative' and insert new definition as follows:

'co-operative' means a society which—

*(a)* is formed, wholly or in part, on the basis of the principles of co-operation;

and

*(b)* has as one of its objects the carrying on of an industry, business or trade:

The alteration of the definition of 'co-operative' and the corresponding addition of new subclause (2b) are proposed purely to improve the drafting of the Bill. Parliamentary Counsel has advised me that the definition as it presently stands, when applied to clause 15, produces a degree of circularity that can be avoided in the manner proposed by this amendment. It is purely a drafting matter.

**The Hon. K. T. GRIFFIN:** I am prepared to support the amendment. I agree that it assists in the comprehension of the Bill. Of course, I draw attention to a subsequent amendment which I have on file and which I believe will reflect more appropriately the provisions that come under clause 15, but perhaps I should refer to that later. In the meantime, I support the amendment.

Amendment carried.

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

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

(2b) For the purposes of this Act, a co-operative is eligible to be registered under this Act if—

*(a)* it is formed on the basis of the principles of co-operation; or

*(b)* although not formed entirely in accordance with the principles of co-operation, the commission is satisfied that there are special reasons why the co-operative should be registered under this Act.

This amendment picks up the provisions of clause 15 (3), which allows the Corporate Affairs Commission to permit the registration of co-operatives that might otherwise be ineligible to register under the Act. The criteria for registration are set down in subclause (3), namely, that the co-operative has in some degree been formed on the basis of the principles of co-operation and that the commission is satisfied that there are special reasons why the co-operative should be incorporated under the Act. We shall be considering the deletion of that subclause in a subsequent amendment in the name of the Attorney, and for that reason I propose new subclause (2b).

It picks up the criteria of subclause (3) and provides that, where a co-operative is formed on the basis of the principles of co-operation, if it does not conform entirely to the principles of co-operation and the commission is satisfied that there are special reasons why the co-operative should be registered, then the Corporate Affairs Commission may allow that registration.

**The Hon. C.J. SUMNER:** I am prepared to agree to the Hon. Mr Griffin's amendment being moved in lieu of the amendment I was going to move, as it has the same effect and is consequential on the amendment to which we have just agreed, that being to change the definition of 'co-operative'.

Amendment carried; clause as amended passed.

Clause 15—'Registration of co-operative'—reconsidered.

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

Page 8, lines 25 to 34—Leave out subclause (3).

Amendment carried; clause as amended passed.

Bill reported with further amendments. Committee's reports adopted.

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

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

The Attorney-General previously indicated that Government time would be made available for consideration of this Bill in the House of Assembly. This also applied to the Criminal Law Consolidation Act Amendment Bill and two other Bills introduced by the Hon. Mr Burdett. I am grateful for this indication that Government time will be made available for consideration of the Bill to ensure that it passes into law.

The Bill has been a long time in preparation and drafting. As the Attorney-General said during this second reading speech, attention was first given to amendments with the establishment of a working party in 1978. That working party reported at about the time I became Attorney-General and I and the Liberal Government took the matter further, to the point where a Bill was introduced at the end of the last session.

The Bill which now comes out of Committee and moves to its third reading is a quite substantial reform in the area of co-operative law. It must be remembered that the Industrial and Provident Societies Act in this State is based on United Kingdom legislation from the 19th century. Apart from one or two relatively minor amendments, there has been no substantial review of that law or the concepts of that time. The Bill before us is very much overdue.

I know that this is not the end of the track with respect to this Bill because there will need to be regulations prepared. I hope that when those regulations are prepared they are circulated for public comment before being promulgated—but that is for another day. At the third reading stage I will ask the Attorney-General whether he can give an undertaking that those regulations will be exposed for public comment when they have been drafted. For the moment I appreciate the indication of the Attorney-General that Government time will be made available for the consideration of this Bill.

**The Hon. C.J. SUMNER (Attorney-General):** The Government is prepared to make Government time available for the passage of this Bill in the House of Assembly. To save the Hon. Mr Griffin raising this at the third reading stage, I indicate that I have no objection to the regulations relating to this Bill being made publicly available for comment prior to promulgation. I will draw that matter to the attention of the Corporate Affairs Commission.

Motion carried.

Bill read a third time and passed.

## MOTOR VEHICLES ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 24 March. Page 639.)

**The Hon. DIANA LAIDLAW:** I support this amendment to the Motor Vehicles Act. In 1978 a provision was included in the Act enabling a person restricted in the use of his or her limbs to apply to the Registrar of Motor Vehicles for a special parking permit allowing extra time on parking meters and in parking zones. To date 430 persons have received such a permit.

The criteria, however, have been found to be unduly restrictive. The Totally and Permanently Disabled Soldiers Association of Australia has been one amongst a number of parties that has highlighted that persons suffering other disorders (for example severe respiratory or cardiac disorders) are at present not eligible for the permit. A host of people suffering such disorders cannot use public transport or walk at a normal pace. The amendment broadens the Act to enable these people, if they hold a driver's licence, to apply for parking permits.

As legislators we have a responsibility to help as much as possible those people in our community who suffer disabilities. Broadening the criteria for parking permits is a further, albeit small, step in this process. The measure will help to ensure that life will be a little less trying for at least some of the people for whom restricted mobility is a problem. I ask the Minister the following questions.

Firstly, the amendment introduces the term 'physical impairment' but the second reading explanation refers only to severe respiratory and cardiac disorders. As the member for Hanson noted during the debate on this Bill in the other place, section 4 of the Handicapped Persons Equal Opportunities Act offers a very comprehensive definition of 'physical impairment'. Will this definition be the guideline used by the Registrar when issuing permits or will eligibility be restricted to the two disorders mentioned in the second reading explanation?

Secondly, will this parking permit provision apply in council areas throughout the State or is it to be confined to the boundaries of the Corporation of the City of Adelaide?

Thirdly, will the Minister of Transport require the Registrar to provide, when issuing permits, an appropriate sticker that could be attached to the front windscreen, thereby designating a car as one driven by a disabled person? This measure would help parking inspectors in the performance of their duties and would help to alleviate much frustration currently being experienced by the holders of such permits.

Fourthly, if this sticker arrangement was agreed to, could it be extended to all disabled drivers? I suggest this extension because it would make it easier for inspectors to identify and fine owners of vehicles that park in spaces reserved for the exclusive use of disabled drivers in parking stations, shopping centres and the like. It infuriates me that this facility is often abused by owners who do not require this assistance. I support the Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

## BULK HANDLING OF GRAIN ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 563.)

**The Hon. H.P.K. DUNN:** I rise to support this Bill for several reasons, particularly because there is general agreement within the industry that there ought to be changes to this Act, the provisions of which have been very unfair to some council areas and more than fair to others. I cite several instances of this anomaly. For example, in the Kimba area, that you, Mr President, would know, there is capacity to hold 115 000 tonnes of wheat and council rates of $402 were paid, whereas the Light District Council, with a capacity of 27 000 tonnes (less than a quarter of the previous rate), was receiving rates of $9 205. One other case which is closer at hand is at Port Adelaide: it has 340 000 tonnes capacity and the council was receiving rates of $48 000. As an analogy to that, Port Lincoln, with 330 000 tonnes capacity, was receiving only $9 000.

The Bill eliminates many of these anomalies, which have come about by different rating systems. Rates were struck either on land values, which assumed the Government land values, or on capital values; sometimes these were the Government values and sometimes private values, with the result that great anomalies were created with this rate system.

Furthermore, if we look interstate we can see how well South Australian councils have done. Western Australia, which has approximately twice the capacity as South Australia, was receiving only $27 000. Queensland receives about $40 000; New South Wales local councils receive nil; Victoria, nil. South Australia is receiving at this instant $271 000, so local government has benefited greatly by this.

The basis that is being struck now, that is, 5c for every tonne capacity of the installation, is a very fair and equitable way of doing it, particularly as it will be indexed into the cost price index. That is a reasonable method of coming to agreement. Local government is generally happy about it. Of the 66 councils involved, it has been pointed out by the Minister that 53 are totally in favour and most of the rest accept what is being done. Furthermore, they will have rises as the cost price index goes up, so that is fair to them. Most ratepayers would agree that they pay rates on their own land to cover the cost of the land where those silos are built. Therefore, they are paying twice, in effect. However, they are prepared to accept what is being done at this stage and the fairness of what is being put forward. There is a fair consensus between local government and the Co-operative Bulk Handling. So, I support the Bill.

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

## WHEAT DELIVERY QUOTAS ACT (REPEAL) BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 562.)

**The Hon. H.P.K. DUNN:** I support the Bill. This Act was created originally for reasons that are no longer so necessary or obvious. The original Bill was introduced because Australian wheat farmers were put under pressure by the United States, which had a great stock of wheat at the time. The United States indicated that if Australian farmers did not control their wheat production it would flood Australia's markets with wheat at a price much cheaper than Australian farmers could meet. With that situation in mind, the Act was passed to control and regulate wheat production. I believe it had undesirable results.

It cut out the natural flow and trading of wheat and caused an upset in supply and demand. One of the most insidious effects involved areas, say, in South Australia to the west, where development was still proceeding and where people had not earned themselves a wheat quota because they had not been delivering wheat to the extent required to obtain a quota. The standard involved looking at deliveries over the previous three or five years. Although growers in the more established areas with high production figures could continue, farmers in developing areas were unable to obtain useful quotas. Despite appeal provisions, it was not a satisfactory method.

**The Hon. B.A. Chatterton:** Especially for sharefarmers.

**The Hon. H.P.K. DUNN:** Yes, sharefarmers were particularly disadvantaged. I do not believe that Australia or South Australia benefited from the arrangement. We would have had more wheat in our silos if we had continued with the growing arrangements obtaining prior to the introduction of quotas. When the system became freer and we could sell our wheat, the stock was not there and Australian wheat farmers suffered a loss. The system caused ill feeling amongst individual farmers as well. Many proceeded regardless of the official arrangements and put their produce in the system. They did not receive their first advances and, when they did sell, were out in front of people who had stuck rigidly to the Act and who had done the right thing. That caused ill feeling. The abolition of this Act is sound, and I support the Bill.

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

## MEDICAL PRACTITIONERS BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 635.)

**The Hon. J.C. BURDETT:** I support the second reading. Once again, this is an initiative of the previous Government, and the Bill differs very little from the Bill which was introduced by the previous Minister of Health in the previous Parliament but which was not debated and lapsed on prorogation. As the Minister said in his second reading explanation, Bills of this kind are most important. Any Bills which regulate the major professions, such as the legal, medical or any other professions, and which affect the lives of people are important. There was a need to update the Bill, which the previous Minister acknowledged and which the present Minister has carried forward.

I have looked carefully at the few departures in the Bill from the previous Bill. There are not many of them, and most of the departures are minor. There is one quite major one to which the Minister, in his second reading explanation, quite properly drew attention, that is, the compulsory pro-

vision of indemnity insurance by medical practitioners. They must take this out before they take up or continue practice, and they can be restrained from practising if they do not have it.

That provision seems perfectly acceptable. The majority of practitioners are already covered through the medical defence scheme and, wherever they are not covered, it is reasonable to provide that they should have such cover if they want to go into or continue to practise. The amendments to the Medical Practitioners Act passed during the term of the previous Government provided for compulsory negligence insurance in the same way. I certainly support this deviation from the previous Minister's Bill. As I have said, there have been a number of minor deviations and I do not intend to talk about those. Another fairly minor deviation involves clause 8, which provides that the Governor shall appoint one of the members of the board to be Chairman of the board. That is the Medical Board. The previous Bill provided in clause 8 that the board shall appoint one of its members as the President.

There are two different concepts. That of the previous Government's was that the board, once it was appointed, should be democratic and should appoint one of its members President of the board. The concept of this Bill is that the Governor—really the Government—will appoint one of the members of the board to be Chairman of the board. This means that the Government is taking unto itself the right to appoint the Chairman, whereas the previous Bill suggested that that right would be with the board itself.

With various boards there are different methods of appointing a Chairman or President. Sometimes it is by an outside body, sometimes by the elected body (if the body is elected), and sometimes it is by the board itself. My suggestion is that an organisation of this kind, a medical board largely providing peer review, ought to appoint its own Chairman or President (different terms are used in different Bills).

I propose to move to put the Bill back into the form in which it was presented by the previous Minister, which provides that the board shall appoint one of its members to be President or Chairman of the board. Apart from that, a few minor amendments, and the proper introduction of the indemnity fund, this Bill accurately reflects the Bill introduced by the previous Minister. This legislation is a step forward to bring the Medical Practitioners Act into line with the requirements pertaining today in relation to a major professional body and I support the second reading.

**The Hon. R.J. RITSON:** I also support the Bill. Its history has been outlined by the Hon. Mr Burdett, and I merely wish to make a few general comments about the principles embodied in it, with passing reference to the Act that it replaces. I believe that in the past the Medical Practitioners Act provided a satisfactory structure for the review of academic standards and approval of hospitals for both undergraduate and postgraduate teaching and for the review of foreign graduates' medical qualifications. In a sense, a similar structure is proposed in the new Bill.

It is really in terms of the flexibility of medical boards in providing an appropriate range of restraints and sanctions against medical practitioners who stray from the path of good practice or good behaviour that this Bill differs. The previous Act gave the board only two options. A medical practitioner who, in the opinion of the board, was deserving of some sort of censure and punishment could be dealt with by reprimand or by suspension, or by application to the Supreme Court for the cancellation of his licence to practice. However, the previous Act contained a provision which, by way of guidance for the board, indicated that where an offence against the law of the State constituted a reason for determining unprofessional conduct, unless the offence was extremely grave, the board should err on the side of avoiding suspension.

Suspension is a serious punishment. In fact, it is a multi-thousand dollar fine which could amount to hundreds of thousands of dollars. In cases where that was not warranted the board was left with only the power of reprimand. To most people who practice medicine and who are sensitive to these things, being publicly reprimanded, perhaps with press publicity, is a fearsome thing. However, to the public of this State it appears to be a let-off, and no punishment at all. By comparison, other registration Acts contain a system of fines. From memory, the Pharmacy Act has a monetary fine for being intoxicated in charge of a chemist shop.

This new Bill will give the tribunal flexibility in relation to a range of punishments, something that the previous Act did not. This means that the board will be seen to act, and at times it may be constrained to act, in a more just way by imposing fines rather than a suspension and will be seen to be doing something. The addition of legally qualified and judicially qualified people to the tribunal function ensures that some measure of natural justice will be applied with judicial discretion, even though the Bill does not require the tribunal to act in accordance with the rules of evidence.

One can imagine that the presence of a judicially qualified officer will ensure that some measure of natural justice pertains. In fact, because this Bill gives the board and the tribunal almost Draconian powers it must necessarily rely to a great extent on the training and devotion to justice of the judicially qualified member and, indeed, of the lay member of the tribunal.

I believe that the practice of medicine is an art and a profession which holds people's lives in its hands. As a profession, we cannot really complain if we have stringent disciplines applied to us in the same way as they apply to, say, people who fly commercial aircraft. Although the range of penalties that have been introduced is quite severe in many cases, there can be no complaint in principle. In practice, I believe that the Bill will work well; it invites us to place a lot of trust in the good sense of the tribunal.

As I read the Bill, a few things come to mind which seem a little strange. One example is the range of penalties in relation to obstructing the board. Clause 16 provides a penalty of $5 000 for any person who fails without reasonable excuse to respond to a summons to appear before the board; or fails to produce relevant books or equipment after being summonsed to do so; or misbehaves himself or insults members of the board; or refuses to be sworn or refuses or fails to answer truthfully any relevant questions. Of those four offences, three have something in common and the other is an odd situation. The three that have something in common are paragraphs *(a)*, *(b)* and *(d)*, because all refer to a continuing indefinite refusal to co-operate with the sittings of the board. In many ways it is similar in principle to a recent situation when a person was imprisoned indefinitely for refusing to answer questions put to him by a commissioner.

I cannot see how an insult will obstruct the working of the board in the same way as a refusal to attend or a refusal to yield up records. My impression is that that has not been thought out, and a fine of $5 000 has been laid down without distinction. It would be possible for a person in most situations who comes before the board (perhaps someone accused unjustly), to lose control of himself and swear. Theoretically, he would be subject to a fine of $5 000, which is out of all proportion considering the kind of offence compared with an offence of unlawfully obstructing the board.

I do not believe that the matter has been thought through in the drafting. I do not propose an amendment, because I believe that the members of the board or tribunal will notice that and administer natural justice. There are a number of other matters in this Bill on which I have not had time to seek advice from people with legal training. None of those things, to my mind, would cause me to oppose the second reading of this Bill, and I suspect that, given time and consultation with people of legal training and with those who have been involved with the drafting of the Bill, many of my queries or possible objections will disappear. Certainly, they constitute no reason to delay the second reading stage.

One of the important points about the structure of the Bill is that it represents not only an advance in the discipline and control of medical practice, but, in terms of the basic structure of statutory authorities in general, the Bill has been given many of the hallmarks of a QANGO that has not managed to escape the democratic system. The Auditor-General is required to audit the accounts of the statutory authority involved (that is, the board and the tribunal). There is a requirement that a report be made to Parliament. There is sufficient Ministerial control and there is automatic appeal to the courts. Indeed, if all statutory authorities and tribunals were constituted in this manner there would be less need for a statutory authorities review committee.

I commend the Minister and the former Government on the drafting of those democratic controls. I will remain silent in regard to the question of incorporation. I understand that much of the work that has produced the conditions of incorporation was done previously in respect of legal practitioners. There are some differences, but I leave that matter to people who are more professionally trained in corporate affairs. I will not speak further in that regard.

I am a little worried about some of the procedures of the tribunal. Either the board or the tribunal is required to give 14 days notice to a person who is to appear and, if such a person fails to appear and if he does so without reasonable excuse, he has committed an offence. If a person fails to appear even with reasonable excuse, the board or the tribunal is empowered to proceed in his absence. The tribunal having proceeded in his absence, a person has only 30 days in which to appeal to the court. Therefore, within 44 days one can have received notice, be tried, punished, and have exhausted one's appeal time to the court without perhaps even knowing about it, because one may be on, say, a study tour.

I understand that it is extremely unlikely that this will happen. When I suggest these circumstances to people, they say, 'Yes, but there are powers of adjournment. People act sensibly.' I accept all that, but I have often heard that an Act must stand on its own and not necessarily rely on unspoken understandings that people would not act in a way in which they are entitled to act by law. I will have further discussions, but I am tempted to seek an extension of those minimum periods.

In regard to some offences, there are no opportunities to have the decision of the board or tribunal reviewed before the expiration of the appeal period. A person's licence to practice medicine could be cancelled indefinitely, and there is a provision that that person cannot reapply for two years. However, one can appeal within 30 days. It would be a terrible pity if one did not appeal and did not have reasonable cause to do so within 30 days and subsequently new evidence turned up. It is possible that some matters that might give rise to deregistration or a suspension could subsequently become the cause of tortious action or criminal action in another court.

If a tribunal has found, for instance, on a question of fact that sexual interference did occur between a practitioner and a patient and if a court subsequently finds that that did not occur, I wonder what is the provision for having that decision reviewed by the board or the tribunal, given that one has exhausted one's time of appeal with the Supreme Court (which is 30 days) and perhaps a criminal or civil action has come up a year later. Is one entitled to go back to the tribunal or the board in less than two years with the new evidence that has turned up in the court, where the court has found that something did not occur which the tribunal found did occur?

These are the sorts of questions to which I want answers. I do not claim to be competent to answer those questions myself. I merely ask for a little time to have them answered. The Minister has offered me the services of some of his advisers, and I intend to take advice from lawyers in my own Party. I thank the Minister for his offer, and I thank my own colleagues who have offered to explain these matters to me. Having said that, I am very happy to support the second reading.

In principle, the Bill is sound and acceptable to all, but I hope that members will be patient in Committee (there is no doubt that the Bill will pass in this session), because I want to ask a lot of tedious questions about the procedures of the tribunal and the court. Having said that, I support the second reading.

**The Hon. J.R. CORNWALL (Minister of Health):** I thank honourable members for their contributions to this debate. I do not intend to reply at any great length to the second reading speeches. At this stage it is essentially a Committee Bill. Many matters have been raised and canvassed by the Hon. Dr Ritson, and quite appropriately so. I will briefly respond to some of the matters raised by both the Hon. Mr Burdett and the Hon. Dr Ritson.

First, the Hon. Mr Burdett flagged that he intended to move an amendment regarding whether or not we should have a Chairman or a President and whether or not that person should be appointed by the Minister and, therefore, the Government of the Day, or whether that person should be appointed by the board. Concerning the title 'President' or 'Chairman', the question was raised by the Caucus health committee as to whether or not we should have a Chairman or Chairperson. It is a very good point. The Hon. Mr Burdett would be aware that I am heavily committed to women's rights issues and have already announced several significant initiatives in the health area, which I will not canvass at any length at the moment.

The health committee spoke to Parliamentary Counsel about this, and they, as the honourable member would know, are sometimes quite remarkable people, but are also there to keep Ministers and members on the straight and narrow. It was pointed out to me that, if we wanted to change the drafting from 'Chairman' to 'Chairperson', which, I understand, is a talisman of the women's movement (and I am very sympathetic towards the attitude), we would probably have to sequentially change in excess of 400 Acts to get some sort of uniformity across the board.

Therefore, we decided that it was not wise to press on in that direction for the time being at least. A satisfactory compromise seemed to us to refer to a President. It is my understanding that the President can be either male or female. For that reason, in the spirit of true consensus, compromise and common sense, which is the hallmark of my Ministry, we decided that the Bill should come forward in that form. That is the reason behind the amendment to the original Bill introduced by the previous Minister. Frankly, I think that I will be sticking to that firmly.

It is not my intention at the moment to accept any amendments that would try to change the word 'President' back to 'Chairman', because a very important point of principle is involved. As to whether the President should

be appointed by the Minister or the board, again I think that an important point of principle is involved. The Medical Practitioners Act is committed to the Minister of Health, but the board and the tribunal under the proposed legislation will have their own clearly defined statutory powers. Once that Act gets into place, while the Minister is responsible for the Act and can bring it back to Parliament for amendment from time to time, there is no way, nor should there be a way, in which the Minister or the Government can interfere with the conduct of the board or the tribunal. That is entirely proper and we accept it totally and without reservation.

The point arises as to whether or not the Minister, and therefore the Government of the day (whatever its political complexion), should have some discretion and say as to who should be the President of the board. It is my contention and that of the Government, after due consideration, that we should have the discretion to appoint the President, because we will have the opportunity to consider a list of names and decide, with all the due caution and common sense that goes with the burdens of Government, who that President should be. Again, I am of the mind at this moment not to accept any amendment which would take away that discretion from the Minister. However, I am not quite so committed to that as I am to the notion that we should use the term 'President'. I will listen carefully to arguments presented in Committee before we, as a Government, make a collective and sensible decision on it.

The Hon. Dr Ritson described many of the provisions, particularly regarding penalties and the conduct of the board, the tribunal and inquiries, as being Draconian. Certainly, that was my impression when I saw the original Bill that came before Parliament in October last year—a Bill introduced by the previous Government and the previous Minister. My initial reaction on my first and second reading of the Bill was very much like the reaction of the Hon. Dr Ritson, namely, that it did appear to have very Draconian provisions.

I was surprised that the South Australian Division of the Australian Medical Association had accepted those provisions. I have since been in full consultation with the A.M.A., as was my predecessor, and I am assured that that association in turn has consulted with its legal adviser and is happy with the provisions previously introduced and now reintroduced. I point out to the Hon. Dr Ritson that there are adequate rights of appeal. At the same time I understand some of his queries and difficulties with some of the clauses of the Bill.

I have discussed this privately with the Hon. Dr Ritson and I am sure that he will not mind my telling the Council that I offered, in the spirit of consensus and compromise that is characteristic of the way in which I operate, to offer the services of my senior legal services officer and my Chief Administrative Officer in the South Australian Health Commission, both of whom have been associated for a long time with this Bill through its initial conception, its very lengthy gestation and now, we hope, its robust birth. I would be only too pleased to make those officers available to the honourable member.

I appreciate the concern of the Hon. Dr Ritson. He is the only representative of this honourable profession in this Council. Therefore, he obviously has a greater interest in this Bill than most other members. Quite rightly he has a deep interest in seeing that this Bill comes out of this Council in the best possible form, and I am prepared to co-operate in any reasonable way possible. The honourable member has flagged that he does not intend to move amendments but that he wishes to examine not only some but many of the provisons in considerably more depth. I am only too pleased to assist and expedite that matter. I anticipate that this Bill will move into the Committee stage tomorrow. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

## ABORIGINAL LANDS TRUST: COOBER PEDY

Consideration of the House of Assembly's resolution:

This House resolves to recommend to His Excellency the Governor that, pursuant to section 16 (1) of the Aboriginal Lands Trust Act, 1966-1975, section 1257, out of hundreds and allotment 1430, town of Coober Pedy, be vested in the Aboriginal Lands Trust.

**The Hon. J.R. CORNWALL (Minister of Health):** I move:

That the resolution be agreed to.

The Umoona Community Council Incorporated has requested an extension to the boundary of the existing reserve for Aborigines at Coober Pedy. The request was made in relation to a housing programme with the additional land providing a greater degree of privacy for the families involved. Negotiations have taken place between the Umoona Community Council Incorporated, the Coober Pedy Progress and Miners Association, and officers of the Department of Lands and Department of Mines and Energy to reach agreement on the boundary which has now been surveyed. The Aboriginal Lands Trust has requested that section 1257, out of hundreds and allotment 1430, town of Coober Pedy, be transferred to the trust, following which the land will be leased to the Umoona Community Council Incorporated for 99 years. In accordance with section 16 of the Aboriginal Lands Trust Act, 1966-1975, the Minister of Lands has recommended that the land be vested in the trust and I ask members to support the motion.

Motion carried.

## EVIDENCE ACT AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 675.)

**The Hon. DIANA LAIDLAW:** I support the second reading and, in doing so, endorse the remarks made by the shadow Attorney-General (Hon. Trevor Griffin) that the only proper course is to abolish the right of an accused person to make an unsworn statement in his or her defence. The debate on the merits or otherwise of the unsworn statement has had a long and chequered history in this Parliament, rather like the debate on the merits of establishing a casino in this State. Like the casino issue, it is time the issue of the unsworn statement was resolved, for, while we debate this matter yet again, the abuses and injustices associated with an accused person making an unsworn statement continue unchecked. This situation is particularly abhorrent to women involved in cases dealing with sexual offences against them.

I understand that everyone in this Chamber is in accord that the present situation is highly unsatisfactory and that change is required. I agree that the amendments introduced by the Government would remove most of the unsavoury practices and elements associated with the unsworn statement, but I do not agree, however, with the Hon. Anne Levy, who stated earlier this afternoon that if the amendments are passed the accused would be subject to exactly the same rules that apply to an accused who gives sworn evidence. This is not correct. There is a basic and a most profound difference, a difference which the Hon. Anne Levy mentioned rather as an aside later in her contribution to the debate. She said that the only difference, and I emphasise 'only', was that the accused who opts to present an unsworn statement cannot be cross-examined.

The principle of cross-examination is fundamental to our system of justice and the perception that justice is being practised. I am opposed to the retention of the unsworn statement, because under this arrangement an accused is not held to account for his or her statements and action. If one is speaking the truth, one should be prepared to defend the truth; one should be cross-examined. Our legal system provides adequate safeguards for an accused person without according that person the added advantage of making an unsworn statement. The Hon. Trevor Griffin rebutted most convincingly claims that the legal system would not protect Aboriginal defendants and others who gave evidence on oath and thus became subject to cross-examination, and I do not intend to elaborate on these arguments. I support the second reading.

**The Hon. I. GILFILLAN:** I rise to speak on behalf of my colleague, the Hon. Lance Milne, and myself. Unfortunately, he is unable to be here this evening. As the Hon. Mr Griffin has reminded us, there was a select committee on which the Liberal Party then in Government refused to serve. We feel that in doing so it let down its supporters because it is hard to influence a body when one does not belong to it.

A very clear exposition of the position was given by the Hon. Anne Levy this afternoon. It is clear to us that most of the trouble has been caused in rape cases and, as she said, the remedy for this is in section 34i, which should now be subject to an inquiry. For some reason or other, and regrettably, neither the Police Department nor the Police Association appeared before the select committee or provided written evidence. However, they now have certain objections which do not seem to us to be all that vital, and the Attorney-General has largely set our minds at rest.

The one exception to this is that we are doubtful whether the unsworn statement should be extended to courts of summary jurisdiction, and we understand that the Attorney-General is moving an amendment which would cover that objection. The Hon. Mr Milne was a member of the select committee that made recommendations in this. Therefore, we want to support it, but what the Hon. Lance Milne wanted in the beginning was for the same rules to apply whether the accused was making a statement from the witness box or from the dock. In either case, an accused should be subject to the truth and to the same restrictions.

This Bill merely does what he suggested, except for the restrictions on cross-examination where the accused is not of bad character. That being so, we intend to support the Bill, but give notice that, in the event of the Bill not proving satisfactory after section 34i has been reviewed we will consider introducing legislation to go a step further.

**The Hon. C.J. SUMNER (Attorney-General):** I thank honourable members for their contributions, although it is quite clear that once again there is a distinct difference of opinion in the Council between those who want the complete abolition of unsworn statements and those who wish to support the Bill which I have introduced, which retains the unsworn statement, but which makes a number of reforms in relation to the law and practice concerned with it. I do not want to canvass the arguments again. There is little point in my doing that, because we have had this debate in this Council on at least two occasions previously.

The Hon. Mr Griffin asked whether or not the Bill as introduced could have extended the use of unsworn statements to courts of summary jurisdiction, and that interpretation has been on the wording of the Bill.

The select committee that looked at this issue left open the question of whether the unsworn statement should be extended to courts of summary jurisdiction. It pointed out that in some respects, if one was going to have an unsworn statement, it ought to apply in courts of summary jurisdiction as well as in higher courts; indeed, there may be greater force in applying it in courts of summary jurisdiction, because it is in those courts that people are more often unrepresented than in higher courts.

Nevertheless, the committee made no firm recommendation and, at this stage, it would be going outside the recommendations made by the select committee to extend the use of the unsworn statement, particularly as there is such controversy and concern about it. The Bill is intended, and I have now placed on file an amendment to clarify this, to apply only to those jurisdictions in which the unsworn statement is currently permitted. The Bill will provide for the changes necessary in the law and practice relating to the use of the unsworn statement to provide that, in general, the same rules relating to admissibility and relevance should apply, whether the evidence is given on oath, or by way of an unsworn statement. With that one qualification, I thank honourable members for their contributions. I indicate that proposals from the Hon. Mr Griffin, the Hon. Miss Laidlaw and some other honourable members opposite to negate the Bill, by abolishing the unsworn statement, are unacceptable.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Evidence by accused persons and their spouses.'

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

Page 1—

Line 29—Leave out 'subsection (2)' and substitute 'subsection (3)'.

Lines 33 and 34 to page 2, lines 1 to 21—Leave out paragraph *(e)* and substitute the following paragraph:

*(e)* by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections;

(2) A person charged with an offence is not entitled, at his trial for that offence, to make an unsworn statement of fact in his defence.

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

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

and

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

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

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

or

(iii) during the trial.

(4) This section, as in force immediately before the commencement of the Evidence Act Amendment Act, 1983, applies to a trial that commenced before the commencement of that amending Act.

(5) This section, as amended by the Evidence Act Amendment Act, 1983, applies to a trial that commenced after the commencement of that amending Act whether the charge was laid before or after the commencement of that amending Act.

My first amendment is really a minor drafting amendment which is consequential upon the second and more substantive amendment. The substantive issue is whether or not there should be the right of an accused person to make an unsworn statement. In Western Australia, Queensland and New Zealand, it has been deemed appropriate to abolish the inherited anachronism of the unsworn statement.

As I said at the second reading stage, in the Northern Territory there is an indication from the Northern Territory Attorney-General that, in the new criminal code being introduced, there is a provision which will abolish the right of an accused person to make an unsworn statement.

In the United Kingdom, a Royal Commission reported last year recommending the abolition of the unsworn statement in that country. I understand that the Victorian Government is waiting upon reports of the Australian Law

Reform Commission and the Victorian Law Reform Commission before determining whether or not it will proceed to abolish or retain the right of an accused person to make an unsworn statement in that State.

*The Hon. C.J. Sumner interjecting:*

**The Hon. K.T. GRIFFIN:** The Attorney-General interjects that there has already been a report in Victoria. In fact, there have been two reports, one by the Chief Justice's Law Reform Committee, the one that the Attorney has resolved to follow to a large extent in proposing this Bill, and another report (I am not sure by which law reform committee or agency). There were two reports, one in favour of abolition and one in favour of retention.

By far the overwhelming majority of reports across the British Commonwealth have been in favour of abolition. In those countries where the unsworn statement has been abolished, as I said at the second reading stage, there is no evidence at all of any injustice to an accused person. In my amendment there are certain protections for the accused with respect to his own character and his previous record. To some extent they are provisions which the Attorney-General has picked up in his Bill.

To that extent we agree that there should be some protections for the accused person. That is where the agreement seems to stop, because we part on the question of whether or not the unsworn statement should be retained. I could canvass again the arguments that were canvassed three times in the last Parliament and again on this occasion concerning the abolition of the unsworn statement.

It is my clear and positive view that it ought to be abolished. It is the clear and unequivocal commitment of the Liberal Party to abolish it. At the first available opportunity, if we are not successful on this occasion because of the support the Democrats have indicated for the Labor Government, the Council should have no doubt that we will include it in our policy for the next election, and we will be back with a Bill to abolish it in the next Parliament.

**The Hon. C.J. SUMNER:** I oppose the amendment. There is little point again in canvassing the issues at great length. I do not believe the position is as clear cut as the Hon. Mr Griffin has indicated. He says the great majority of reports in common law countries favour abolition.

**The Hon. R.C. DeGaris:** There are more in favour than against.

**The Hon. C.J. SUMNER:** I do not know that even that is correct. Certainly, the New South Wales Law Reform Commission has come down with no proposition to abolish the unsworn statement. The Victorian Law Reform Commission under Sir John Minogue did not come down with a proposition.

**The Hon. R.G. DeGaris:** There was another report.

**The Hon. C.J. SUMNER:** There was one in Victoria. Nevertheless, there are differences of opinion. It is a matter of controversy—

**The Hon. R.C. DeGaris:** Has it been abolished in Great Britain?

**The Hon. C.J. SUMNER:** No, I do not think so. There have been recommendations for its abolition in the United Kingdom over the years and, in fact, there was one last year but it was not put into effect.

**The Hon. K.T. Griffin:** The unsworn statement is not used there very much, anyway.

**The Hon. C.J. SUMNER:** That may be. I am not sure whether it is used here to any great extent nowadays, either. It is not used as extensively as it was in 1973, according to the Mitchell Committee Report. I think the figures indicate that about 60 per cent of trials in 1973 involved the use of the unsworn statement. The select committee report indicates that the Mitchell Committee reported that of 94 trials in the Central District Criminal Court in 1973, 30 accused (32 per cent) made unsworn statements. In 1979 there were 135 trials, and 17 offenders (13 per cent) made unsworn statements and 118 (77 per cent) gave sworn evidence. In 1980, 153 trials 37 (24 per cent) involved unsworn statements and 115 (75 per cent) involved sworn evidence.

In discussing the statistics the committee reported that the arguments emphasised that the unsworn statement is used much more extensively in South Australia than anywhere else in Australia. That argument is based on the Mitchell Committee Report, which states that the unsworn statement was used in 67 per cent of Supreme Court cases in 1973. That is quite different from the 32 per cent in the Central District Criminal Court in 1973. However, the figure reduced quite considerably for 1979 and 1980. Evidence produced to the committee indicates that this reduction in the frequency of the unsworn statement is likely to be permanent.

It is not true that the incidence of unsworn statements is at the level that it was in 1973. That may well be because the statistics referred to by the select committee indicate that if one chooses to make an unsworn statement one incurs a penalty, because the rate of acquittal for people who give unsworn statements is significantly lower than for those who give sworn evidence. In fact, Chief Justice Bray said in a statement tendered before the select committee that persons who decide to make an unsworn statement do incur a penalty.

**The Hon. Diana Laidlaw:** That's not really the problem. It's what they say in their evidence that is the problem.

**The Hon. C.J. SUMNER:** This Bill is designed to address that situation. In fact, if a defendant ventures on to certain ground he can be subject to evidence in rebuttal and, indeed, have evidence of his previous convictions or bad character brought before the court. Justice Bray also said in his statement provided to the select committee.

> Logic may be against it, but history and humanity are for it. I think it would be a sorry day when every person in the dock of a South Australian court charged with a major crime had only the stark alternatives of saying nothing or getting into the witness box and rendering himself open to cross-examination.

Further on he also said:

> The defendant who chooses to make an unsworn statement incurs a handicap. All I urge is that he should retain the right to incur that handicap if he wants to. I would view with revulsion the prospect of his being unable to put his version of the facts before the jury in any form unless he went into the box.

They are views held by former Chief Justice Bray. He agrees with the situation borne out by the statistics produced during the select committee hearings, namely, that a person who choses to make an unsworn statement incurs a penalty.

The figures that we have received indicate that a person is more likely to be convicted if he makes an unsworn statement than if he gives sworn evidence. I do not think that there is any point in canvassing these issues. I think that this Bill will overcome many of the difficulties associated with the unsworn statement. Nevertheless, it provides people with the ancient right to provide their evidence in that way should they desire to do so. Accordingly, I oppose each of the amendments proposed by the Hon. Mr Griffin which, in effect, will abolish the unsworn statement in criminal trials in the higher courts.

**The Hon. K.T. GRIFFIN:** I do not believe that any conclusion can be drawn from the statistics given by the Attorney-General. The sample provided is quite small. Without more detailed examination of the particular cases we are not in a position to determine whether the very fact of making an unsworn statement was the reason for a conviction or whether the person's guilt was the reason for conviction. I suspect that more guilty people make unsworn statements than not. I do not think that conclusions can be

drawn from the statistics mentioned by the Attorney, certainly not in favour of its retention.

**The Hon. R.C. DeGARIS:** I will not speak at any great length, because I believe that my view is already well known. I have spoken on this issue on many occasions and have strongly supported the abolition of the unsworn statement. I think that it is fair to say that most reports in British Commonwealth countries from a variety of inquiries and commissions that have looked at this issue have favoured the abolition of the unsworn statement. The unsworn statement has not been abolished in Great Britain, but there have been recommendations for its abolition. There have been two reports in Victoria: the first recommended abolition and the second favoured its retention, but with many changes.

The unsworn statement has already been abolished in Queensland, and recommendations have been made in that regard in New South Wales. It has been abolished in Western Australia and New Zealand, and one notes that the general opinion throughout the Commonwealth can be said to be in favour of the abolition of the unsworn statement. I have no doubt that eventually it will be abolished in South Australia. I am quite certain that the Australian Democrats have taken a certain view on this matter, but as it operates they will come around to the view that the correct thing to do is to abolish the unsworn statement.

Whether or not the amendment that has been moved by the Hon. Trevor Griffin (who handled it very well) is carried, I want to make clear that, if the Bill is not amended, it should pass, because, although it does not abolish the unsworn statement, it improves the present situation significantly. We must acknowledge that. However, the Bill does not go far enough, and I believe that the unsworn statement should be abolished in this State.

The Committee divided on the amendments:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, R.C. DeGaris, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, and R.J. Ritson.

Noes (9)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, and C.J. Sumner (teller).

Pairs—Ayes—The Hons H.P.K. Dunn and R.I. Lucas.

Noes—The Hons K.L. Milne and Barbara Wiese.

Majority of 1 for the Noes.

Amendments thus negatived; clause passed.

Clause 3—'Right to make unsworn statement.'

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

Page 2, line 23—After 'offence' insert '(not being a summary offence, or a minor indictable offence that is heard and determined in a summary way)'.

I do not wish to extend the use of the unsworn statement to courts of summary jurisdiction. That matter may be considered in the future, but I do not believe that it is appropriate to do that at this stage. The select committee indicated that, while there may be some consistency in the proposition that the unsworn statement should be permitted in courts of summary jurisdiction, it did not recommend that extension, and I believe that we should follow the select committee report. Accordingly, I make clear that the unsworn statement is not available to defendants in courts of summary jurisdiction.

**The Hon. K.T. GRIFFIN:** I support the amendment, because I certainly would not want to see the right to make an unsworn statement extended to accused persons in courts of summary jurisdiction. However, I want to make clear that, because I was defeated on the last amendment, I do not propose to call a division on this clause. I regard this clause as an integral part of the Government's proposal to preserve the unsworn statement. Having determined that I do not have the numbers for abolition in this Committee, there is no point in taking the time of the Committee in regard to this clause.

I have some queries about the way in which the provisions of the clause will be administered. While the principle embodied in this clause is something of an improvement, I would not go so far as to say that it is a significant improvement. However, to some extent it does tighten what can be included in an unsworn statement. I am intrigued about how it will be policed. Does the Attorney-General envisage that judges will require a draft unsworn statement to be typed and handed to them before the accused person makes an unsworn statement from the dock?

Does the Attorney envisage that the judge will not have any involvement at that stage, that the accused will get into the dock and make his unsworn statement, and that the prosecutor or the judge will have the right to interrupt the accused in his presentation of the statement to make a point of procedure? If that were to occur, it would certainly act to the prejudice of the accused person. I could see some difficulty in a so-called draft of the unsworn statement being handed to the judge before it was read, but that may be the only solution. I will certainly welcome some enlightenment on the way in which the Attorney believes this will work.

**The Hon. C.J. SUMNER:** That will depend on the practice that is to be adopted by the judges. It will be for the judges to determine the practice in their courts in relation to this matter. The select committee made some observations on this topic. I think it was suggested that the statement in South Australia generally now is typed up prior to being delivered and, in fact, could be submitted to the judge prior to its being given to ensure that it does not bend any of the rules of evidence. Alternatively, if an accused is giving an unsworn statement and embarks on material that he should not be discussing (material that is inadmissible in terms of the Bill now before us) then the judge could interrupt. I would expect a judge to interrupt in those circumstances and perhaps advise the accused that if he continues in that vein there could be consequences flowing from it as far as his own character is concerned, or there could be an indication that rebuttal evidence could be called.

I cannot say what practice will be adopted by a judge in his court. That would be for that judge to determine or for a court of criminal appeal to determine if there is any doubt about it. That is not an unusual situation and applies to many areas of the law where the detailed application of it in courts is left to the judges. They were the two suggestions that the select committee made.

The other proposition put forward by the select committee was that the Law Society should be advised of the ethical rules that operate in Victoria in the bar counsel and that these rules should be drawn to the attention of the Law Society with a view to developing similar rules in this State. I certainly intend to do this once this legislation is passed. I cannot offer any more specific advice on how the matter will be dealt with by the courts. I think that the situation could easily be dealt with given the general practice in this State of the unsworn statement being prepared and typed out prior to being given in court.

**The Hon. K.T. GRIFFIN:** I do not propose to take this matter any further. I predict that there will be some difficulties with the implementation of this clause. I believe that it will not be as easy as the Attorney-General suggests to resolve the sorts of questions that I have raised. All I can say at this stage is that I will watch with great interest how this clause is implemented. Whilst I hope that it will not create problems for the courts and the parties before the courts, I tend to the view that most likely they will find considerable difficulties in the implementation of this clause.

Amendment carried; clause as amended passed.

Clause 4—'Evidence in sexual cases.'

**The Hon. K.T. GRIFFIN:** I do not wish to make any comment on this clause, as it is an integral part of the Government's proposition for the retention of the unsworn statement. Accordingly, I do not oppose it in the light of the loss of the vote on clause 2.

Clause passed.

Clause 5 and title passed.

Bill reported with amendments; Committee's report adopted.

## RIVER MURRAY WATERS BILL

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

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

*That this Bill be now read a second time.*

I am pleased to present this Bill, which is the culmination of initiatives undertaken by the Hon. Des Corcoran when Minister of Works in a former Labor Administration. The purpose of the Bill is to ratify a new River Murray Waters Agreement between the Governments of the Commonwealth, South Australia, New South Wales and Victoria.

By 1973 the Government of the day recognised that attempts to achieve improved mutually beneficial management of the Murray River by effecting minor amendments to the existing agreement or by the adoption of agreed informal practices, especially in respect of increasing water quality problems, was no longer appropriate. On the advice of the Hon. Mr Corcoran, the then Premier (Hon. Don Dunstan) called for a meeting of heads of Government to address the problem. Such a meeting was held in March 1973, when a working group was established to completely review the existing agreement.

A steering committee of responsible Ministers received the recommendations of the working group in 1975. These recommendations proposed that the River Murray Commission be given additional powers to take account of a range of matters concerned with water quality in its management of the river. The four Governments involved agreed that, pending further consideration of the agreement, the commission should generally operate as if it had the proposed additional powers. The commission was also asked to review the agreement to determine necessary amendments to improve its operation.

The first draft of a revised agreement was submitted by the commission in May 1978. Negotiations between the Governments on the principles of a new agreement were then commenced. It is pleasing to note that these negotiations were continued by the previous Government and that the negotiations reached fruition in October 1981, when a meeting of heads of Government agreed on the matters to be included.

The agreement appended to this Bill is in accordance with the principles accepted at that meeting and endorsed by this Government. The Bill therefore is the same as that introduced by my predecessor before Parliament was prorogued. When considering the fact that it is now nine years since the Hon. Mr Corcoran first proposed the negotiation of a new River Murray Waters Agreement, it is of interest to note the history of the establishment of the first such agreement. The first formal negotiations between the States in respect of the management of the Murray River commenced with a convention in 1863. Attempts to come to some mutually acceptable and beneficial agreement between 1863 and 1906 were, however, singularly unsuccessful.

During that period there were three conventions, three conferences of Premiers, one convention proposed which did not eventuate, mountains of correspondence generated, three royal commissions (one in each of the three States) and an agreement signed by the three Premiers in 1906, in relation to the locking of the river and the allocation of water, which was never ratified by any of the State Parliaments. Between 1906 and 1913 negotiations between the States continued mainly through correspondence, and Victoria established yet another royal commission. Finally, in July 1913 the basis for a formal agreement, just 50 years after the first convention called for that purpose, was accepted.

The River Murray Waters Agreement was signed by the Prime Minister and the three Premiers on 9 September 1914 and ratified by the four Parliaments in 1915. This agreement established a works programme and a formula for cost sharing, established a water sharing formula including an entitlement for South Australia, confirmed the rights of New South Wales and Victoria to use the water in their tributaries and created the River Murray Commission with narrow powers to implement the water sharing provisions.

Notwithstanding the limited powers accorded the commission, much was achieved over the following 60 years. Between 1922 and 1939 there were 13 locks constructed on the river, six within South Australia and the Murray mouth barrages being completed in 1940. The new agreement, which this Bill seeks to ratify, is a great improvement on the former agreement. The most significant additions, particularly for South Australia, are the new initiatives included in Part IV which set out provisions for water quality accounting and control. The principal initiatives in this Part provide power for the commission to:

- Consider any or all relevant water management objectives, including water quality, in the investigation, planning and operation of works.
- Monitor water quality.
- Co-ordinate studies concerning water quality in the Murray River.
- Recommend water quality standards for adoption by the States.
- Make recommendations to any Government agency or tribunal on any matter which may affect the quantity or quality of Murray River waters.
- Make representations to any government agency concerning any proposal which may significantly affect the flow, use, control or quality of Murray River waters, and
- Have regard to the possible effects of its decisions on any river or water management objectives when exercising its powers under the agreement.

The new agreement, therefore, for the first time requires the commission to take account of water quality in its management of the Murray River. To South Australia this is a major advance. The ability to set and work towards water quality objectives will enable this State to proceed with confidence with its internal programmes for the better management and use of its water resources. In the long term the combination of commission and State water quality management should enhance the quality of Murray River water in South Australia to the benefit of all users.

In the context of the long and difficult negotiations, commencing in 1863 and more recently in 1973, and of the acceptance by the Commonwealth and the three States of this greatly improved agreement, it is most gratifying to submit this Bill for consideration by the Council. I seek leave to have the detailed explanation of the clauses of the Bill included in *Hansard* without my reading it.

Leave granted.

**Explanation of Clauses**

Clause 1 is formal. Clause 2 provides for the Act to come into operation on proclamation. Clause 3 contains the interpretative provisions required for the purpose of the ratifying Act. Clause 4 provides that the Act binds the Crown. Clause 5 provides for approval of the agreement.

Clauses 6, 7 and 8 provide for the appointment and conditions of office of the South Australian Commissioner and Deputy Commissioner. Clause 9 empowers the commission to exercise the powers conferred by the agreement and enables the Supreme Court to make orders for the enforcement of decisions and orders of the commission. Clause 10 enables the commissioners and authorised persons to enter land for the purposes of the agreement.

Clause 11 authorises the construction, maintenance, operation and control in South Australia of the works contemplated by the agreement and the carrying out of operations contemplated by the agreement. Clause 12 authorises and requires the Minister to carry out the obligations of the State under the agreement. It also authorises other contracting governments and constructing authorities to carry out works and operations contemplated by the agreement in South Australia. Clause 13 confers a power of compulsory acquisition for purposes related to the agreement.

Clause 14 empowers the Governor to grant interests in or over Crown lands for the purposes of the agreement. Clause 15 empowers the charging of tolls in respect of boats passing through locks. Clause 16 provides for the payments required of the State under the agreement to be made out of moneys provided by Parliament. Clause 17 exempts works carried out under the agreement and property held for those works from State taxation.

Clause 18 is an evidentiary provision. Clause 19 provides for the laying of reports before Parliament. Clause 20 confers jurisdiction on the Supreme Court in respect of the commission. Clause 21 makes malicious damage of works constructed under the agreement an indictable offence, punishable by up to ten years imprisonment. Clause 22 is a regulation-making power. Clause 23 provides for the repeal of the present River Murray Waters Act and contains a transitional provision in respect of the present Commissioner and Deputy Commissioner.

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

## BUILDERS LICENSING ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

## CONSUMER TRANSACTIONS ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

## RACING ACT AMENDMENT BILL (1983)

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

**The Hon. J.R. CORNWALL (Minister of Health):** I move:

*That this Bill be now read a second time.*

It is designed to amend the Racing Act to provide financial assistance to the racing industry in South Australia. In 1980, both Houses of Parliament approved amendments to the Racing Act which put into effect certain recommendations of the Committee of Inquiry into Racing. Those changes were intended to alleviate the critical financial position that confronted the three codes and to offer them a means to re-establish their viability by improving the quality of racing offered to the public in this State. One of the major points of that legislation was the sharing of the operating surplus of the Totalizator Agency Board equally between the Government and the racing codes.

Since that time the position has been closely monitored and, although there has been a considerable increase in both on-course and off-course totalisator betting and the situation is continuing to improve, the Government considers that further action is required. The decision to take further action has been made in recognition of the important role that the racing industry plays in the State's economy through its investment in property, plant and equipment and its provision of employment both on a full-time and part-time basis.

The Government, therefore, in light of the continuing difficulties of the industry, proposes to provide to the industry additional funds of approximately $761 500 per annum. This will be achieved through the sharing of unclaimed dividends and fractions on dividends related to Totalizator Agency Board betting, one half being paid to the Hospitals Fund and the other half being shared between the separate funds of the three racing codes within the Racecourses Development Board in the proportion that amounts bet with the Totalizator Agency Board for each form of racing bear to the total amount bet with the Totalizator Agency Board.

As an adjunct to these legislative amendments, further assistance will be provided to the industry through an agreement reached between the Government and the Totalizator Agency Board. Under that agreement the outstanding balance in the capital loss account on Databet will be amortised over a period of 10 years, and the amount made available as a result will form part of the board's surplus and be shared equally between the Government and the racing codes. The interest earned on the capital fund and commission fees received from the operation of the agency at Broken Hill will also be shared on the same basis. Collectively this should generate an estimated $162 750 per annum.

The Bill also provides for the restoration of the 1979-80 bookmakers' income by a reduction of .23 per cent in turnover tax without restoring the stamp duty on betting tickets. This will have the effect of reducing the Government revenue by approximately $393 000 per annum based on 1979-80 figures (the last year in which stamp duty was collected). The 1.4 per cent of turnover tax paid to clubs will not be affected.

Finally, the Bill includes an amendment that will authorise the Racecourses Development Board, with the approval of the Minister, to pay an amount standing to the credit of the fund for any of the codes to the controlling authority for that code for the purpose of providing stake money. The detailed analysis of the clauses follows, and I seek leave to have it incorporated in *Hansard* without my reading it.

Leave granted.

**Explanation of Clauses**

Clause 1 is formal. Clause 2 provides that the amendments made by clauses 3, 4 and 6 (relating to the application by the Totalizator Agency Board of moneys accruing through the non-payment of fractions and through unclaimed dividends) shall have operation from 1 August 1982. The other clauses of the measure are to operate from a day fixed by proclamation.

Clause 3 amends section 76 of the principal Act which provides that any amount accruing to the Totalizator Agency Board by virtue of the non-payment of fractions is, within three weeks, to be paid to the Treasurer for payment into the Hospitals Fund. The clause amends this section so that only one half of any such amount is to be paid into the Hospitals Fund. The amount remaining is, under the amendment, to be divided between the funds for the various forms of racing kept pursuant to Part V in the proportions that the amounts bet with the Totalizator Agency Board in relation to each form of racing bear to the total amount bet with the board in relation to all forms of racing during the period elapsing from the date of the last payment under the section.

Clause 4 amends section 78 of the principal Act which provides, in subsection (3), that an amount accruing to the Totalizator Agency Board or an authorised racing club by way of unclaimed dividends shall be paid to the Treasurer for payment into the Hospitals Fund. As in the case of clause 3, this clause amends the section so that only one half of any such amount accruing to the Totalizator Agency Board is to be paid into the Hospitals Fund. The amount remaining is to be divided between the funds for the various forms of racing kept pursuant to Part V upon the same basis as is provided for under clause 3.

Clause 5 amends section 114 of the principal Act which provides for the payment by bookmakers to the board of a percentage of their winnings from bets. Under the clause, the percentage applying in relation to a bet made within the metropolitan area or at registered premises on a South Australian race is reduced from 2.3 per cent of the amount payable to the bookmaker under the bet to 2.07 per cent of that amount. In the case of such bets made on races held outside South Australia, the clause reduces the percentage from 2.9 per cent to 2.67 per cent. In the case of bets made with a bookmaker on a racecourse outside the metropolitan area, the percentage is reduced, in relation to bets on South Australian races, from 2.1 per cent to 1.87 per cent and, in relation to bets on races held outside South Australia, from 2.7 per cent to 2.47 per cent.

Clause 6 makes an amendment to section 133 consequential upon the amendments made by clauses 3 and 4. Clause 7 substitutes for section 137 (the operation of which has expired) a new provision authorising the Racecourses Development Board, with the approval of the Minister, to pay an amount standing to the credit of the fund for a form of racing to the controlling authority for that form of racing for the purpose of the provision of stake money for races held by registered racing clubs.

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

## ADJOURNMENT

At 10.5 p.m. the Council adjourned until Wednesday 30 March at 2.15 p.m.