LEGISLATIVE COUNCIL

Wednesday 31 October 1984

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

OMBUDSMAN'S REPORT

The PRESIDENT laid on the table the Report of the Ombudsman for 1983-84.

MINISTERIAL STATEMENT: POLICE PENSIONS

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a statement.

Leave granted.

The Hon. C.J. SUMNER: The triennial actuarial review of the Police Pensions Fund has now been completed and I now table the relevant reports compiled by the Acting Public Actuary, Mr A.R. Archer. The review is also being tabled in the House of Assembly by the Deputy Premier. The review is in two parts:

The first part relates to the requirement under section 8 of the Police Pensions Act for the Public Actuary to report on the financial position of the fund and the adequacy of members' contributions.

The second part comprises a report on the cost to the State Government of the fund.

This is the first time that this second part has accompanied the triennial review. It has been produced in order to improve understanding of the financing of public sector superannuation.

Membership of the Police Pensions Fund is compulsory for police officers and they must contribute specified percentages of salary. Their contributions are paid into the fund and invested. When pensions or other benefits are paid the cost is shared between the fund on the one hand and the State Government on the other. The purpose of the review is to consider the direction which the fund should be taking to ensure that it can meet a reasonable share of the benefits, given its experience since the last review and various assumptions concerning the future.

On the basis of his valuation, the Acting Public Actuary has reported that the current financial position of the fund is satisfactory. However, he notes that this is so because the fund has not to date been required to pay any share of the cost of cost-of-living increases to pensions. The cost of these increases is very significant because of a feature of the scheme whereby pensions increase at a rate in excess of the CPI. The Acting Public Actuary considers that a substantial modification of benefits and contribution rates is necessary in order to produce a scheme under which police officers in future carry a reasonable share of the cost of all benefits. A point which the Acting Public Actuary has highlighted is that the past investment performance of the fund has no bearing at all upon the need to adjust benefits and contributions. He says:

> The need arises only from a consideration of the relationship between contributions payable by future new entrants and the benefits which those new entrants will eventually receive. In considering this relationship, the only relevant investment issue is the return which the fund might reasonably achieve on investments made in the future. Thus, neither the returns on past and present investments nor the current financial position of the fund (with a $5.9 million surplus) has any impact upon the need to restructure benefits and contributions.

The second report dealing with Government costs shows that the cost of the scheme will continue to increase at a faster rate than the rate of inflation for many years. This point warrants special comment because some critics of public sector schemes have assumed that such increases demonstrate that the schemes are going seriously astray. In fact, such increases reflect the method of superannuation financing adopted by all Governments over many years.

The Government does not fund in advance for its superannuation commitments in the sense of setting aside a specified body of assets to cover future pension payments. Rather, it operates on an unfunded basis, paying out each year only the amount of money required in respect of pensions and other benefits paid in that year. The inevitable consequence of adopting this unfunded approach is that costs will rise, even in the absence of inflation, until the superannuation scheme matures. The extent of the increases is monitored by periodical reports such as the one which I have tabled.

Thus, increases in Government costs need come as no surprise. This is not to say, however, that the Government is not concerned about future costs. It does adopt a responsible attitude towards costs to be borne by future generations. Because of this, the Government has announced in another place that it intends to change the method of accounting for superannuation costs by Government departments in order that each year's accounts may show a proper estimate of future costs arising from the employment of staff in that year. This point, as it relates to the Police Department, is covered in the reports.

The Government appreciates the importance of the Police Pensions Fund to police officers and does not believe that any decisions should be taken in regard to contribution rates and/or benefits until full consultation has been held with representatives of the contributors. Also, regard may need to be paid to the results of the inquiry into public sector superannuation. The Deputy Premier has written to the contributors' representatives inviting their views.

QUESTIONS

STEAMTOWN PETERBOROUGH RAILWAY PRESERVATION SOCIETY

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Attorney-General a question on the sale of Steamtown assets in Peterborough.

Leave granted.

The Hon. M.B. CAMERON: All honourable members would have been concerned, I would imagine, to read that there was a move by people in a Society in Peterborough to sell what is a magnificent collection of historic locomotives and other rollingstock to a private individual for a sum reported to have been $500. It has been estimated that the real value of these assets is more like $250 000. It has been said that all but one 1912 steam locomotive in a shed has been sold to a local resident who is the mother-in-law of the Society's former Secretary, and that it is proposed to move these assets out of Peterborough.

I understand that two State Governments have made grants to the Society totalling $80 000; those grants were obviously made to Peterborough and its residents. It also has been indicated that the Attorney is investigating this matter. First, when the State Governments made grants to the Society, were any conditions attached to the grants concerning the potential disposal of these assets? Secondly, has the Attorney-General completed his investigation of this matter and, if so, what are the results?

The Hon. C.J. SUMNER: I share the concern expressed by the honourable member and by other honourable members in private discussion with me about this matter. As a

result of an approach some days ago by Mr Graham Gunn, the member for Eyre, I made certain inquiries about the situation concerning the Steamtown Peterborough Railway Preservation Society, and my first move was to ask the Commissioner for Corporate Affairs to report on the matter. He indicated what we now know, that is, that on 22 October Matheson J. granted to Martin Dunstan, the Town Clerk of Peterborough and a member of the association (namely, the Steamtown Peterborough Railway Preservation Society) an interim injunction against a Mrs Mehlis and nine committee members of the association prohibiting, until further order, dealings with the property of the association sold to Mrs Mehlis on 6 October 1984.

I understand that Mr Dunstan intends to seek a declaration from the court that the sale of property to Mrs Mehlis is void and other related orders. The property sold on 6 October 1984 was for a consideration of $500, apparently, and it includes a locomotive in working order said to be valued at $100 000. This locomotive is one of three that the association brought from Western Australia with the assistance of a Government grant.

Also, I believe that another Government grant was made to the association conditional upon local government being represented—I understand that was the Peterborough local council—on the committee of management. From information I have, the local government representative has been excluded from committee meetings since August 1984. The problem concerns what action is available to the Government. I started with the Corporate Affairs Commissioner and, in particular, requested him to look at the matter with a view to ascertaining whether there is anything in the powers of the Corporate Affairs Commissioner to allow him to take action. Obviously, he would have considered the Associations Incorporation Act on the basis that the association has received substantial public funding.

Unfortunately, the report from the Corporate Affairs Commissioner is that the Act does not provide him with any capacity to act in this matter. Honourable members will recall that in late 1982 a Bill was introduced in Parliament for a new Associations Incorporation Act. Honourable members will recall that that matter was debated in this Chamber and that honourable members opposite objected. They said that the powers that were given were excessive and, as a result, the matter was—

The Hon. K.T. Griffin: They were.

The Hon. C.J. SUMNER: The honourable member interjects 'They were'. The fact is that, had that Bill proceeded, it is quite probable that the Corporate Affairs Commissioner would have some authority now to take some action in this situation. That was the sort of thing envisaged by that legislation when it was introduced. The fact is that in that Bill the Corporate Affairs Commission would have been given powers of inspection and powers of special investigation which exist under the Companies Code. That was to be modified, of course, to take into account the fact that we were dealing with incorporated associations and not companies. When one is dealing with associations one is not just dealing with small church groups but with some large financial institutions such as the Adelaide Children's Hospital and other incorporated associations. The Government believes that incorporation is a privilege that is given to an association and that there should be some public responsibility on that association with regard to the manner in which it deals involving its funds. Had that Bill been passed by Parliament there would have been the capacity for the Government to act in this situation which, I think, is a matter of concern to all honourable members if the facts are as reported.

The Hon. K.T. Griffin: Why did you not bring back the Bill?

The Hon. C.J. SUMNER: Simply because the Bill has been redrafted and referred again to interested parties for comment. All I am saying to honourable members is that those are the facts. What has happened on this occasion in Peterborough seems to put up a persuasive case for the sorts of powers that were suggested in the Associations Incorporation Bill. They were there to overcome the situation of associations involved in the potential mismanagement of funds where members were unable to take any action in relation to the matter.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is not the situation. In fact, it was not particularly intrusive at all; it merely gave the Corporate Affairs Commission powers of inspection and special investigation.

The Hon. K.T. Griffin interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: If the honourable member is suggesting that that is not appropriate with some of the very large financial incorporated associations in this State, we will have to disagree. If he is suggesting that that Bill would not have been appropriate for use in the circumstances with which we are faced, I will have to disagree with him. I do not want to make a lot of the point. What I have said happens to be a fact: there is a need for an updating of the Associations Incorporation Act. That has been recognised for years. The Bill I introduced was substantially prepared in any event when the Hon. Mr Griffin was Attorney-General, because it was introduced shortly after the November 1982 election. As soon as the Bill came into this Chamber the Hon. Mr Griffin and his colleagues opposite changed their minds about the Associations Incorporation Bill. The Hon. Mr Griffin was quite happy to have it drafted while he was Attorney-General.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: When I took over the Bill and introduced it in here the Hon. Mr Griffin was quite happy to do an about turn and oppose it.

The Hon. K.T. Griffin: It hadn't had approval.

The Hon. C.J. SUMNER: It had had approval for drafting, and the honourable member knows that. It had been drafted when I took over.

The Hon. L.H. DAVIS: I rise on a point of order. The answer being given by the Attorney-General has no relevance to the question asked by the Leader of the Opposition.

The Hon. Anne Levy: What Standing Order covers that?

The Hon. L.H. Davis: The one John Cornwall uses all the time.

The PRESIDENT: There certainly should be grounds for a point of order, but there are not. I cannot take it as a point of order.

The Hon. C.J. SUMNER: I am responding to interjections on what is a serious issue. I emphasise that, whether or not it is a Bill in this form, what has happened at Peterborough indicates a need for some updating of the associations incorporation legislation. I then referred the matter to the Crown Solicitor to see whether any action might be available by that means. Unfortunately, the Crown Solicitor has reported that she can see no legal ground on which the State could usefully intervene in this dispute. I understand that certain conditions were placed on the Society when tourism grants were made to it in 1977 and 1980.

The 1980 grant carried three conditions, two of which appear to have been met while the third—providing for representation by the Peterborough council on the Society's management executive—has apparently not been met, as I mentioned previously. It might be that this condition would be enforceable by the State against the Society, although the practical value of doing that is speculative. All that would

do would be to ensure that that condition was met, namely, that the local council be represented on the committee. Whether that would overcome the broad problems outlined by the honourable member is another question. Certain conditions were imposed, but at this stage neither the Corporate Affairs Commissioner nor the Crown Solicitor can see any legal ground on which the State could usefully intervene.

I certainly intend to pursue that matter further with the Crown Solicitor to see whether anything can be done. The situation at present is that it is private litigation between the members of the Society who are in dispute; that is the normal situation with regard to an incorporated association. That may seem strange and unusual, but the State in these circumstances cannot intervene. As I said before, on the basis of the advice that I have received from the Corporate Affairs Commission and the Crown Solicitor, the powers are simply not there.

However, I understand the concern about the matter. I will see whether anything further can be done, but at present it appears that it is a matter of private litigaton between a member of the Society (Mr Dunstan, who, I understand, is the Town Clerk of Peterborough) and those people in the Association with whom he is in dispute. If the facts are as outlined—that its assets are worth in excess of $100 000 and that they have been sold for $500—that, on the face of it, would give cause for concern, but that issue might have to be resolved by the courts in due course. Whether the Government can assist in that respect I do not know.

Certainly, I intend to discuss the matter further with the Crown Solicitor and will also see whether the matter can be considered by the Government with a view to exploring the options. If the honourable member has any suggestions as to what can be done I would certainly be interested in hearing what he can put forward. It looks as though his colleague Mr Gunn is moving for a Select Committee. I would think that the only result of a Select Committee would be that a proposal for legislation be introduced to retrospectively reorder the affairs of the Society. Members opposite would need to think carefully before they went down that track, but it appears that that may be what Mr Gunn has in mind in apparently moving for a Select Committee in the House of Assembly.

I do not under-estimate the concern in the community about the matter, but it is not appropriate for me to comment further, as the matter is before the courts in private litigation. I will certainly pursue the matter again with the Crown Solicitor and discuss it with other Ministers to see whether any additional action can be taken.

HEAD INJURIES

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about day care centres for the head injured.

Leave granted.

The Hon. J.C. BURDETT: I have been contacted by two constituents—Mrs Maureen Lockwood and Mrs Maureen Howard—both of whom have sons who have suffered significant head injuries. Mrs Howard and Mrs Lockwood have been attempting for a number of years to obtain suitable facilities to meet the needs of head injured members of our community. It is clear that they are reaching the stage of complete frustration. At present, head injured people have limited access to facilities and services appropriate to their needs.

Mrs Lockwood and Mrs Howard came to see me after being totally dissatisfied with the degree of the interest displayed in their problems by the Minister of Health. They are concerned, particularly, that the problems of head injured South Australians are quite different from those of people suffering such complaints as cerebral palsy or other congential abnormalities. Head injuries have resulted from accidents and the disabilities that these people face are quite different from those of people who suffer long-term hereditary illness or disability.

The sons of both Mrs Lockwood and Mrs Howard have attended the Regency Park Centre for the Young Disabled and both ladies speak highly of the work done there. Unfortunately, the Centre, which has been assisting five or six head injured young people at a time, is unable to provide long-term assistance once the young people have turned 18.

Mrs Lockwood approached the Minister when he was shadow Minister. At that time he was very sympathetic to them, said that much had to be done, and drew their attention to the Labor health policy, which stated:

> A Bannon Labor Government will initiate a new deal in long-term rehabilitation services and facilities for young brain injured victims in South Australia.
>
> There are an estimated 2 000 young brain injured patients in our community, yet the facilities which they are offered at the Hampstead Centre remain grossly inadequate.

Since the election the Minister's enthusiasm appears to have waned. On his election the Minister received a card and offers of congratulations from the parents and patients of ward 1C at the Hampstead Centre. He replied, thanking them for this gesture, and said:

> I would like you all to be reassured that, during the time that I will be Minister of Health, I will at all times try to ensure that the very best health care and rehabilitation is available within our community.

Although the Minister's interest appears less when an election is not involved, I can assure him that the Opposition remains concerned about this issue. Mrs Lockwood described her son as having an alert brain trapped in a poorly functioning body and this description exemplifies the problems that parents such as Mrs Lockwood and Mrs Howard face with children or dependants who have suffered an injury and face, overnight, dramatically changed circumstances in their lives.

Mrs Lockwood's son is 21 but needs total care, from toileting to feeding. Naturally, this places enormous demands on his mother, who recognises the urgent need for a day care centre. Such a day care centre (and they exist in other States) provides valuable assistance and rehabilitation for head injured people. An outside environment is important to provide some respite for the family of the head injured as well as providing an appropriate environment for active stimulation of the brain injured. In Lithcombe, New South Wales, an excellent day care centre provides a variety of facilities and services to the head injured and it is important that consideration be given to a similar facility being established in South Australia.

In a submission to the Hon. Dame Roma Mitchell, who has been reviewing services for behavioural disordered persons, ROCI (Relatives of Challenged Individuals Inc.) describes the plight faced by a family which has a member who suffers head injury:

> The impact on a family when a member suffers head injury is traumatic in the extreme and cannot be over-emphasised. The fear and anxiety of the acute stage places enormous pressure on all members of the family. Their lives are held 'in limbo' while they wait, often for many weeks, before the effects of the injury are more clear and this is then usually followed by months of watching their loved one undergo a slow and painful rehabilitation process.
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> The necessary preoccupation of the immediate family members (that is, the parents or spouse) with the head injury victim places an added burden on family relationships and is particularly stressful for children. And as traumatic as these first months are, the pressures on the family do not ease with time—the pressures merely change. As well as the difficulties of coping with a disabled

family member, they must also come to terms with their own emotional reaction to the situation. It is very difficult to reconcile memories of a previously healthy person with the reality of one who has suffered head injury and consequent disabilities.

The PRESIDENT: Order! I call the attention of honourable members to the fact that it is very difficult to hear the honourable member who has the call. The Hon. Mr Hill and the Attorney-General are the two worst offenders at present. Will they please be seated or tone down?

The Hon. J.C. BURDETT: Thank you, Mr President. In its submissions, ROCI makes the following valuable comments about the need for a day care centre:

> ... the head injured person requires facilities and activities which are stimulating and have meaning to the individual and which allow a normal range of choice to cater for individual preferences and interests. Such activities are needed to take the place of employment for those who cannot enter either open or sheltered work. They should therefore be aimed to stimulate and encourage improvement in physical, emotional and social functions while providing the person with a lifestyle which has meaning, is normalising and gives the sense of possible progression rather than a 'dead end'.

My questions are:

1. What is the new deal referred to in the Labor Party's health policy in relation to the brain injured?

2. What action is the Minister taking to provide an urgently needed day care centre for the head injured?

3. When will the Minister make an announcement about the provision of these services?

The Hon. J.R. CORNWALL: I thank the honourable member for that substantial contribution. If one leaves aside the somewhat uncharacteristic political hyperbole it was a reasonably accurate statement about the lack of facilities for those involved in this growing problem. I was made acutely aware of this matter during my productive period in Opposition, as I have told members of this Chamber on numerous occasions. It was against that background that an active policy was produced in which a new deal was promised for the young brain injured in the South Australian community. As I have told members of this Council previously—but I believe it is worth repeating—approximately 200 young people in this community are brain injured every year as a result of road accidents. There are also, of course, a significant number who are brain injured for other reasons, whether it be at birth or trauma other than road accidents.

Neurosurgical techniques are such that many more of these lives are being saved whereas in years gone by the victims undoubtedly would have died. Brain injury produces a number of serious *sequela*. Many of these are manifested by quite bizarre behaviour patterns. They show up as a substantial reduction in the normal inhibition present in people in the rest of the community. They can most certainly place very severe strains indeed upon their families once they have gone through the processes of acute care and acute rehabilitation and are placed back with those families.

There are also those people on the margins of intellectual disability who, for one reason or another, have severe behavioural disturbances. These disturbances often lead to multiple appearances before the courts and in those people being placed, sometimes quite inappropriately, in our gaol system. Incidentally, the overwhelming majority of the head injuries to which I referred as a result of road trauma occurs in young males: seven out of every eight young people who sustain brain injury as a result of road trauma are young men. Because of the group with severe behavioural disturbances, Cabinet approved my establishing the Mitchell Committee of Inquiry. Dame Roma Mitchell is currently busily involved, among her other duties, in looking at the problems of the behaviourally disturbed. She is well down the track with her investigation and, as I understand it, will present at least an interim report reasonably early in the new year.

I think that it is not a wild estimate to suggest, as I did in the platform before the last election, that there may well be upwards of 2 000 of these people in the South Australian community, one way or the other. It is perfectly true, as the honourable member has said, that our present facilities are inadequate. It was because of that inadequacy that, within weeks of becoming Minister of Health, I asked for a complete round-up of all the long term rehabilitation facilities in this State, whether at Hampstead Centre or anywhere else. That review was originally intended to occur during 1983 and was to be on my desk, as Minister of Health, before Christmas of last year.

It became obvious, however, that the task was bigger than we had originally anticipated and that we not only needed a complete summary of rehabilitation facilities available but a comprehensive set of recommendations as to what actions the Government would need to take to overcome those deficiencies. For that reason, about nine or 10 months ago I asked the Chairman of the Health Commission, Professor Gary Andrews, to take over the chairmanship of an expanded committee with expanded terms of reference. As I have told members of this Council previously—and I will repeat—I anticipate that that very comprehensive review will be available and on my desk by the end of this calendar year. It will, therefore, be available for consideration by Cabinet and comment by the South Australian public in the early part of 1985. It will also be available for specific consideration by Cabinet and the bureaucracy, the senior members of the Health Commission, the central agencies such as Treasury and, in particular, the Public Service Board from February.

I must say that the rate at which all of these initiatives and inquiries have moved has been a disappointment to me. I think that I have a reputation for wanting most things in my portfolio area to occur yesterday rather than tomorrow. I admit freely that I have been frustrated by the time that this comprehensive review has taken. Nevertheless, the undertaking to provide a new deal for the young brain injured in our community is as valid now as it ever was and we will most certainly be putting a series of initiatives in train during 1985 that will meet the commitments given in 1982.

COURT WITNESSES

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about the courts.

Leave granted.

The Hon. K.T. GRIFFIN: A newspaper report last week stated that the work of the police in the courts was creating a considerable strain on police resources and was prejudicing investigations by police of criminal activities. The report states:

> Some reports say shortages of men lead to ongoing investigations—even in the elite Major Crime Squad—being placed in 'the hold basket' until other work is cleared.

The Assistant Commissioner (Crime), Mr Harvey, is reported to have indicated that there are some 400 cases at present before the Central District Criminal Court and the Supreme Court. He said:

> Our commitments as police witnesses are a tremendous consumer of manpower.

He is later reported as saying:

> There are two options—either raising the threshhold of day-to-day commitments or getting more personnel, but if we have more officers, we will have more court commitments as we solve more crime.

The Secretary of the Police Association, Mr Brophy, is reported to have indicated that for the police there were

longer and more demanding court commitments. The report, quoting Mr Brophy, states:

> He said there was a 'tremendous impact on the operation of the department' as a result of police officers being recalled to attend court. 'This includes people being called in on alternate shifts, days off, sick leave, workers compensation leave and holidays,' he said.
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> It meant the officers involved had to be given further time off in lieu which depleted the numbers on the road for the second time.

The report also indicated that one of the other significant pressures had been the Roxby Downs operation, which took a significant number of police out of the day-to-day work of the Force. I am aware that attendances at court, not just by police officers but lawyers and other witnesses, with the waiting time that occurs, consume an inordinate amount of time. In some of the lower courts there appears to be from time to time an attitude, particularly in relation to police officers, that as they are on Government time there is really no need to facilitate their return to the beat or whatever and slot them into the court schedule earlier than otherwise would have been the case.

As I have indicated, that is a problem that is faced by other witnesses as well because of the considerable number of cases that are listed from time to time in some of these courts. It involves the question of the scheduling of cases, notices to litigants and witnesses, preventing adjournments without notice except in special cases, perhaps the payment of costs in some cases where matters are adjourned unnecessarily, and a variety of other matters. It is not an easy problem to solve, I acknowledge that, but it is a problem which appears to be having an increasing impact on the Police Force and which will necessarily have a growing impact on the State Budget. In the light of that report and background, I ask the Attorney-General:

1. Have there been any discussions with judicial officers, court officers, police, the Law Society, or the Legal Services Commission, with a view to reducing the waiting time of witnesses, particularly police officers, in court cases, and developing a mechanism by which notice of attendance at a more certain time can be achieved?

2. Is the Government considering any procedural changes within the courts to facilitate the hearing of evidence from witnesses, particularly police officers?

3. Generally, what steps is the Government taking to limit attendance at courts by police officers and to reduce the waiting times of those officers at court hearings?

The Hon. C.J. SUMNER: The problem that the honourable member raises is difficult, if not intractable. Various suggestions have come up from time to time to try to overcome this problem. With respect to the disposal of cases, recently the courts have become responsible for the listing of cases, as opposed to the Crown Prosecutor's Office, and that, I think, has led to some improvement in the disposal of cases. But the major problem, of course, is that one does not know for how long an earlier witness will be engaged in a court. Cross-examination may take 10 minutes or 10 hours. As the honourable member would know, if counsel estimates that cross-examination will take 10 hours and warns the witness for 10 hours hence, and in fact cross-examination takes 10 minutes and the witness is not there, then the court is usually less than enthusiastic about that sort of occurrence.

The honourable member would know that counsel would then be subject to some severe criticism for not having the witnesses ready to give evidence. That is an extreme example, but I give it as an example of the sort of problem that occurs. The courts demand that witnesses be there when they are called and I do not really see that we have much alternative but to ensure that they are there because, if they are not there, there are delays in cases proceeding. If there are delays in cases proceeding, then the length of the court list extends, and that is not desirable either and is a waste of judicial time because judges are sitting around without cases to hear if the witnesses are not there on time.

So, some attempts have been made to try to improve the disposal of cases, particularly by the method I have outlined, of giving the court the responsibility for listing criminal matters in the higher courts. I am happy to raise the honourable member's question with the Crown Prosecutor and the Chief Justice to see what can be done, but I am not particularly hopeful. I understand the problems that the police have and, of course, the community, because the police, while engaged in court, are not doing other work out in the community. If we make it more convenient for witnesses, it inevitably becomes more inconvenient for the courts. If it becomes more inconvenient for the courts, then rather than witnesses' time being wasted, the courts' time is wasted. That, of course, is an equally difficult problem to solve. The honourable member raised the question and, as he said, it is not an easy question to resolve. Some action has been taken, but I am happy to discuss the matter with the Crown Prosecutor and the Chief Justice to see whether anything can be done to resolve matters.

TANKS AND DAMS

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Water Resources, a question concerning tanks and dams.

Leave granted.

The Hon. PETER DUNN: In reply to a question I asked on 28 August of the Minister of Water Resources, on 24 October (p.1402 of *Hansard*) he states:

> There are sixteen major water conservation reserves in County Buxton. Six of these are no longer of use to the Engineering and Water Supply Department and it is proposed that they be resumed by the Department of Lands . . . It is proposed to lease the remaining nine reserves to 'water trusts' made up of interested parties in the vicinity of respective reserves.
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> Leases will be at a nominal rental yet to be determined. Leases will be for seven years with right of renewal, subject to the lessees fulfilling their lease agreements. The water trusts will be required to control reserves and maintain them in a satisfactory condition. Conditions controlling the use of water will be the responsibility of individual trusts; however, as a condition of a lease a trust must sell water to the public if requested.

The reply goes on to say that the trusts are required to control and maintain the reserves in a satisfactory condition, that this will release E & WS staff for the maintenance of other assets, and that pricing of the water to the public had not at that time been finalised. My questions are:

1. Will the E & WS Department offer the trusts the use of the specialised equipment it has developed to maintain the dams and tanks?

2. Would the Department hire the equipment to the trusts?

3. What criteria is being used to determine the price of water to the public from these dams?

4. What will happen to the dams and tanks should a trust be unable to be formed to maintain them?

The Hon. FRANK BLEVINS: I will refer those questions to my colleague in another place and bring back a reply.

HEALTH BOARDS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before directing a question to the Minister of Health on the question of the administration of boards.

Leave granted.

The Hon. ANNE LEVY: In this State there are a number of boards such as the Medical Board, the Dental Board, the Chiropractors Board, and so on which are committed to the Minister of Health and which nevertheless are autonomous boards in their own right concerned with the registration of the profession, the maintenance of professional standards, and the protection of consumers from ill advised acts by members of the profession. Of course, these boards are quite autonomous in their main functions and are self-supporting financially by means of the registration fees that they charge. However, the registration fees that they charge have to be approved by the Government, although the Government has no say in the administration of the boards. My question to the Minister relates to the administration of these autonomous boards and whether he believes that there is a role for the Minister in charge of these Acts to play concerning the administration of these boards, seeing that the fees they charge have to receive governmental approval.

The Hon. J.R. CORNWALL: I have made it clear to the Council previously, but I will repeat it again today because it is most important, that the Acts under which these various registration boards are established and under which they conduct their affairs are very much a matter for the Minister of Health of the day. However, I would make it just as clear that these boards are given statutory powers and independence within the Acts under which they operate. Any interference in their autonomy in the sense that they discharge those powers, as they relate to matters such as registration and standards within the professions, would be quite inappropriate. However, the question of the competence with which they conduct the administration of their affairs, since that is a financial matter, is a question with which I firmly submit the Government and the Minister of the day must be concerned.

To give the Council some idea of the scope of these boards, I point out that the registration of health professionals in South Australia currently exists in respect of 10 disciplines. There are 10 separate registration boards and two separate disciplinary tribunals—the Medical Professional Conduct Tribunal and the Dental Professional Conduct Tribunal—altogether comprising 12 boards. The boards and the disciplinary bodies are established by Statute. In other words, each has its own Act. The Acts establishing the boards contain varying provisions in regard to administrative support. Historically, half of the Boards have been, and continue to be, serviced by accountants in private practice acting as Registrar and providing secretarial assistance. They engage the services of lawyers as required. They keep their registration fees at a reasonable level and do not seek any form of Government subsidisation of their operations. The other half were until a couple of years ago serviced by an administrative unit of the Hospitals Department as it then was, and later the Health Commission.

The policy of the previous Government—the Liberal Government—was that the latter boards (that is, the five to which I referred) should be administratively autonomous and also financially self-supporting. However, I do not believe that the implications of the latter part of that policy (that is, to be fully self supporting) were fully thought out by the then Government. The Medical, Chiropractors, Occupational Therapists and Psychological Boards moved from Health Commission accommodation to leased premises some time ago which they share, and administrative support to all of those boards is provided by Medical Board employees.

The situation has been that the boards have paid an annual contractual fee at the end of each year to the Medical Board based on about 4 per cent of the Medical Board's total expenditure. Recently, however, the Medical Board indicated that from 1 July 1984 a recharge will be made to the boards of the actual cost incurred in providing an administrative service. Partly as a result of that action the Chiropractors and Psychological Boards recently requested substantial fee increases in order to maintain financial viability. At the time I foreshadowed to Cabinet, when commenting on their applications for increases, that I intended to have a review of the boards' operations conducted, and the fee increases were deferred pending that review, I also indicated that, if fee increases did not proceed, it would be necessary for the Health Commission to make grants of $20 000 to the Chiropractors Board in 1984-85 and $6 000 to the Psychological Board in this financial year to keep them financially viable.

I might say that the applications for increases followed substantial increases that had been approved in 1983-84. In the case of the Chiropractors Board the request was that the annual registration fee be increased from $150 to $250, which I am sure would not have pleased Mr Olsen, the Leader of the Opposition in the House of Assembly, at all. I regard the situation as untenable whereby the Government of the day attracts criticism when the fees are increased on the recommendation of registration boards but, on the other hand, the Government has no direct control over the level of expenditure incurred by the boards that leads to the fee increases being sought.

I would concede that a board cannot predict how many disciplinary matters might come before it; how lengthy hearings might be; whether appeals to the Supreme Court might eventuate; what resultant legal costs might be and, therefore, what the overall effect on finances might be. However, in view of many of the unresolved questions, I have to tell the honourable member and the Council that Cabinet has approved the establishment of a working party to review the operations of registration boards in the health portfolio, paying particular attention to administrative support and financial matters. I held discussions with the Chairpersons of the boards prior to taking my submission to Cabinet and they indicated general support for the review. The membership of that working party will include a senior Health Commission officer who will chair it, a senior officer of the Public Service Board and a senior officer from the Crown Solicitor's Office. Broadly, the terms of reference will be:

- review the organisation, staffing and administrative requirements of the boards, taking into account any future responsibilities and workloads which can be identified;
- review the accommodation requirements of the boards;
- review the financial situation of the boards, taking into account functions of the boards, remuneration of board members, comparative fee levels and the potential costs of litigation;
- review the provision of investigative and legal services to the boards; and
- recommend any necessary or desirable changes.

HEYSEN TRAIL

The Hon. L.H. DAVIS: Has the Minister of Health, representing the Minister of Recreation and Sport, a reply to my question of 28 August about the Heysen Trail?

The Hon. J.R. CORNWALL: My colleague the Minister of Recreation and Sport informs me that steel droppers are used to mark the Heysen Trail where they are the most cost effective method. This is usually the case in difficult terrain or rocky areas. The droppers are low to the ground, painted green with the top six inches coloured red. They do not impose unduly on the environment. The section of the Heysen Trail referred to is the section from Hawker to

Parachilna—a total length of approximately 150 kms. Only 1.5 kms of this section is along roads. In some situations droppers are used alongside the road but are placed no closer to the edge of the road than normal road markers and are not dangerous to road users. The siting of the markers is closely supervised and they are inspected regularly. The trail markers are used at an average of 10 per kilometre and are only placed five to 10 metres apart where it is necessary to indicate a substantial change in the direction of the trail.

ACCESS CARDS

The Hon. R.I. LUCAS: Mr President, I think my questions are more appropriately directed to you, and they are as follows:

1. Could you, Mr President, provide a list of all people and their occupations who have been issued with a new card allowing access to the car park allotted to Parliament House in the Festival Centre car park?

2. Could you provide a list of all people and their occupations who have been issued with a new card allowing access to Parliament House?

3. Could you provide a list of all people and their occupations who have been either refused cards or had their applications deferred for both types of cards referred to in questions 1 and 2?

The PRESIDENT: My answer is 'Yes', most certainly, but not off the top of my head.

GRIEVANCE DEBATES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about grievance debates.

Leave granted.

The Hon. L.H. DAVIS: In recent years the Legislative Council has experienced a significant increase in its level of activity. The Council sits longer, the number of Select Committees has increased and Question Time invariably runs for a full hour. Each Wednesday private members' time provides a valuable opportunity for members to introduce private members' Bills or motions expressing a point of view. However, it does not provide members with an opportunity to make a speech on a specific topic or a number of topics—in Parliamentary language, there is no opportunity to grieve.

Certainly, Question Time enables a member to make an explanation. In recent years there has been a tendency for some explanations to be quite lengthy, often caused by the detailed background or complex nature of the question asked. In fact, as an example, I refer to my recent question, which falls into this category, on the important issue of Hawker water and roads. It is only your generous forbearance, Mr President, which enables questions of that nature to be asked. I understand that the Australian Senate and other Upper Houses around Australia provide time for grievance debates. I believe it is an appropriate time for this Council to consider the introduction of grievance debates in private members' time. I ask the Attorney-General to consider the feasibility of introducing grievance debates of a total of one hour's duration during private members' time on Wednesdays. If a member was permitted to grieve for a maximum period of 15 minutes, four speeches could be made each sitting week. This would mean that each member, other than Ministers, would have an opportunity to grieve four times in a normal Parliamentary year.

The Hon. C.J. SUMNER: I am aware of the practice in the House of Assembly and in certain other Houses of Parliament. I suppose the question as to whether there should be a grievance debate in the Legislative Council concerns all members, not just me. However, I appreciate the honourable member's directing the question to me: he must feel that I have more influence than others in relation to this matter. Whether there should be a grievance debate in the Council, I suppose, is ultimately a matter for the Council itself to decide. The Hon. Mr Milne just growled at me as he walked past. I can only assume that he does not view the suggestion with any equanimity.

The Hon. B.A. Chatterton interjecting:

The Hon. C.J. SUMNER: There is a Select Committee examining the practices and procedures of Parliament.

Members interjecting:

The Hon. C.J. SUMNER: It includes matters that are exclusively the compass of the House of Assembly. No doubt, if the honourable member wished to take up this matter through the Select Committee, I am quite sure that it could be dealt with expeditiously.

The Hon. L.H. Davis: You previously expressed a view favourable to it; that's why I raised the question with you.

The Hon. C.J. SUMNER: I am not in a position to express a point of view on behalf of the Government, because this matter has not been considered by the Government. If I have expressed a personal view previously, as I well may have, I would not want to resile from that personal opinion. Clearly, it would not be an opinion which at this stage would have the support of the Government. I repeat: ultimately, it is a matter for the Council to decide. Should the honourable member wish me to take up the matter before the Select Committee, I will be happy to do that. Alternatively, the honourable member could have the matter referred to the Standing Orders Committee of the Legislative Council.

FERTILISATION PROGRAMMES (PRESERVATION OF EMBRYOS) BILL

The Hon. R.I. LUCAS obtained leave and introduced a Bill for an Act relating to the preservation of embryos created for the purposes of fertilisation programmes. Read a first time.

The Hon. R.I. LUCAS: I move:

That this Bill be now read a second time.

This Bill seeks to preserve embryos that have been created for the purposes of *in vitro* fertilisation programmes in South Australia until the end of 1985, by which time it is hoped that the IVF Select Committee that was recently established will have reported and that comprehensive legislation will have been introduced in, and passed by, this Parliament. Such legislation would provide specific guidelines for the operation of IVF programmes in South Australia.

This Bill has had to be introduced because the Minister for Health and the Government continue to reject my pleas to withdraw the administrative instructions that they issued in June of this year. Those administrative instructions allow the destruction of excess frozen embryos in certain circumstances, but do not allow the donation of embryos to other participating couples in the IVF programme.

The history of the need for this Bill begins with the presentation to Government of a working party report on *In Vitro* Fertilisation and Artificial Insemination by Donor in January 1984. The authors of that report were Dr Aileen Connon and Ms Phillipa Kelly. That Working Party report

was comprehensive and made a large number of recommendations (some 25) for action by Government.

In June of this year the Health Minister and Cabinet decided to implement only two of those recommendations: recommendations 20 and 23, which related to the freezing of embryos and surrogacy. Recommendation 20 states:

That storage of fertilised gametes should be maintained until such time as any of the following events occurs:

(a) A couple wishes to use the fertilised gamete(s) themselves in a subsequent treatment cycle;

(b) A couple requests in writing that storage of their fertilised gamete(s) be ceased;

(c) The relationship of a couple ceases through death or any other reason; or

(d) At the expiration of an agreed period of time but in any event no longer than 10 years from the date of commencing storage.

Recommendation 23 states:

That no change to the law be made to enable surrogacy to be practised in South Australia.

The *Advertiser* of 19 June of this year, in a front page article headed 'South Australia sets new rules on stored embryos', stated:

Frozen human embryos stored in South Australian hospitals will be destroyed if the domestic relationship of the 'parents' is terminated through death or separation. And special hospital consent forms exercising strict control over the use of frozen human embryos in South Australian hospitals will be introduced soon.

All couples seeking to enter the *in vitro* fertilisation programme will be required to sign the forms, which also will set a 10-year limit for frozen embryos storage. The embryos will be destroyed before 10 years if a shorter maximum period has been agreed to in advance by the parents.

The Minister of Health, Dr Cornwall, said yesterday the South Australian Health Commission was notifying the Queen Elizabeth Hospital and the Flinders Medical Centre, the two hospitals involved in the programme, immediately to introduce the forms.

As a result of those instructions, consent forms have been prepared for participants in the IVF programmes. These forms, which implement the intention of recommendation 20, must be signed by any couple participating in the programme, even if that couple has social, moral or religious objections to the course of action envisaged in that consent form.

It is clear from the consent forms that the requirement for a stored embryo to be destroyed could occur at any time: for example, the relationship of a couple could cease through death or separation at any time or a couple might have requested in June of this year that storage not continue beyond December of this year. However, whilst these situations could occur at any time, I am advised that up until now no stored embryo has had to be destroyed since June of this year, when the instructions were issued.

It is important to note that we are not talking about hundreds of embryos being frozen and stored at present. It is estimated that there are about 40 to 50 frozen embryos at the Queen Elizabeth Hospital programme, of which possibly only about 10 might be excess embryos. The vast number of the current stored frozen embryos will be used in future treatment cycles for participating couples; that is, the first embryos may not be successfully implanted and, as a result, the stored frozen embryos will be used in subsequent treatment cycles for those couples. But it is estimated by a participant in the Queen Elizabeth Hospital programme, as I said, that possibly only about 10 of those currently stored frozen embryos may prove to be what are called 'excess' or 'surplus' frozen embryos.

The question that needs to be asked is whether there is any other viable option for these excess frozen embryos. Experts involved in the programme, such as Dr John Kerin from the Queen Elizabeth Hospital, believe that there is another option, that is, embryo donation to another participating couple. Soon after the June announcement of the administrative instructions by the Health Minister, Dr Kerin indicated publicly that he would not take part in embryo destruction, and soon after that the Queen Elizabeth Hospital team called for the availability of the embryo donation option. However, the administrative instructions issued by the Government only allow the embryo destruction option and do not allow the embryo donation option.

The major problem with the present situation in South Australia is that the Health Minister and the Cabinet have taken decisions on controversial aspects of the IVF programme without any debate by the Parliament. They have taken the political back door of issuing administrative instructions rather than introducing comprehensive legislation into the Parliament. The Cabinet and the Health Minister are clearly snubbing their noses at the Parliament in their actions on this issue.

The Parliament is the supreme law making body of the State and it is its responsibility to debate such controversial issues as those that relate to the IVF programme. It is only in this way—through Parliamentary debate—that the community can have its views properly considered and reflected in legislation, rather than in what we have at the moment: the collective view of 13 male members of the Cabinet deciding what ought to happen on the controversial aspects of the IVF programme, which are of concern not only to those members of the Cabinet but to everyone in the community.

I have been advised that the effect of the passage of this legislation on the Queen Elizabeth Hospital situation will not be to create any difficulties. They will just continue to store the excess embryos until a final decision on disposal or donation is made by the Parliament. No storage problems are involved.

The situation at Flinders Medical Centre is less clear. At present, there is no freezing facility at FMC, although there is currently an application for funding such a facility with the Health Commission at present. If that funding is granted then FMC will be in a similar situation to the Queen Elizabeth Hospital. If that freezing facility is not provided then this Bill will require FMC to take all reasonable steps to ensure preservation of any excess viable embryos.

I am advised that use of the freezing facility at the QEH could be made available to the FMC for storage of excess embryos and that such an arrangement would not present significant problems to the continuation of the FMC programme. For example, there are no problems with regard to transportation of frozen embryos from, say, the QEH to the FMC.

However, I believe that this transportation arrangement is unlikely to be necessary because of the likelihood of the FMC acquiring a freezing facility. My advice, in summary, is that this State's IVF programmes will continue much as they are at present if the Bill is passed.

The last matter I would like to comment on is the use of the word 'destruction' in the Bill. The Minister of Health objects to that word and prefers to use the phrase 'withdrawal of extraordinary means of support'. Other people use words such as 'disposal' or 'termination'. For example, the working party report used the word 'disposed'.

I believe, personally, that 'destruction' is the word most commonly understood by the community and that it is a fair description of what actually happens. The phrase 'withdrawal of extraordinary means of support' has many problems. The Minister of Health needs to address the question of whether pulling the plug on the use of an incubator to sustain the life of a 'pre-term' foetus is also 'withdrawal of extraordinary means of support'. The Minister of Health might like to use that phrase, but I do not, as it gives a misleading impression.

This is a relatively simple Bill with a simple aim of ensuring that Parliament, not the Cabinet, has a say in the ultimate destination of excess frozen embryos in the IVF programme, that is, whether we continue to allow or permit destruction of those embryos or whether we take up that other viable option suggested by eminent people in the profession, such as Dr John Kerin—embryo donation. This Bill will stop the possible destruction of embryos in South Australia until the end of 1985 by which time, hopefully, comprehensive legislation might have been passed.

The Hon. J.R. Cornwall: The matter was first raised in October 1982 when Tonkin was still in Government and without permission whatsoever your mates at the Queen Elizabeth Hospital, including Kerin, froze 12 times before Cabinet permission was granted. Are you aware of that?

The ACTING PRESIDENT (Hon. R.J. Ritson): Order! The Minister will have an opportunity to speak.

The Hon. R.I. LUCAS: Thank you, Mr Acting President. The Minister will have an opportunity to put those views if he wants to. What happened in 1982 is beyond my scope as I was not a member of this Council then. All I can hope to do as a member of the Council is to address the problems and questions as I see them now. If the then Shadow Minister of Health did not address the problems in 1982, that is on his conscience. It is certainly not on my conscience.

The Hon. J.R. Cornwall: It's not on her conscience at all. She was quite unable to be involved, the same as you would be unable to be involved.

The Hon. R.I. LUCAS: I am not the Minister of Health either, but the Minister is not prepared to take any action.

The ACTING PRESIDENT: Order! Members must come back to the debate.

The Hon. R.I. LUCAS: Thank you, Mr Acting President. The point I make under severe provocation from the Minister of Health is that I am not the Minister of Health, either. This Bill has been introduced because the Minister of Health is not prepared and is unwilling to introduce necessary legislation in this area. The only way in which we as a Parliament will have an opportunity to debate these controversial aspects is through private member's legislation in the Council.

The Hon. Barbara Wiese: Why have we set up a Select Committee?

The Hon. R.I. LUCAS: That is a very good question. This Bill merely seeks to—

The Hon. Barbara Wiese: It pre-empts the findings of the Select Committee.

The Hon. R.I. LUCAS: No, it does not. The Cabinet has pre-empted (if one wants to take that view) the findings of the Select Committee. The Cabinet has decided that one possible destination of frozen embryos ought to be allowed, that is, embryo destruction, but that the other viable option recommended by Dr John Kerin of embryo donation will not be allowed.

The Hon. J.R. Cornwall: You're in favour of rent-a-womb?

The Hon. R.I. LUCAS: That is the Minister's term: he can use it if he wants to.

The Hon. J.R. Cornwall: That term is in common usage, as you well know.

The Hon. R.I. LUCAS: It is in common usage in regard to surrogacy provisions generally, and this Bill has nothing to do with surrogacy provisions. It is not true that this Bill seeks to pre-empt the findings of the Select Committee. In fact, it seeks to do exactly the opposite. It is trying to wind back the Government's administrative instruction to a situation where the controversial aspects of the programme, that is, the ultimate destination of the frozen embryos, will be decided after the Select Committee has reported and we have debated legislation in this Parliament.

The Bill has a sunset provision, which will lapse at the end of December 1985. The reason for the sunset provision is that I hoped that the Select Committee might have reported and we as a Parliament might have debated and finalised what we believe ought to happen with these controversial aspects of the IVF programme. However, yesterday in debate the Attorney-General persuasively argued a scenario where it is possible that the report of the Select Committee and supplementary legislation would not be presented until the latter part of 1986, which is, of course, some two years on. If that is the case, unless this Bill is passed the present administrative instructions that were implemented, without any discussion by the Parliament, by Cabinet with regard to the destruction of frozen embryos will stay in place possibly until the end of 1986, that is, for two years. I do not believe that that is right: I believe that Parliament ought to assert its role in this matter and ensure that the Parliament, and not the all male Cabinet responding to recommendations of the Minister of Health, decides what should happen with respect to the IVF programmes. I do not accept that, and I do not believe that the majority of members of the community accept that situation. I think that the Minister of Health knows it.

I give notice that, if this Bill passes and if at the end of 1985 comprehensive legislation has not been introduced to provide specific guidelines for the IVF programme in South Australia, I will seek to extend the term of this Bill for another six or 12 months, or for some set period in which I believe it is likely that comprehensive legislation will be introduced. As this Bill is, in my view, relatively simple, members can make up their mind pretty quickly one way or the other whether they agree with it, and I hope that we can come to an early resolution of the matter one way or another so that it will not be allowed to lapse on the Notice Paper for want of discussion by the Government. If that was to be the Government's approach, in my view it would be political cowardice. If the Government does not agree with the Bill, let it and the Minister of Health say so and throw the Bill out.

Let the Government for once put on record what it believes ought to be happening with this part of the IVF programme. I believe that there will be differing views on this particular issue, even among members on this side of the Chamber. I accept that and will accept the ultimate decision of this Chamber. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides definitions necessary for the purposes of the Act. Under the Act, a 'fertilisation procedure' means a procedure of fertilising an ovum outside the body and transferring it into the uterus, and a 'fertilisation programme' means a programme established by or at a hospital with a view to the treatment of female infertility. Clause 3 provides that a person who has the custody or control of an embryo derived as part of a fertilisation programme shall take all reasonable steps to ensure the preservation of that embryo. A penalty of $2 000 or imprisonment for six months is prescribed for non-compliance. However, the section would not apply in relation to an embryo that does not have any viable use in a fetilisation procedure and also would not apply to the transferring of an embryo into the uterus of a woman as part of a fertilisation procedure. Accordingly, an embryo, once created, would have to be used, or stored for future use (unless it was unusable).

Clause 4 provides that a person who has the custody or control of an embryo derived as part of a fertilisation programme shall not destroy that embryo or permit its destruction. A penalty of $4 000 or imprisonment for one year is prescribed for non-compliance. This would have particular relevance to the freezing of embryos. The section would not apply to the inadvertent destruction of an embryo during the course of a fertilisation procedure. Clause 5 provides statutory protection to a person who complies with the provisions of the proposed Act. The effect of the provision would be to traverse all requests, agreements or directions relating to the destruction of embryos. Clause 6 provides that offences against the Act would be summary offences. Clause 7 provides for the expiration of the Act on 31 December 1985.

The Hon. BARBARA WIESE secured the adjournment of the debate.

GAS SUPPLIES

The Hon.K.L. MILNE: By leave, I move:

That this Council requests the Premier to write immediately to—

1. the Prime Minister, and
2. the Leader of the Federal Opposition,

asking that favourable consideration be given to any proposal of the South Australian Government for the building by the Commonwealth Government of a gas pipeline from Melbourne to Adelaide, similar to the pipeline from Moomba to Sydney, to allow South Australia to have an alternative and cheaper service of national gas supply.

The intention of my motion is that the Premier should write to both these Leaders now to get a commitment from them during the election campaign. Honourable members would have gathered from my recent questions in this Council regarding national gas prices and electricity tariffs that I am very concerned about the negotiations that are going on at present between the Government and the Cooper Basin producers. I hope that other honourable members are concerned, too, because in 1985 in South Australia we will be paying roughly 60 per cent more for gas than they are paying in New South Wales and Victoria.

This is the result of people inexperienced in this field negotiating with hardened experts, with the amateurs being outmanoeuvred, in my opinion, anyway. Also, we were done in the eye by our own South Australian company, producing South Australian gas. It is too ludicrous for words! What is more, there is nothing we can do about it until 1987 because present arrangements will hold until then, but negotiations are proceeding now relating to prices in 1987 and beyond. Mr Goldsworthy made it clear in a speech in another place that there are two sides to this vexed question while he was politely 'putting the record straight', as he put it. However, the negotiations for prices beyond 1987 are being conducted now, and I am not confident that we will be told what the Government is doing. Yet, in a matter as vital to South Australia as this, I believe that Parliament should be kept informed and consulted. I think it would have been better if there had been greater consultation in the first place. I have dealt with that matter in questions to which I hope to receive replies very soon.

A lot of the criticism that the Electricity Trust has had to bear has been directly due to the exorbitant price it has had to pay for gas. As I have stressed before, this has further eroded South Australian competitiveness for our industry as against other States. The problem is that the producers feel, and perhaps rightly, that they have us over a barrel (to coin a phrase!). I have no doubt that they must be giving the Minister of Mines and Energy a hard time. Therefore, it seemed to me, and to a number of other interested people, that it would be a good idea to have a second string to our bow, or another barrel to roll out, as one might say. One of the obvious ways of strengthening our negotiating hand, of course, is to start negotiations for an alternative supply of natural gas. One of the obvious places to begin would be Esso-BP in Victoria, with their cheaper Bass Strait gas, or even to go back to coal from Newcastle, or it might be an idea to run a pipeline from the Northern Territory to Moomba, which is not very far. There are other alternatives, but I suggest that we should first concentrate on a pipeline from Victoria to Adelaide.

That, very briefly, is why I am suggesting that we should seek the help of the Prime Minister and/or Mr Andrew Peacock. If this motion is carried, then I will also propose that we seek a commitment from Don Chipp and the Australian Democrats in the Senate to support us as well, unless someone else would care to propose it. I apologise for not having discussed this matter properly with the Government and the Opposition before but I have been sick. However, I ask the House to pass this motion today, in order that the message may go the Premier at once. He can then consider it, discuss it with his Cabinet and, hopefully, agree to put some pressure on the Federal Leaders so that they can look after us, for a change, and not look at South Australia as a colony of New South Wales.

The Hon. I. GILFILLAN secured the adjournment of the debate.

ADELAIDE RAILWAY STATION DEVELOPMENT

The Hon. I. GILFILLAN: I move:

That regulations under the Adelaide Railway Station Development Act, 1984, concerning promulgation of a development plan, made on 11 October 1984, and laid on the table of this Council on 16 October 1984, be disallowed.

The reasons for moving the disallowance of the regulations applying to the Adelaide Railway Station development proposal are several, and I do not intend to cover them all in detail today. First, in the media it has been somewhat inaccurately interpreted as an across-the-board opposition and blocking move for the project as a whole. I want to make it quite plain that that is not the case. There are very good reasons why, in many cases, regulations are disallowed, and there is fairly widespread ignorance in the general public and perhaps in some of the media of the procedure of regulations and the process and the consequence of the disallowance.

A Government has the power to reintroduce the regulations in whatever form it sees fit after a disallowance motion is successful. So, it cannot be regarded as a complete and effective blocking motion. It can, of course, be used, and in this case it is being used, as a signal to the Government that all is not well, right and rosy with the project and it would do it well to take a deep breath and reconsider some of the details that have appeared in the regulations. First, it is pertinent to make the point that the Adelaide Railway Station Development Act, 1984, was passed, I believe, with undue haste earlier this year, partly because there is euphoria when an exciting project like this comes before us. The two clauses that caused some of the embarrassment we are currently confronted with are:

5 (2). No consent, approval or other authorisation is required under the City of Adelaide Development Control Act, 1976, in respect of the proposed development.

5 (3). To facilitate the proposed development, the Minister may grant such exemptions from the Building Act, 1970, as he thinks fit.

Both of these are rather dramatic clauses in legislation these days, when conservation, heritage responsibility and con-

sultation with the public are so much before us and so much an important part of our decision making process. It is an embarrassment not only to the Government but, I believe, to the Parliament because we passed that Bill unanimously when it came before us. I believe that the regulations show some conflict with the stated principles behind the Planning Act. A document 'Guide to State Planning System' contains a few comments appropriate to this motion, as follows:

If a project is highly controversial or likely to have major social, economic or environmental significance, an Environmental Impact Statement may be prepared. Environmental impact assessment is integrated with planning controls.

I believe that it is obvious that in this case an EIS should have been an essential requirement for the project. The document continues:

Where a private development or project is of major social, economic or environmental importance, the Minister for Environment and Planning may require an Environmental Impact Statement (EIS) be prepared.

There is no doubt that this project fits all those criteria. It continues:

State Cabinet has directed that Environmental Impact Assessment procedures should apply to major proposals by the Crown, Crown agencies or to private bodies where Government funding or approval is involved.

No-one can dispute that all these criteria apply to this proposal. It continues:

If the Minister decides that an EIS is necessary, the developer usually prepares a Draft EIS, which the Minister must make available for public exhibition for a minimum period of two months.

They are all very worthwhile aims but, unfortunately, in this case none have been put into effect. There has been public expression of disappointment concerning the lack of effective consultation from aldermen of the Adelaide City Council. Alderman Manos and Alderman Watson have publicly expressed that there was no effective consultation, and I believe that that is a serious deficiency in the procedures that a responsible Government should take in a project of this nature and in this locality. The project is in conflict with the City of Adelaide plan principles. The City of Adelaide Development Control Act, 1976-1981, in relation to 'Height', states:

Principle 15. Building heights throughout the City shall be controlled taking into account the Desired Future Character of the relevant Precincts. The tallest buildings in the City shall be confined to the Core Exchange and Victoria Square Precincts.

Obviously, this is in conflict with the fact that the tallest building in Adelaide is now to be built outside what was recognised as the City square. It continues:

Principle 16. New Development shall provide landscaping and planting appropriate to the desired future character of the particular locality within the relevant Precinct.

Principle 25. Elements of townscape such as the relationships of buildings along a street in terms of horizontal and vertical alignments; siting of buildings; the relationships of new to existing buildings and generally, the design, appearance, scale, roof shape, material, colours and finishes of proposed building work, advertising and other signs, external furniture displays and hoardings, shall be controlled having regard to the Statement of Desired Future Character of the Precinct in which the development is situated, and having special regard to factors of cultural, environmental, historic, architectural, scenic or scientific interest.

All of these are very important matters in which the Adelaide City Council was completely ignored in consultation. It continues:

Principle 34. Control over development shall be exercised having regard to and recognising the significance of and the need to preserve and enhance those items within the City of Adelaide listed on the Register of State Heritage Items or the Interim List established by the South Australian Heritage Act, 1978.

The railway building is one of those items and, obviously, the council should have been involved in the consideration of this project. Under 'Activities', the document continues:

The North Terrace Precinct should continue to develop as the cultural centre of the State, and the focus of Parliamentary, educational and medical activities. The role of the Precinct as the tourist centre of the city should be promoted and strengthened. The development of cultural facilities such as the Festival Centre and Art Gallery should be continued, and reinforced on the southern side of North Terrace by additional convention and tourist accommodation.

I repeat 'southern' as this project is diametrically opposed to the 'Activities' specification in this document. The document under 'Environment' continues:

The environmental character of the Precinct should be dominated by the streetscape of North Terrace, with grand avenue tree planting, historic and monumental buildings, and extensive landscaping juxtaposed with the abrupt wall of buildings on the south side.

There is no contemplation of abrupt walls of buildings on the north side. It continues:

New development should be sympathetic with, and contribute to, the sober and grand architectural styles in the Precinct. The intensity and height of development should drop markedly on the north side of North Terrace . . .

This project will do absolutely the reverse. The railway station building is on the State Heritage Register but, as in the case of Yatala A Division building, the Heritage Act has been rendered meaningless because this Government has exempted itself from it. The Premier and the Chairperson of the ASER Co-ordinating Committee, Mr Graham Inns, have both publicly stated that the railway building is not part of the ASER development. Yet, the Act shows that it is included as part of the development site by defining the actual section quite distinctly and, secondly, I refer to the regulations included in the drawings as part of the development. Public land for private development conflicts with original intentions and traditional use of space outside the terraces. I shall go back further into a part of our past that may not be well known to all, but does in a way compare and set a precedent for what we are considering here today. I quote from the book 'Augustus Short, D.D., Bishop of Adelaide' by Judith M. Brown. The background to this was that the Bishop asked for and was granted an acre of land in Victoria Square for a cathedral. When that became more widely known about the town there was a fair amount of protest. The book states:

The Mayor opened the meeting after which W. Peacock Esq., M.L.C., took the platform and said 'it was not the first time the colonists had met to defend their liberty and to protect their property, and he hoped they would on that occasion show themselves to be good men and true'. Mr Peacock then moved the first motion which was that the meeting should 'cordially approve of the proceedings of the City Council in resisting the claims of the Bishop of Adelaide to the acre in Victoria Square' as he understood the 'whole of the squares of the city were to be preserved from invasion', and added 'so they would have been from every other person except a bishop'. This was greeted by 'cheers and confusion' which encouraged Mr Peacock to warm to his subject . . .

I do not intend to warm to this subject. There is an analogy that the Premier and his Government are the latter day bishops who are presuming that they can take pieces of what is public property and, to be good men and true, we have to stand up and be counted in opposition to that.

The Hon. C.J. Sumner: There are railway lines there.

The Hon. I. GILFILLAN: There may be, but they are in the wrong place.

The Hon. C.J. Sumner: Why not remove the railway lines as well?

The Hon. I. GILFILLAN: Eventually, yes. The Chairperson of the ASER co-ordinating committee, Mr Graham Inns, has stated publicly that the document used—

The Hon. C.J. Sumner interjecting:

The ACTING PRESIDENT (Hon. C.W. Creedon): I ask the Minister to be quiet.

The Hon. I. GILFILLAN: I will bravely continue and be a good man and true. One of the areas of concern to people who are anxious that there be time to reconsider the situation is that the document used for comment by the City of Adelaide Planning Commission and council has been described now as not an official document by the Chairman of the ASER Co-ordinating Committee. That means that the people who have made an effort to diligently study the plan were confronted with the statement that what they were studying was not an official document and, therefore, was not a valid basis for them to criticise or consider the issue. It is quite obvious that many people of importance and significant standing in Adelaide have serious concerns about details of the project. I emphasise that at this stage it is obvious—

The Hon. C.J. Sumner: Do you support the project?

The Hon. I. GILFILLAN: Yes. It is obvious that the details of the project must be examined closely and critically. Therefore, I would like to read a letter written by Gordon S. Davidson, CPE, as Chairman of the South Australian Heritage Committee, to the Hon. D.J. Hopgood, Minister for Environment and Planning. The letter states:

I write today at the request of the members of the South Australian Heritage Committee and in relation to the Adelaide Station and Environs Development Plan and to express to you some of their concerns about it. As you know, our Act specifies the committee's functions of advice and referral but the members feel that in the matter of 'carrying out all things necessary to the performance of our functions etc.' we can place these points of view before you.

The members feel that the Adelaide station project impinges very much upon several aspects of heritage value and therefore is related to the work which we undertake. The decision to communicate with you was a unanimous one and I am also to say that the decision and this letter is quite separate from the Heritage Branch and their various connections with the committee. We hope, therefore, that you will regard this letter as an initiative taken in the full spirit of heritage as well as in our responsibility to you as our Minister.

The committee in its work has recommended for listing many important Adelaide buildings. These have included a noble and historic series along the northern side of North Terrace. Prominent in our minds all the time has been the Colonel Light plan along with the park lands. Although it has not been possible to list these two latter items, the committee regard them as being of first importance to South Australia. Over the years the plan has remained generally intact and it is one of the great features of South Australian planning—indeed, as you know, it finds additional expression in the planning and design of many places outside the City of Adelaide. Our committee's concern is therefore with the effect which the proposed Adelaide station plan will have on the heritage values of Adelaide in general and on North Terrace in particular. We feel that the style of the northern side of North Terrace makes a clear and significant contribution to the character of the city. It is a distinctive heritage image which people recognise and value.

This image is represented by buildings which have been and are still used for a range of the functions of State, for example, hospital services, the university, the museum, gallery, library and of course Government House, Parliament House and the Constitutional Museum. The existing railway station is an extension of this pattern and the whole complex has been further enriched by the development of the Festival Centre. The Heritage Committee has recognised all of this by recommending for listing on the State Register many buildings along North Terrace. They contribute to 'physical, social and cultural heritage of the State' as well as being of 'significant, aesthetic, architectural, historic and cultural interest'.

The Hon. C.J. Sumner interjecting:

The Hon. I. GILFILLAN: I wish the Attorney would pay attention. The letter continues:

The Committee wishes to express its view and concern that the proposed station development will seriously compromise the heritage value of these buildings, the North Terrace streetscape and the Colonel Light plan. They have a further concern that this particular development is the first solely commercial intrusion into the park lands area. We have a strong anxiety about the effect that this large scale high rise development will have on the character of North Terrace and its historic buildings. By its physical dominance it will adversely effect the style, beauty and importance of such historic items as the Constitutional Museum, Parliament House and the other beautiful buildings.

We further feel that it is important that the existing heritage streetscape of the northern side of North Terrace and the environs of the park lands be preserved and enhanced. The unique heritage character of the park lands, which is enjoyed by both citizens and visitors should, we feel, be maintained and restored wherever possible. You will observe that this letter has related solely to heritage concepts and you will appreciate, I know, the committee's genuine concern for the preservation of one of South Australia's most important heritage items. This letter is written to you as our Minister and I trust that you will also regard it as a letter to the Government. We would be grateful therefore if you would share its contents with your colleagues, the Premier and the other Ministers.

I am assuming that the Attorney has already seen the letter. The letter concludes:

We would ask that these views and representations receive your earnest consideration.

In concluding my remarks at this stage, I repeat that I believe that the project has much to commend it. We now have time to pause and review, in particular, the extreme height of the 23-floor hotel. Personally, I do not feel competent to make a more detailed criticism of it. It is worth noting that the Subordinate Legislation Committee is presently inviting and hearing evidence on the project, and therefore it seems quite appropriate that a motion of disallowance of the regulations be moved. As I would like the opportunity to consider the submissions made to the Subordinate Legislation Committee, I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

EYRE LANDS

Order of the Day: Private Business, No. 8: Hon. G.L. Bruce to move:

That regulations under the Coast Protection Act, 1972, concerning declaration of lands to constitute coast (Eyre), made on 21 June 1984, and laid on the table of this Council on 2 August 1984, be disallowed.

The Hon. ANNE LEVY: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

KANGAROO ISLAND LANDS

Order of the Day: Private Business, No. 9: Hon. G.L. Bruce to move:

That regulations under the Coast Protection Act, 1972, concerning declaration of lands to constitute coast (Kangaroo Island), made on 21 June 1984 and laid on the table of this Council on 2 August 1984, be disallowed.

The Hon. ANNE LEVY: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

EVIDENCE ACT AMENDMENT BILL (No. 4)

Adjourned debate on second reading.

(Continued from 24 October. Page 1410.)

The Hon. BARBARA WIESE: I oppose the second reading of this Bill. I begin by saying that this Bill, if it is necessary at all, is premature in view of the changes implemented as a result of action taken by the Government only a year ago. These changes, recommended by the Select Committee of which I was a member, have made unsworn statements subject to the rules of evidence, just as sworn evidence is subject to the rules of evidence. That means that an accused

person cannot get away with making scurrilous statements about a complainant in a sexual offences trial, which was once the case (at least that is the result we are hoping to achieve with the amendments that have been enacted). It will be achieved if judges interpret the law as it is intended.

Having said that, I make clear that I think it is too soon for us to know what effect that change in the law is having. As the Hon. Ms Levy demonstrated with figures she quoted during this debate, there has been a shift in the use of the unsworn statement in sexual offences cases and there has been a slow increase in the number of offenders who have been found guilty after making an unsworn statement. However, so far the figures are too small in number for us to find any statistical significance. Therefore, I think it is unreasonable to take further action until we have more information and also know the effect of proposed changes to section 34i of the Evidence Act, which will amend the law of evidence in relation to present controls on the examination of a complainant in a rape trial and the present requirement that a judge should warn a jury that it is unsafe to convict an accused person on the uncorroborated evidence of a complainant.

I agree with those people in the community who have criticised the procedures which have been allowed to take place in the courts in relation to cases of sexual assault, and I agree with those people that there needs to be some change. However, I think we need to be careful about the changes that we bring about, because change for its own sake is useless. We must be sure that in making changes we do not, first, make changes which will prove to be ineffective and, secondly, will create new problems.

The 1981 Select Committee took evidence from a number of people on this question. It became clear in my mind that many of the problems complained of relating to sexual offences cases did not in fact relate to the unsworn statement at all but to other provisions relating to sexual offences.

As I have already indicated, the Government is trying to solve those problems with the amendments that I have referred to. In addition, the Select Committee received very compelling evidence from a number of witnesses which suggested that abolition of the unsworn statement would actually disadvantage some accused persons, for example, some Aboriginal people and also people who have a poor understanding of the English language. In my view, the rights of these people, although they may be few in number, are just as important and should be protected. It is not enough to say, as the Hon. Miss Laidlaw said during the course of this debate, that we spend millions of dollars on services such as legal aid to help people like this, and everything should be okay. The point is that the mere provision of legal assistance may not be sufficient to guarantee justice to this group of people. The Select Committee heard considerable evidence to support this view.

I simply cannot disregard that evidence in the cavalier way that the Hon. Miss Laidlaw and the Hon. Mr Griffin have done. The Hon. Miss Laidlaw was callous in her remarks about this group of people when she made her statements about the provision of legal aid and suggested that she could see no reason at all to retain the unsworn statement on behalf of that small but, in my view, worthy group of people.

In support of this view, I refer again to some of the evidence that we received on the Select Committee. After I have quoted from a couple of passages of that evidence, I will be very surprised if that does not raise considerable doubts in the minds of all honourable members about whether or not they are really approaching this issue in a rational way. I refer first to a submission that was made to the then Attorney-General by Mr Peter Waye, who is a barrister of some 30 years standing in Adelaide. He said:

> For many years I have defended tribal or semi-tribalised Aboriginals charged with serious crimes—mostly murder. It is my experience that it is not possible for such an Aboriginal to give evidence before a jury in his defence, for the following reasons:
>
> (1) His inability to comprehend even basic English and the nuances of English.
>
> (2) The tribal Aboriginal has such respect and is in such awe of the person in authority, such as a barrister or a judge, that he will endeavour to give any answer which he feels will please the questioner. If a question is put to him he will answer in the affirmative, even if in fact it is not the correct answer as he knows it.

Mr Waye then went on to quote a number of cases where this had been a problem. The next point he made was this:

> (3) The tribal Aboriginal cannot comprehend the Western or European concept of an idea. If a tribal Aboriginal is asked why he did something, he can explain the facts and describe what he did, but is unable to give his reason or reasons for doing the same.
>
> The whole atmosphere of a trial and the formality of the court and robes of counsel and judge places the tribal Aboriginal in a position of awe and he is completely overcome by the atmosphere. I have seen a tribal Aboriginal charged with murder entering the dock and faint with fear.
>
> There are other sections of the community whom in my opinion would be greatly disadvantaged if they were obliged to enter the witness box and subject themselves to cross-examination in the presentation of their defence. These include a person with an extremely pronounced stutter; European migrants who are obliged to give their evidence through an interpreter; people of subnormal intelligence. I recently acted for a young man charged with murder, who spent all of his early life in Minda Home and was of very low intelligence. It would have been impossible for him to properly present his defence by way of sworn evidence.

The sentiments expressed in that view are also supported by a number of other eminent members of the legal profession, including South Australia's former Chief Justice. I simply cannot ignore submissions like that when I am deliberating on whether or not we should retain or abolish the unsworn statement.

I agree with the Hon. Miss Laidlaw that the point of this debate is to find truth, fairness and equity. In so doing, it is essential that we look at the question of fairness and equity, not only to victims of sexual violence but also to the people who have been referred to by Mr Waye and others who gave evidence to the Select Committee. Reference has been made also in this debate to the importance of cross-examination as a tool for extracting the truth. I remind honourable members also of evidence that the Select Committee received on this point in relation to Aboriginal defendants.

In particular, the Aboriginal Legal Rights Movement submission outlined in great detail the special powers that have been adopted for police to interrogate Aboriginal people and the reason why the procedures must be different from those followed for other people in the community. It also pointed out that because of cultural and language difficulties Aboriginal people were often likely to give answers that they thought the person wanted to hear. The Movement's submission quoted His Honour Forster J., who in a Northern Territory judgment in 1976 set out guidelines for police interrogation of Aboriginal people, and in part that submission stated:

> Great care should be taken in formulating questions so that so far as possible the answer which is wanted or expected is not suggested in any way. Anything in the nature of cross-examination should be scrupulously avoided as answers to it have no probative value. It should be borne in mind that it is not only the wording of the question which may suggest the answer, but also the manner and tone of voice which are used.

I ask honourable members opposite what principle of justice will be served if these people are subjected to cross-examination when one has a judge telling us that in cases such as this cross-examination will have no probative value at all. It seems to be absolutely nonsensical to suggest that

justice will be served by requiring these people to face cross-examination.

Finally, I will make one point about community support for abolition of the unsworn statement, particularly amongst women's organisations, because this matter has been referred to extensively by members opposite. I am very aware that a number of women's organisations in the community consider that it is necessary to abolish the unsworn statement in order to protect the rights of victims in sexual offences cases. As I said earlier, I am sympathetic to that point of view, but we ought to get that point of view into some perspective in the sense that the organisations that are making these recommendations in relation to sexual offences trials are viewing this issue from that one perspective and are not looking at the use of the unsworn statement overall.

They are not considering what effect the retention or abolition of the unsworn statement will have on other groups in the community. In fact, when the former Women's Adviser to the Premier gave evidence to the Select Committee, she admitted that this was so as far as her own evidence was concerned. She made clear that the remarks that she was making in support of the abolition of the unsworn statement were being made solely in regard to its use in sexual offences trials. So, I am suggesting not that we should be critical of those organisations because they are putting forward this point of view based on their assessment of its use in a particular category of legal proceedings, but that we as legislators who are charged with looking at the law as it affects all citizens in the State have to take into account the interests of Aboriginal people and the other categories of people who we have been told would be disadvantaged if the unsworn statement is abolished. As legislators we cannot afford to be so narrow in our assessment of the legal position.

In summary, my position is that I agree that change is necessary in the procedures relating to sexual offences cases and, as I have said, the Government has already taken steps to remedy some of the problems that have been identified in this area, first, by making changes that took effect 12 months ago and, secondly, by changing section 34i of the Evidence Act, which occurred only in this session of Parliament.

I believe it is reasonable that we should give these changes a fair go, and I am reasonably confident that we will find that they will solve most of the problems that have been identified in regard to sexual offences cases. We have not allowed sufficient time for these changes to be judged fairly. However, if after a reasonable evaluation we find that problems still exist in regard to sexual offences cases, I would want to consider the matter again and to assess the situation. Whatever action is ultimately found to be the most suitable to deal with the objections that have been raised in regard to sexual offences cases, I would also want to insist that the rights of Aborigines and other people who are disadvantaged by our legal system will also be protected. For all these reasons, I oppose the second reading of this Bill.

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

COMPANIES (APPLICATION OF LAWS) ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

Under the Companies Act, 1962, liquidators were registered by the Companies Auditors Board from 1 April in one year until 31 March of the subsequent year. A condition of registration as a liquidator was that the applicant give a bond in favour of the Registrar of the Companies Auditors Board in the sum of $10 000. Regulation 10 of the companies regulations made machinery provisions for the Companies Auditors Board to get in the proceeds of a bond and to distribute those proceeds where a liquidator had contravened a condition of the bond.

The Companies Auditors Board became defunct as from 1 July 1982 upon the commencement of the Companies (South Australia) Code and the Companies (Administration) Act, 1982. As from this date the Companies Auditors Board's registration functions were carried out by the Corporate Affairs Commission, and its disciplinary functions by the Companies Auditors and Liquidators Disciplinary Board. This approach is consistent with the provisions of the Companies (South Australia) Code which empower the Commission to deal with claims against liquidators' bonds given after the commencement of the code.

The proposed amendment will allow the Corporate Affairs Commission to take the benefit of bonds given to the Companies Auditors Board under the Companies Act, 1962. This will provide security during the period from the repeal of section 8 of the Companies Act, 1962, to the registration of liquidators by the Commission under section 22 of the Companies (South Australia) Code. The amendment will enable the Corporate Affairs Commission to deal with claims against such liquidators' bonds on the same basis as the Companies Auditors Board would have dealt with such claims if it still existed. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 will give the Act retrospective operation. This is necessary so that there is continuity in the security afforded by bonds given to the Companies Auditors Board under the Companies Act, 1962. Clause 3 inserts new subsection (5) into section 37 of the principal Act. The new subsection provides that the Corporate Affairs Commission may take advantage of a bond given by a liquidator to the Companies Auditors Board in the same circumstances as the Board could have if it had continued in existence.

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

SECOND-HAND GOODS BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the licensing and control of dealers in second-hand goods; to repeal the Second-hand Dealers Act, 1919, and the Marine Stores Act, 1898; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

This Bill repeals the Marine Stores Act and the Second-hand Dealers Act and replaces the latter with a new Second-hand Goods Act. The existing Second-hand Dealers Act and the Marine Stores Act were assented to in 1919 and 1898 respectively. Many of the provisions of the existing Acts are anachronistic and cause problems both to those to whom they apply and those required to enforce them.

In January 1981, an inter-departmental working party chaired by a senior officer of the Police Department was established to review the Second-hand Dealers Act, the Marine Stores Act and the Hawkers Act. In the course of its review, the working party consulted the Chamber of Commerce and Industry, the Professional Car Dealers Association, the Licensed Marine Store Dealers Association, the Licensed Antique, Second-hand, Art Dealers Association, the Department of Public and Consumer Affairs, the Department of Labour, the Second-hand Vehicle Dealers' Licensing Board and the Local Government Association. The working party subsequently produced a consolidated draft Bill entitled 'the Second-hand Goods Act', which repealed the Second-hand Dealers Act and the Marine Stores Act with the chief objectives being:

- to provide appropriate and adequate legislation for the licensing and control of persons dealing in second-hand goods;
- to control the likely avenues through which stolen goods may be disposed;
- to control the illegal actions of persons either attempting to dispose of, disposing of, or having disposed of, stolen goods, or goods that have been otherwise unlawfully obtained;

and

- to recover property that has been stolen or unlawfully obtained and to return that property to its rightful owner.

This Bill has now been the subject of extensive examination by the Department of Public and Consumer Affairs, those organisations mentioned above, and other interested organisations such as the Antique Dealers Association of South Australia, Trash and Treasure Australia Ltd, the Society of Auctioneers and Appraisers and the South Australian Automobile Association. Both the industry associations and the Police Department have sought the introduction of this revised and updated legislation as a matter of urgency. This new Bill has, as its primary requirement, the licensing of all persons who carry on the business of buying or selling or otherwise dealing in second-hand goods. The licensing functions will be carried out by the Commercial Tribunal and the licensing procedure has been modelled on the Department of Public and Consumer Affairs common licensing system which is applicable to all the occupational groups regulated by the Department.

All licensed second-hand dealers will be required to retain goods purchased by them for a period of four days prior to reselling them and they will also be required to record particulars of the goods so as to identify their origins. It is anticipated that these measures will assist the police to trace stolen second-hand goods.

An evidentiary provision is included in the Bill which provides that a person, in the absence of proof to the contrary, shall be deemed to be a second-hand dealer if he sells second-hand goods on six or more days within a 12-months period. This is seen as a fair and liberal means of allowing the average citizen the freedom to use the markets for the purpose they were designed and deter the non-licensed persons from regularly dealing. All applicants for second-hand dealers licences will be required to satisfy the Commercial Tribunal that they are over 18, that they are a fit and proper person to carry on the business of being a second-hand dealer and that they are able to fulfil the obligations imposed on licensees, notably the ability to comply with the recording processes required by the Act. A licensed second-hand dealer will be required to conduct his business from registered premises. The dealer will not be permitted to sell second-hand goods otherwise than at those premises unless he seeks a permit from the Commercial Tribunal to allow him to do so. The permit system will legalise many 'antique fairs' which have been conducted by licensed second-hand dealers, and which, under the existing Second-hand Dealers Act, they have been prohibited from conducting. In addition, it will afford a licensed dealer the opportunity to deal at a 'trash and treasure market'.

Because the Act seeks generally to prevent fraud in the transfer of second-hand goods it must apply to everyone who carries on the business of dealing in second-hand goods. We must recognise, however, that many organisations and individuals only deal in second-hand goods as an incident to their main business activities and that they should therefore be exempt from the requirements of the Act. Firstly, there are the charity and other non-profit organisations such as schools, sporting and service groups who sell both new and used goods. These organisations may collect unwanted household items from members and friends for sale to raise funds. These types of groups will not be affected by the legislation as appropriate regulations will be promulgated to ensure minimum interference with their activities since it it unlikely that these groups are involved in the larger scale 'fencing' of stolen property.

Secondly, there are those who dispose of their own property by way of a 'garage sale' or by way of attendance at a 'trash and treasure market'. These people operate their business as a hobby or as an income supplement. These people themselves fall into two categories. There are those who do not hold a dealers licence but who attend auctions and other sales outlets to purchase goods (both new and used) at low value for the purpose of re-sale at a market and, secondly, there are those persons who do not purchase goods but acquire them by scavenging at dumps and other places of abandonment. Usually these people repair or restore the goods before attempting to sell them. Again, regard must be had to the purpose of the Act and it is seen as unnecessary intrusion to control the activities of the latter category. A suitable exemption will be granted to exclude them from the operation of the Act.

The Act also recognises a special class of persons who handle second-hand goods, namely, commission auctioneers. The police have submitted that there is a need to control this obvious lucrative avenue for the disposal of stolen goods. The Department of Public and Consumer Affairs, in conjunction with the police, conducted an extensive investigation of auctions and it was concluded that it would have been unduly restrictive to require commission auctioneers to be licensed as second-hand dealers and thus have to comply with the obligations required of a licensed second-hand dealer, such as disposing of the goods only after a period of four days. These provisions would have had a detrimental effect on the business of those auctioneers who act only as commission auctioneers and who sell second-hand goods on behalf of other persons at auction. It could have resulted in closure of some of the wellknown auction rooms as they would not have been able to hold goods for the required period without obtaining larger premises (as most of the goods are received just prior to the auction time). The recording details would have required extra staff to the point where the business would no longer be profitable.

It is important, however, that this avenue of disposal be controlled and it is vital that certain information in relation to the goods be available to enable police to trace and recover stolen goods. Auctioneers will therefore be regulated by means of a negative licensing system. Although auctioneers will not be formally licensed as such, the way they conduct their auctions will be effectively controlled. They will be required to keep prescribed information and particulars of the goods sold at auction such as the names and addresses of the vendors and purchasers. They will also be required to take possession of those goods which are due to be auctioned at least 24 hours prior to the commencement of the auction. This will provide police with the opportunity

to inspect the auction rooms and examine the goods present. It should also be noted that the administration of the Act falls into two areas. The licensing and administrative functions under the Act will be carried out by the Department of Public and Consumer Affairs, mainly through the Commercial Tribunal, while the Police Department will be responsible for the enforcement and investigation functions. These functions will be carried out in the normal course of designated police officers' duties.

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

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the commencement of the measure and, where necessary, for the suspension of operation of specified provisions of the measure. Clause 3 provides for the repeal of the Second-hand Dealers Act, 1919, and the Marine Stores Act, 1898. The clause deems persons licensed under either of those Acts to be licensed dealers under this measure and deems managers nominated under the Second-hand Dealers Act to be registered as managers under this measure. Clause 4 provides definitions of expressions used in the measure. 'Second-hand goods' is defined as meaning goods that have been used for a purpose not connected with their manufacture or sale or goods a part or parts of which have been taken from other second-hand goods. 'Second-hand dealer' is defined as meaning a person who carries on the business of buying or selling, or otherwise dealing in, second-hand goods (whether or not he deals in any other goods) but excludes commission auctioneers. 'Commission auctioneer' is, under the clause, a person who carries on the business of conducting auctions for the sale of second-hand goods on behalf of other persons and who does not carry on the business of selling second-hand goods on his own behalf whether by auction or otherwise.

Clause 5 empowers the Governor to grant conditional or unconditional exemptions by regulation. Clause 6 provides that the provisions of the measure are in addition to and do not derogate from the provisions of any other Act. Clause 7 commits the administration of the measure to the Commissioner for Consumer Affairs subject to the control and direction of the Minister.

Part II (comprising clauses 8 to 11) deals with the licensing of second-hand dealers. Clause 8 provides that it is to be an offence for a person to carry on business as, or to hold himself out as being, a second-hand dealer unless he is licensed as such. The clause fixes a maximum penalty of $5 000 for such an offence. A person is not required to hold such a licence in order to carry on a business for which a licence is required under the Second-hand Motor Vehicles Act, 1983, or to buy or sell goods if they are bought or sold in the course of a business as a second-hand motor vehicle dealer.

Clause 9 provides for applications for second-hand dealer licences. Applications are to be made to the commercial Tribunal and are to be subject to objection by the Commissioner for Consumer Affairs, the Commissioner of Police or any other person. Under the clause, the Tribunal is to grant such a licence if the applicant is a natural person over 18 years of age and a fit and proper person to hold the licence, or, in the case of a corporation, if the persons in a position to control or influence substantially the affairs of the corporation are fit and proper persons. An applicant must also satisfy the tribunal that he has made suitable arrangements to fulfil the obligations of a licensee under the measure. Clause 10 provides that a licence is to continue in force (unless cancelled or suspended) until the licence is surrendered or the licensee dies or, in the case of a corporation, is dissolved. A licensee is to pay an annual fee and lodge an annual return with the Registrar of the Commercial Tribunal. Clause 11 provides that the business of a licensed second-hand dealer may be carried on, with the consent of the tribunal, for not more than six months where the licensee dies.

Part III (comprising clauses 12 to 16) deals with the conduct of business by second-hand dealers. Clause 12 requires a licensed second-hand dealer to register with the Tribunal all premises at which he sells or disposes of second-hand goods. Under the clause, the Tribunal may grant permission for the temporary use of premises not registered by a licensee. Clause 13 requires that the business conducted by a licensee at registered premises must be personally supervised by the licensee himself (if he is a natural person) or by a person registered by the Tribunal as a manager. Where a licensee has two or more registered premises, each of the premises must be supervised in that way. Objections may be made to the registration of a person by the Commissioner for Consumer Affairs or the Commissioner of Police. A licensee is allowed 28 days, or a longer period granted by the Tribunal, to replace a registered manager. Clause 14 requires a second-hand dealer (and this would include a second-hand motor vehicle dealer) to enter particulars prescribed by regulation in records to be kept by him in relation to all second-hand goods that come into his possession or custody. The entry is to be made forthwith after the goods come into the dealer's possession. In the case of goods bought at an auction conducted by a commission auctioneer, insertion in the record of a receipt from the auctioneer identifying the goods and signed by the auctioneer will constitute a sufficient entry.

Clause 15 requires a second-hand dealer (again, including a second-hand motor vehicle dealer) to keep all second-hand goods bought by him or received into his possession or custody, without changing their form or disposing of them, for four days. If, within that period, the police notify the dealer that any of the goods are suspected as having been stolen or unlawfully obtained, the dealer is to keep the goods for a further period not exceeding five days. The clause requires a dealer to notify the police of any goods that come into his possession that answer any description of stolen goods circulated by the police or that he otherwise suspects as having been stolen or unlawfully obtained. All second-hand goods in the possession of a dealer are to be kept clearly marked with a serial number corresponding to a serial number assigned to the goods in the dealer's records. The clause provides a defence to a charge of an offence of failing to keep second-hand goods for the requisite period if the dealer obtained them from a licensed dealer, or disposes of them to a licensed dealer, and had not received any notice that they may have been stolen or unlawfully obtained.

Clause 16 provides that an authorised member of the Police Force may enter the place of business of a licensed dealer at any time when someone is present at the premises and, if not permitted entry, may enter by force. An authorised member of the Police Force may enter the place of business of a licensed dealer at any time and by force, if necessary, if he suspects on reasonable grounds that stolen or unlawfully obtained goods are present upon the premises. The clause provides for inspection of any goods upon such premises and any records of the dealer that are required to be kept under the measure. 'Licensed dealer' is under the clause defined to include a licensed second-hand motor vehicle dealer.

Part IV (comprising clauses 17 to 20) deals with the duties of commission auctioneers. Clause 17 requires a commission auctioneer to enter the prescribed particulars relating to any

second-hand goods that come into his possession in the records required by regulation. The entries must be made prior to the goods being offered for sale.

Clause 18 requires a commission auctioneer not to offer any second-hand goods for sale by auction unless he has had the goods in his possession for not less than one day before the commencement of the auction. If, before the commencement of the auction, the police notify the auctioneer that any of the goods are suspected as having been stolen or unlawfully obtained, the auctioneer is to keep the goods without offering them for sale for a further period not exceeding five days. The clause requires an auctioneer to notify the police of any goods in his possession that answer a description of stolen goods circulated by the police or that he otherwise suspects as having been stolen or unlawfully obtained. A commission auctioneer must, when making an entry in his records relating to any second-hand goods, also mark the goods with a serial number corresponding to the serial number for the goods shown in the record. Clause 19 requires a commission auctioneer to enter in the records required by regulation, forthwith after the completion of each auction, prescribed particulars of each sale and purchaser of second-hand goods.

Clause 20 provides that an authorised member of the Police Force may enter the place of business of a commission auctioneer at any time at which someone is present there and, if not permitted entry, may enter by force. An authorised member of the Police Force may enter such premises at any time and by force if necessary if he suspects on reasonable grounds that stolen or unlawfully obtained goods are present upon the premises. Having entered, the police officer may inspect any goods upon the premises and any record kept by the auctioneer in pursuance of the measure.

Part V (comprising clauses 21 and 22) deals with the disciplining of licensed dealers, registered managers and commission auctioneers. Clause 21 provides that the Commercial Tribunal may hold an inquiry for the purpose of determining whether there is proper cause to discipline a person who is or has been a licensed dealer, registered manager or commission auctioneer. An inquiry is only to be held under the clause if it follows upon the lodging of a complaint by the Commissioner for Consumer Affairs, the Commissioner of Police or some other person. The Registrar of the Tribunal may where appropriate request either Commissioner to carry out an investigation into matters raised by a complaint. Where the Tribunal is satisfied that proper cause exists to do so, it may reprimand the person the subject of an inquiry; impose a fine not exceeding $5 000; suspend or cancel any licence or registration in the person's name; disqualify him from obtaining a licence or registration; or, in the case of a commission auctioneer or former commission auctioneer, prohibit him from being a commission auctioneer.

There is to be proper cause for disciplinary action in any case where a licence or registration has been improperly obtained; where a dealer or commission auctioneer or another person acting in the course of a dealer's or auctioneer's business has committed an offence against this measure or any other Act or acted negligently, fraudulently or unfairly; where registered premises have ceased to be suitable for the purposes of the business of a dealer; or where a person has ceased to be a fit and proper person to be licensed or registered or in a position to control substantially the affairs of a licensed corporation. Clause 22 requires the Registrar of the Tribunal to keep a record of disciplinary action and to notify the Commissioner for Consumer Affairs and the Commissioner of Police of the name of any person disciplined and the disciplinary action taken against him.

Part VI (comprising clauses 23 to 36) deals with miscellaneous matters. Clause 23 provides that a member of the Police Force may enter upon any premises or place at which a second-hand goods market is being or is to be held and may inspect any goods apparently in the possession or control of a person who is offering or preparing to offer goods for sale at the market. A member of the Police Force may require a person offering or preparing to offer goods for sale at such a market to state his name and address. 'Second-hand goods market' is defined by the clause to mean any market at which second-hand goods are sold (whether or not other goods are also sold there).

Clause 24 empowers a licensed dealer (including a licensed second-hand motor vehicle dealer) or a commission auctioneer to require a person selling or delivering goods to him to satisfy him that the person obtained the goods lawfully or from a person or place alleged by the person. Where the dealer or auctioneer suspects that the goods have been stolen or unlawfully obtained, he may seize the person and the goods and deliver the person and (if practicable) the goods into the custody of a member of the Police Force. Clause 25 provides that second-hand goods shall be deemed to be in the possession or custody of a licensed dealer (including a licensed second-hand motor vehicle dealer) or a commission auctioneer when they are in any premises, place or vehicle that is occupied by him or under his control. Clause 26 is an evidentiary provision under which proof that a person has sold second-hand goods on not less than six different days within a 12-month period will, unless the contrary is proved, constitute proof that the person has been carrying on business as a second-hand dealer throughout the period of that activity. The clause also facilitates proof that a member of the police was at a particular time an authorised member of the Police Force for the purposes of the measure.

Clause 27 provides that for the purposes of this measure the act or omission of an employee or agent of a second-hand dealer or commission auctioneer will be deemed to be an act or omission of the dealer or auctioneer unless he proves that the person was not acting in the course of his employment or agency. Clause 28 provides for the Commissioner for Consumer Affairs or the Commissioner of Police to investigate, at the request of the Registrar, any matter relating to an application or other matter before the Tribunal or any matter that might constitute proper cause for disciplinary action. Clause 29 provides that the Commissioner of Police may in any proceedings before the Tribunal pursuant to this measure appear personally or be represented by counsel or a member of the Police Force. Clause 30 provides for the service of documents.

Clause 31 creates an offence of providing information for the purposes of the measure that includes any statement that is false or misleading in a material particular. Clause 32 provides for the return of a licence that is suspended or cancelled. Clause 33 provides that a member of the governing body of a body corporate convicted of an offence is also to be guilty of an offence unless he proves that he could not by the exercise of reasonable diligence have prevented the commission of the offence. Clause 34 provides for continuing offences. Clause 35 provides that proceedings for offences against the measure are to be disposed of summarily and must be commenced within 12 months and only by the Commissioner for Consumer Affairs, an authorised officer under the Prices Act, a member of the Police Force or a person acting with the consent of the Minister. Clause 36 provides for the making of regulations.

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

SECOND-HAND MOTOR VEHICLES ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Second-hand Motor Vehicles Act, 1983. Read a first time.

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

That this Bill be now read a second time.

This short Bill proposes an amendment to the Second-hand Motor Vehicles Act, 1983, that is consequential to the provisions of another Bill before Parliament, the Second-hand Goods Bill, 1984. The Bill also proposes two further minor amendments. The amendment of a consequential nature is designed to ensure that the Commissioner of Police has a clear right to appear personally or by his representative in proceedings before the Commercial Tribunal relating to the grant of a second-hand motor vehicle dealer's licence or proceedings relating to the discipline of a licensed dealer. The interest of the Commissioner of Police in such proceedings is of course principally in relation to the matter of dealings in stolen vehicles. At present, this responsibility of the police is reflected in the arrangement under which second-hand motor vehicle dealers must be licensed under both the Second-hand Motor Vehicles Act and the Second-hand Dealers Act—the Commissioner of Police having under the latter Act the primary supervisory role in relation to the grant, renewal or revocation of licences.

However, under the provisions of the proposed new Second-hand Goods Act, a licensed second-hand motor vehicle dealer will not be required to hold the general second-hand dealer's licence, although he will be required to comply with most of the other obligations under that measure. This amendment is therefore intended to ensure that the Commissioner of Police will continue to have power to appear and oppose the grant of a licence or argue for the cancellation of a licence in relation to any person known or thought to have been involved in dealings with stolen vehicles. The Bill proposes an amendment to the Second-hand Motor Vehicles Act which would enable an unlicensed person to carry on the business of a deceased licensee for not more than six months after the death of the licensee. A provision of this kind is included in the Second-hand Goods Bill and in other occupational licensing legislation and is of obvious benefit for the dependants of persons who have not formed companies to conduct their businesses.

Finally, the Bill proposes an amendment to the provision of the principal Act dealing with the power of the Tribunal to discipline second-hand motor vehicle dealers. The amendment removes from the ground for disciplinary action that a dealer acted negligently, fraudulently or unfairly the limitation that the action was to the prejudice of the rights or interests of a person dealing with the dealer in his business. The amendment is designed to ensure that disciplinary action may be taken in any case where a dealer's actions do not affect the person with whom he is dealing but some third party. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 amends section 11 of the principal Act which provides, *inter alia*, that the licence of any person shall cease to be in force upon the death of the person. The clause inserts a new subsection (8) which provides that, where a person carrying on business in pursuance of a licence dies, an unlicensed person may, with the consent of the Commercial Tribunal and subject to any conditions imposed by the Tribunal, continue to carry on the business until it is sold or the expiration of six months, whichever first occurs.

Clause 3 amends section 14 of the principal Act which at subsection (10) provides that there shall be proper cause for disciplinary action against a respondent if he has, in the course of carrying on, or being employed or otherwise engaged in, the business of a dealer, acted negligently, fraudulently or unfairly to the prejudice of the rights or interests of a person dealing with him in that business. The clause strikes out the passage 'to the prejudice of the rights or interests of a person dealing with him in that business' in order to cater for cases where the harm is done to some third party. Clause 4 inserts a new section 38a which provides that the Commissioner of Police may, in any proceedings before the Commercial Tribunal pursuant to the Act, appear personally or be represented by counsel or a member of the Police Force.

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

ARTIFICIAL BREEDING ACT REPEAL BILL

The Hon. FRANK BLEVINS (Minister of Agriculture) obtained leave and introduced a Bill for an Act to repeal the Artificial Breeding Act, 1961. Read a first time.

The Hon. FRANK BLEVINS: I move:

That this Bill be now read a second time.

This short Bill provides for the repeal of the Artificial Breeding Act, 1961. That Act provided for the establishment of the Artificial Breeding Board. The functions of the Board were, amongst other things:

- To establish and operate centres for the collection and storage of semen for the artificial insemination of stock.
- To purchase semen from other sources to supplement supplies.
- To establish field services and distribution centres for the insemination of stock.
- To investigate infertility and promote the use of artificial insemination where economically feasible.

On 1 September 1962 the Artificial Breeding Board of South Australia commenced operations at Northfield on departmental land, where a semen collection and distribution centre was developed.

In the early 1970s frozen semen of high fertility was developed and the cost of operating proven bull schemes was considered prohibitive. Consequently, it was considered expedient to accept a proposition from the Victorian Artifical Breeders Co-op to lease the Northfield Centre. The South Australian Artificial Breeding Board ceased to operate as a semen collection and distribution organisation on 31 December 1974. In August 1975 a new Artificial Breeding Board was appointed with a watching brief on artificial breeding in the State, including a liaison with the Victorian firm.

In 1977 Victorian artificial breeders ceased producing semen and the centre became a semen distribution point under the agency of Herd Improvement Services Co-op Ltd. (HISCOL). In 1983 HISCOL restricted sales of semen to its Yankalilla office and the Northfield facilities were taken over the Department of Agriculture's Dairy Research and Veterinary Sciences Sections. It is considered that the watching brief previously provided by the Artificial Breeding Board can now be provided by the industries concerned.

Since the enactment of the Artificial Breeding Act in 1961, artificial breeding as a management aid has extended from the dairy industry to most species of livestock through privately run operations. A Government artificial breeding operation is no longer warranted as the original objective

of laying the foundations for artificial breeding has been achieved. Industry has been consulted and there is general agreement with the proposal to repeal the Artificial Breeding Act. The industries concerned have nominated a contact person so that the Minister of Agriculture may obtain industry opinion on artificial breeding matters should it be necessary to do so. Clause 1 is formal. Clause 2 provides for the repeal of the Artificial Breeding Act, 1961.

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

HOUSING AGREEMENT BILL

Adjourned debate on second reading.
(Continued from 24 October. Page 1453.)

The Hon. DIANA LAIDLAW: This Bill seeks to ratify an agreement reached earlier this year between the Commonwealth, the States and the Northern Territory to define a public housing policy for this nation and to provide assistance for both home rental and home purchase for low income groups in our community. The agreement is an important social document and has the support of the Liberal Opposition. Secure and adequate shelter is a primary need for all Australians. The lack of such accommodation can become a daily nightmare for those concerned. It can aggravate pressures and tensions within a family situation to the point of the irrevocable breakdown of that structure.

The impact of inadequate shelter or no shelter at all for an individual or a family will be expensive for our society in the short and long terms, both financially and socially. The fact that there are so many people in our community who are in need of secure and adequate shelter at an affordable price is a disgrace in our country that is so well endowed with natural resources. Secure shelter at an affordable price should be a basic right for all Australians. Therefore, I welcome the principle under which this agreement has been framed.

The primary principle of this agreement is to ensure that every person in Australia has access to adequate and appropriate housing at a price within his or her capacity to pay by seeking to alleviate housing-related poverty and to ensure that housing assistance is, as far as possible, delivered equitably to persons resident in different forms of housing tenure.

The agreement honours a commitment by the Federal Government made prior to the last election to renegotiate the Commonwealth/State housing agreement of 1981. It is pleasing to note that, after extensive consultation, the new agreement carries forward the main thrust of the 1981 Fraser Government agreement. This point is important, although it is one that appears to be inadvertently or perhaps deliberately ignored by both Commonwealth and State Government members when addressing the agreement. For instance, when reading the Minister's second reading explanation one could be excused for believing that this Government alone had a monopoly over the concern to provide home rental and home purchase assistance to low income groups in our community. Such a notion is both distasteful and misleading. It also ignores the dedicated approach of the former Tonkin Government and, in particular, the former Minister of Housing (Hon. Murray Hill) to widen access to housing for low income groups.

For instance, under the Hon. Murray Hill's guidance the following initiatives were taken while the Liberal Party was in Government during 1979-82. I will briefly refer to these intiatives for the sake of the record. First, stamp duty was removed for first home buyers on properties up to a value of $30 000, and on all first home purchases over $30 000 stamp duty of $580 was remitted. This initiative has been extended by the present Government. The Liberal Government also removed land tax from the principal place of residence; increased the maximum loan from the State Bank while maintaining its lending rate of 55 loans a week and also injected new funds for this purpose. It introduced a new low deposit rental purchase scheme to enable low income earners with a minimum deposit of $500 to buy a house of their choice at concessional interest rates.

It promoted flexible mortgages or alternative approaches to mortgage arrangements with lending institutions. It gave Housing Trust tenants in attached houses the opportunity for the first time to purchase the dwelling that they occupied. It was also the first State to accept the Commonwealth offer to participate in the mortgage and rent relief scheme, and this joint Commonwealth-State scheme was worth $3.5 million to South Australia.

In addition, it introduced a home purchasers-in-crisis scheme, a pilot scheme to assist home purchasers who were unable to meet mortgage repayments and who faced repossession as a result of extended periods of crisis. An advisory service was also established through the South Australian Housing Trust. Under the Liberal Government a design and construct programme was introduced whereby private builders could design their own houses and the Trust would accept tenders from amongst those builders. Leased dwellings were introduced in 1980 whereby the Trust leased private rental accommodation and, in turn, released those dwellings to low income tenants at subsidised rates.

The first rental co-operative venture in Australia was commenced in South Australia in 1981 between the Trust and the private sector to help the Women's Shelter Association, and further joint ventures were strongly and successfully promoted under the Hon. Mr Hill's guidance. I have mentioned those initiatives, but I believe it is unfortunate that this Government has not been big enough in spirit to acknowledge the Hon. Mr Hill's contribution while Minister of Housing for the initiatives that he introduced helped to ensure that the Trust maintained its pre-eminent role among housing authorities in Australia.

In reinforcing the Trust's record the Liberal initiatives also helped to ensure that South Australia was able to play a credible and prominent role in determining the context of this new agreement. It is proposed that the new agreement will operate from 1 July 1984 until 30 June 1994. A further provision allows for an evaluation to proceed on a three yearly basis. The 10-year term will provide housing authorities with an opportunity to forward plan with some degree of certainty. This is a desirable goal, although I note that the degree to which the Trust, for instance, will be able to forward plan will be tempered by the availability of funding. In this context it is significant that there is absolutely nothing in the Bill or the agreement itself to indicate that the level of funding to be provided for the first triennium will be maintained in future years. In fact, there is even some concern about the level of funding for the next two years—1985-87.

To date, the Federal Government has committed a minimum amount of $1 500 million across Australia during 1984-87. In this, the first year of the triennium, which also happens to be an election year, the Federal Government has agreed to spend $623 million or 41.5 per cent of the guaranteed $1 500 million. This raises the possibility that during the next two years the Federal Government may limit its expenditure to the balance of the $1 500 million minimum, that is, 58.5 per cent. While such a decision by the Federal Government would honour its funding commitment under this agreement to the States in 1984-87, such a decision would severely curtail the housing assistance programme that the States may plan on the basis of the generous assistance provided in this financial year.

I have raised these uncertainties with regard to funding arrangements, for it is important to maintain a balanced perspective on the value of the ten-year agreement and the forward planning aspirations of housing authorities around the country. The agreement introduces a degree of autonomy and flexibility for the States in regard to allocating the funding for housing schemes that was not present in the 1981 agreement.

I welcome this approach and add that the approach is one for which the Hon. Mr Hill fought when Minister of Housing. The agreement not only continues the former practice of allowing States to nominate Loan Council funds for housing but also now allows States to allocate some of their Commonwealth-State Housing Agreement funds to cover rent rebates, based on the supplementary rent allowance provided to private tenants. The matter of rent rebates for Trust tenants has become a major financial headache for the Trust.

I understand that originally rebates were introduced to help pensioners on low incomes meet the full rents of their Trust houses. However, the Trust's 1983-84 annual report notes at page 8 that, as at 30 June 1984, 32 222 tenants—64 per cent of all tenants—were in receipt of rent reductions costing the Trust $32.013 million. This sum compares with $22.65 million of rent foregone by the Trust through rent reductions in 1982-83. This alarming increase, coupled with the fact that last financial year 55.9 per cent of new tenants were eligible for rent reductions, is a measure of the financial difficulties experienced by many families and individuals in our State at present.

The agreement introduces a new formula for calculating public housing rents. In future, rents will be based on the costs incurred in the provision of public housing and it replaces the former market rent policy. While the new cost rent formula will have some advantages for Trust tenants, I am pleased that the Minister in his second reading speech acknowledged that the basis for calculating the costs requires some refinement, and in that regard he will be continuing his negotiations with the Federal Government.

There are two more provisions in the agreement which I welcome and to which I wish to refer briefly. First, a new local government community housing programme will be introduced that recognises the outstanding success of the South Australian Housing Trust's joint venture projects with local government, service clubs, hospital boards, private enterprise, providers of aged care services, and church groups in the metropolitan area and the country. For instance, in 1983-84 a total of 144 units of accommodation were completed under joint venture schemes in South Australia and, at the end of the year, a further 96 were under construction, with commitments for a further 58. The joint venture programme to which I have referred not only helps stretch the Trust's resources in providing housing for low income individuals and families but also helps foster among local communities a responsibility for the care of those who are less financially well off.

The second provision to which I wish to refer is that outlined in the objectives of the schedule, that is, to develop a community awareness and acceptance of public housing in the community. I have been concerned for some time about the tendency among the general public and the housing authority in this State to segregate recipients of Government housing assistance from the rest of the community, and local government bodies share some responsibility in regard to this segregation. I believe that the new housing agreement will encourage local government and, hopefully, the community at large, to realise that there is little value in segregating those who are poor from the more affluent members of our community. In fact, there has been a tendency in the past to consider the poorer people in our community as being inferior.

I believe that this has occurred as a result of grouping many of those people who are less well off in our community in the outer suburbs. The policy seems to be 'Out of sight, out of mind'. That approach seems to have simply aggravated the problems of those most in need of help in our community. I am pleased to see that this problem has been addressed in the principles outlined in this agreement, and I believe it will go a long way toward helping those who truly need assistance in terms of housing.

In passing, I make a brief comment about the growing waiting list with the Housing Trust. It is growing at quite alarming proportions. Although the Government expresses concern about this and in this agreement indicates that it is in favour of doubling the proportion of Trust dwellings in our community, I suggest that it should look at the effects that many of its other policies and decisions are having on individuals and families that may well be aggravating this problem of Trust waiting lists.

There is no doubt that the Government's approach to taxes and charges in this State and their increase well above the inflation rate is compounding the financial problems faced by young couples in our community in particular and is making it increasingly impossible for them to believe that they can realise the dream of home ownership. If they do realise that dream, rising charges and taxes make it increasingly difficult for them to meet their commitments on their houses. Because of those pressures and frustrations that many people are feeling in respect of the cost of housing, the Government should seriously question its undisciplined approach to increases in Government charges and look at the total effect of these increases and not look at the merits of each increase on an individual basis. I feel that if such a responsible approach were adopted it may well find that it did not create such alarm among the younger people in our community in respect to the provision of housing in the future. I support the second reading.

The Hon. C.M. HILL: I thank the Hon. Miss Laidlaw for her very generous remarks concerning me, and I am pleased to support the ratification of the new Commonwealth/State housing agreement. The finalisation of the agreement and the Minister's introduction of this Bill into the Chamber were heralded by many glowing tributes to the Commonwealth Government and the Commonwealth Minister, and also included a lot of words but not many specific plans or projects which are intended to help ease the tragic situation created by the inability of Governments today to house the increasing number of people waiting for public housing.

Many plans are envisaged by the Minister, and they are all recorded in his speech. Plans are one thing—actions are another. I hope that the Government can make some real progress in this area. Of course, the State Government should achieve gains and make progress, because it is being supplied with more funds from the Commonwealth. Whether the Commonwealth will be in a position to honour all of its promises over the three-year or ten-year period referred to by the Minister remains to be seen. I have some doubts as to whether or not those promises will be fully honoured. Nevertheless, the State has more money this year than was previously the case and it now has the responsibility to set up the actual statistics of commencements and completions to indicate that it is getting on with the job.

One should remember that the cost of unit construction itself is increasing all the time. This means that in any event a Government must receive more money even to maintain previous figures. It is very disappointing to me, when I see that one of the principal factors of the increase in housing costs, is a result of the present State Government's support for the unionisation of the subcontracting system within the

housing industry. All efforts should be made to reduce the cost of housing, and all opposition should be given by the Government to measures which flow on to increase costs.

In his speech the Minister indicated that the State laid before the Federal Government the principles upon which it wanted the Federal Government to plan for the future. In fact, the Minister said:

> We have lobbied for the national implementation of South Australian policies and programmes such as rental purchase, support for co-operatives, development of local housing projects with local government and communities, and diversification of the public housing stock.

That is the very foundation left to the present Government upon which to build its housing programme. That foundation was left by the previous Government. I remember that when we came to office in 1979 the previous Labor Government had cancelled the rental purchase scheme within the Housing Trust—for what reason I could never ascertain. However, the Government of which I was a member introduced such a scheme.

In regard to support for co-operatives, we supported the co-operative movement under Cabinet policy before the then Labor Opposition had a policy on co-operatives in the housing area. That was proved at a meeting in the Prospect town hall when the then Government of which I was a member and the then Opposition gave their views and policies about co-operatives. Those facts came out at that meeting. The development of local housing projects with local government blossomed during the term of the previous Government. The diversification of the public housing stock, I imagine, refers mainly to the design and construct schemes introduced by the previous Government and which proved to be a very effective means of diversification of the Trust's stock throughout the metropolitan area. The foundation was certainly there and the Government used those factors in its arguments and in its lobbying with the Federal Government as it began the challenge to forge this agreement which we are now going to support. In the Minister's speech I read with interest the reference to the rent relief funding scheme.

The Hon. Miss Laidlaw made the point that South Australia was the first State Government to introduce a rent relief funding scheme. The Minister here said:

> South Australia runs the only rent relief programme that gives an immediate response to the people's needs without waiting times or waiting lists.

So, policies were laid down that have brought some credit on the previous Government. At the time I was surprised because the then Labor Opposition and many of its activists and supporters within the housing industry generally were simply bashing us around the head and publicly stating that nothing was being done. The Labor Minister then had his opportunity to live up to all the plans and policies that were brought forward prior to the last election. Frankly, he has made a complete mess of his administration.

That is highlighted even in today's paper, when it is obvious that he has lost the administrative control of the Housing Trust, which is within his Act under the direction of the Minister and which saw its position to be so serious that it publicly made a statement only yesterday that its board is deeply concerned by a number of elements of the proposed joint venture at Golden Grove; the board believes that Parliament and the public should investigate with special thoroughness the terms of the proposed joint venture and the process by which the Government was led to accept it. Those are very—

The Hon. J.R. Cornwall: Are you putting the proposition that it should have been a fully public sector development, which is what the Trust puts?

The Hon. C.M. HILL: The proposition that I am putting to the Council is that, without precedent during the life of the Trust, the Trust has publicly criticised the Government of the day; not only that, it has—

The Hon. J.R. Cornwall: For allowing a private development?

The Hon. C.M. HILL: We want to know why. The public wants to know why, because there are very serious charges in this statement that I have just read, and I refer to those words 'the special thoroughness of the terms of the proposed joint venture and the process by which the Government was led to accept it'. The Minister of Housing, who has the administrative control of this, really should resign when a board of this kind, with whom he should have continuous liaison—

The Hon. Diana Laidlaw: And to which he has appointed the members.

The Hon. C.M. HILL: The less said about the appointment of the Minister's members to it, the better. I do not want to get into that area of personal criticism.

The Hon. J.R. CORNWALL: A point of order, Mr President. I seek a ruling, more in sorrow than in anger. I know that it is the tradition in this Council to wander at large in second reading contributions, but I wonder whether you can find any relevance in the remarks concerning the Golden Grove development, the board of the Housing Trust, Mr Edwards and various other things to the Bill that is before the Council.

The PRESIDENT: I suppose that the title of the Bill itself has something to do with housing. I can hardly take it as a point of order.

The Hon. C.M. HILL: I am dealing with the Housing Trust, and the Minister should understand that the Housing Trust is the authority that provides public housing in this State. In the main, we are discussing the subject of public housing because of the needs of the 32 000 people who have not got a roof over their heads. The Minister has a roof over his head, and sufficient salary to pay for it, too, but he has not much consideration for those 32 000 if he is trying to gag me from talking about the Housing Trust.

If the Minister of Housing brings the Housing Trust to its knees by his incompetent administration the 32 000 little people will suffer. That may not be of any concern to the Minister opposite, either, but it is a concern to me, to members on this side of the House and to the public at large. I cannot see how an institution like the Trust, having issued a public criticism of the Government, and naturally of its Minister because it works through its Minister like that, can go on working with the Minister and how they can have respect for each other. How can it exist?

I want to hear more about this Housing Trust statement both in Parliament and out. I do not know how the Government will treat the matter. I have not seen any statement; the only thing that this paper that was printed this morning says is, 'The Minister has grabbed his hat and rushed up there to talk with his board about it'.

The Hon. Diana Laidlaw: He should have talked to it earlier.

The Hon. C.M. HILL: He should have talked to it before it had even contemplated issuing a thing like this. I do not know what is going on. The public does not know what is going on, but I know that we have an institution with a proven record in this State—the finest of its kind in Australia. It has a man at its head in Mr Edwards, who is the top housing administrator in Australia and who refused only a short time ago the top job in Victoria, which carried a much higher salary, because he had a love for and interest in this State and in the South Australian Housing Trust. I know he has been tempted to go to Canberra and has rejected the opportunity. If this Government can treat an institution and an administrator like that in such a way that it causes those people to issue a statement like this, the Government,

and its Minister in particular, stand condemned for their poor administration. So, it is a very unhappy start to the year and to this Bill to which we are speaking today to have this on our plate so unexpectedly within the last 24 hours.

I would like to know, apart from all the committees that the Government has mentioned in the second reading explanation of the Minister, all the plans and all the depths that the socialists will examine to try to rectify the situation, all the theory and all the talk, what will actually be done in bricks and mortar to help the situation? That is what the pragmatic people in this area, who really want to get on with the job, want to hear about.

I cannot find anything in the Minister's explanation. Paragraph after paragraph about the Government's programmes is mentioned, but it is all theory. I want to make one or two constructive suggestions as to how the situation might be overcome. The reason why the Government has not gone into the practical solutions is that it can bring criticism and some unpopularity within a population that has been accustomed to relatively high standard housing and other lifestyles, which are all very well for those who have roofs over their heads but do not in any way help those 32 000 people who are out there in the cold.

The first proposal that I suggest is that the cost and the standard of our public housing might have to come down so that more units can be constructed with the available money and that therefore this great challenge can be partly met. Particularly, I refer to the possibility of building apartment blocks. Apartment blocks are buildings to which at first blush people object very strongly. There is no doubt that if we can afford the single unit dwellings on the normal residential allotments, despite the fact that they might be 15 or 20 kilometres out from the city centre, and can build sufficient of them, that is a plan that we would all like to achieve.

However, if we do not have the money or the resources to increase production in that area, is it wise simply to hold hard to standards as we know them and leave 32 000 people out in the cold? This matter is worthy of a degree of public discussion to ascertain whether adjustments and changes should be made. Such apartment blocks for public housing are erected in all other cities. I do not refer to plans and designs for conventional apartment blocks, because the construction of some of those blocks sometimes results in a high cost per unit. Perhaps even the style of construction of apartment blocks should be of reduced standard, and there are examples of this in some of the Asian cities, such as Singapore, where huge numbers of people have had to be housed. Of course, the standards must be weighed against the available resources.

I advocate not high rise buildings but medium rise buildings of about five or six storeys. If apartment blocks could be designed so that construction costs were low, we could deliver far more units for the money that is available in the public housing area. Above all else, we must keep the 32 000 applicants in mind. I know that one of the first criticisms that arise when a proposition such as this is first mooted is that these blocks will be future ghettos or slums, but if we think this proposition through we find that it is not the design or construction but the people who bring about slum conditions, if they occur. I do not agree with the argument that cheaply constructed housing blocks to house people who have no accommodation at present will lead to future slums. The whole question of living standards and lifestyles could be policed by Trust officers and inspectors.

At times I think that that might be the only practical way to overcome the problem. The figure of 32 000 is ever increasing: there are more and more matrimonial breakups and more and more people are leaving home much earlier than was the case years ago. Unemployment is not getting very much better, when we get down to the hard facts. The number of elderly people who require public housing is increasing, and so one could go on. Therefore, I would hope that the Housing Trust (I will not say 'the Government' because I believe that the Trust, after what was said in today's paper, will more or less go it alone in regard to its policies) will persevere with proposals and ideas for design and construction that will lessen the cost. The proposition regarding apartment blocks should be borne in mind.

Another factor in favour of apartment blocks is that they would be close to the city, and this is a major advantage. With high transport costs and the lure of the central business district for shopping, work and entertainment, and with the nearness of the parklands, there is a very strong desire among young people in all income brackets to live close to the city.

The Hon. J.R. Cornwall: Some of us oldies would like to, too.

The Hon. C.M. HILL: Exactly. I mentioned all income groups, because I did not want to exclude the Minister, and I know that he is at one end of the scale. I simply pose the question: can we continue to afford the luxury of erecting, through public housing schemes, houses of the quality of those that have been built in metropolitan Adelaide? I hope that some discussion will flow from what I have said so that a more realistic approach may develop. We must find a means of building suitable accommodation with the money available.

The second point I make is in regard to rent sharing and the requirement that tenants share accommodation in the public sector. I do not know to what degree this takes place at present, but I do know to what degree it takes place in the private sector—the practice is very extensive. When flats or apartments are advertised for lease, private applicants seek the right to occupy accommodation on a share basis. Invariably two people apply, not necessarily husband and wife but in many cases two men or two women, as the case may be. The point is that people share the rent, and they can afford to do that. From my observation, in today's world they live quite happily. I certainly hope that, from the queue for public housing, when accommodation is available, people fill every bedroom when a unit of public accommodation is offered, because that is fair in comparison to the other situation.

In any case, perhaps the only way to overcome the problem is to ensure as much as possible that every bedroom in metropolitan Adelaide is occupied. That question must be considered. It might be possible to consider rent sharing in regard to existing Housing Trust rental homes on Housing Trust estates—not emergency accommodation or the houses in the city that the Trust has bought for public housing. If there is a possibility of share arrangements so that people can be housed, in the present environment that situation should be pursued.

The third point I make is that more thought should be given to the reasons why this situation is occurring. At the one end of the scale young people are demanding public housing. Many of them leave home much earlier than was the case years ago. They may decide to share a flat, but that utopian dream does not turn out to be such a happy exerience, and very soon they are on the door of the Housing Trust putting their name on the list and demanding public housing. The second or third bedroom or the sleepout in their parents' home in which they lived, say, a year ago, is empty, and that is one of the great problems. It is part of our lifestyle that young people leave home, and I do not necessarily criticise them for that, because that is their decision, but it becomes my concern and a concern of the whole community when our taxation money must be used

to provide public housing when these young people apply for accommodation. We should consider whether or not young people, who leave home when accommodation is available, could perhaps return to their parents' home as an alternative to public housing. That matter should be canvassed and discussed with them, and perhaps some counselling should be given.

If we could only reverse that situation and have young people remain in the parental home for two or three years longer than they do now the demand for public housing would reduce. At the other end of the scale we have the situtation of elderly people such as a widowed mother or father, pensioners, who not very long ago—and this is still the case with some people—lived with the married daughter, for example. That situtation has many advantages, of course, from the point of social security and the whole area of provision of elderly citizens' homes and so forth. If we could manage a situation in which those people remained in a family home there would be tremendous advantages, especially in relation to this question of public housing. The way to have them remain at home is to allow the married daughter to have a granny flat, or accommodation of whatever name or style one wants to give it, built on her premises.

The Hon. J.R. Cornwall: You tried that when Minister and some of the local councils scared you to death.

The Hon. C.M. HILL: They did not scare me to death at all, but some local councils took strong objection to the suggestion—that is the point—and they still do. However, they are being grossly unfair, and they should be reminded of these 32 000 people of whom a large percentage are elderly. I think that the time has come when the Government has to be very firm with local councils and individual citizens who believe that a granny flat on a property alongside them detracts from their property value or has something objectionable about it. We have to be very firm with those people and to say that the need is such, because of the statistics before us, that this kind of accommodation should be allowed. I have inspected such accommodation in the suburbs of Melbourne, and in some of the best suburbs of Melbourne. In fact, there are examples of accommodation, not of the sort envisaged here at the moment, but where the housing authority leases outside moveable units to people; it places the unit in the backyard while the parent is still alive and removes it on the passing of the parent. I could not sense any great opposition in the suburbs of Melbourne to that proposal.

Whether we need to go that far is not the question. Some property owners simply want to build an attached brick or stone small flat on the rear or side of their home for their parents to live in. That is a separate kettle of fish altogether from the outside timber framed unit that is brought along as a portable entity of accommodation. Time and time again, local government regulations prohibit this sort of construction despite the fact that aesthetically it cannot be questioned. They do this simply because of strict zoning regulations that say that only one unit of accommodation is permitted in a street or suburb. Therefore, these people are unable to care for their parents, those parents move out and then knock at the Housing Trust's door demanding public housing. Therefore, there is a need for this accommodation.

I refer now to the interjection made by the Minister. I remember discussing this matter with my officers and with officers of the Department of Environment and Planning. It was resolved to take a conciliatory view and to try to encourage local government to understand this position better. Unfortunately, local government is very inflexible on some of these matters and has not got the welfare of these people at heart as much as it should have. All it is concerned about is aesthetics and not the individuals involved. I opened a magnificant Housing Trust block of flats at Norwood. Afternoon tea was held under the carports, which had tiled roofs and a timber structure. I remarked that it was interesting for people in public housing to have carports on site covered with tiles comparable to those on the roofs of the houses. I was told that the local council insisted on that. If the local council had not insisted upon those many car parking spaces being made into carports, that extra money could have gone into public housing. Aesthetically the project would not have been as attractive, but the occupants would have been happy to put their cars in an open carpark on site. That was a classic example of where local government did not give enough humane consideration to this problem.

If local government will not do this, unfortunately the State Government has a responsibility to take charge of this situation. That will take a considerable amount of courage and whether this Government is prepared to do that remains to be seen. However, I think that this matter should be looked at very carefully.

I do not want to go on with these ideas which have evolved from some experience in the area involved. I certainly hope that the aspirations and aims of the State Government in this area that were mentioned by the Minister will come to fruition.

I want to see real action and real statistics as to what is happening in this area. Frankly, when we consider the serious side of this problem that has now occurred with the Housing Trust, the sooner that this rupture can be mended the better. If the Housing Trust cannot continue working with complete confidence in the Government of the day, and vice versa, this State in its public housing area is in for very serious problems. I hope that we will not see criticism of the Housing trust or its officers in regard to this matter.

I have already expressed my views about the General Manager of the Trust. The Chairman and the Deputy Chairman of the Board are the only two people left of whom I have knowledge because all the others I appointed to the Board have been displaced. However, those two senior directors, and the senior and executive staff of the Trust, are all very dedicated and efficient officers who should not have on their plate problems of the kind that have arisen. The way in which the matter can be settled is, first, for a full explanation to be given so that there are no secret aspects to this matter. The public are entitled to know what has caused the problem and are also entitled to know what were the original terms and processes by which the Government was led to buy into and to accept the proposition at Golden Grove. I support the Bill.

The Hon. J.R. CORNWALL (Minister of Health): I will be brief, because there was not a great deal in that contribution from the Hon. Mr Hill that could be related to the Bill, although generally some parts of the contribution were very good.

If the Hon. Mr Hill is prepared to support this Government, and I hope he can convince his colleagues to do so in the matter of granny flats, then I concur completely in what he said. I think we should all be more concerned, whatever tier of Government we operate in, about people than aesthetics in the matter of housing, particularly at a time, as the honourable member quite rightly said, there is a very long waiting list for public housing. I cannot let the occasion go without a very brief reference to the Hon. Mr Hill's new found enthusiasm for public sector residential development. The simple fact is, apropos of Golden Grove, that the Government is involved in a joint venture with a proven private sector developer. If the previous Tonkin Government had not been so short sighted and demolished the Land Commission, then it would have been well placed—

Members interjecting:

The Hon. J.R. CORNWALL: You can't have your cake and eat it too. You cannot criticise joint ventures on the one hand and say that the Trust should have been involved in this massive development at Golden Grove for which everyone knows it does not have the combined skills at the moment: one cannot go to bat and say that there should be public sector development on the one hand and, at the same time, be champions of the private sector. What has happened at Golden Grove, of course, after lengthy negotiations, is that a very happy arrangement has been entered into between the Government, in the form of the Urban Land Trust, and Delfin (who are proven developers and have an enormous track record at West Lakes; they never lost their nerve right through the slump of the latter 1970s, took their risks and lumps and never varied or tried to water down the conditions of the indenture). I happen to know because I live at West Lakes and have watched it grow into a most magnificent suburb. I think the Government—

The Hon. C.M. Hill: How many Labor members live down there?

The Hon. J.R. CORNWALL: Not too many State Labor members, I must say. It is only the big league really: the Federal members live on the Lake and the B graders, like the State Minister of Health, live in extended project homes in Annie Watt Circuit. Having said that, I do not think we should get into a long grievance debate in the matter of Golden Grove. There is a very happy story to tell about it. There are others better qualified and closer to it who can tell it better than I. I urge all members to expedite the passage of this Bill because it is very much in the public interest as well as, at this moment, in the personal interest.

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

[Sitting suspended from 6 to 7.45 p.m.]

ANTI DISCRIMINATION BILL

(Continued from 30 October. Page 1575.)

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

That Standing Orders be so far suspended as to enable it to be an instruction to the Committee of the whole Council on the Bill that it consider each proposed subclause contained in clause 27 as separate questions.

I have moved that motion to facilitate consideration of clause 27. My own interpretation of Standing Orders is that that is not strictly necessary but, in the interests of harmony, I have been willing to move it.

Motion carried.

In Committee.

Clause 1—'Short title.'

The Hon. K.T. GRIFFIN: I advise the Committee that I have asked the Attorney whether, after consideration of this clause, we should move to consider clause 27, which deals with discrimination, particularly in the controversial area of sexuality. I have made that request because the decision by the Committee on that clause will to some extent determine my attitude to other amendments which, to a large extent, are consequential upon the decision on clause 27. I move:

Page 1, line 15—Leave out 'Anti Discrimination' and insert 'Equal Opportunity'.

In the second reading debate I made the point that 'anti discrimination' appeared to be a rather negative connotation when in fact we are talking about equal opportunity or equality of opportunity and that that would more adequately reflect the intention of the legislation than the term 'anti discrimination'. Of course, the Sex Discrimination Act carries the word 'discrimination' but I have always thought that the reference to sex discrimination in the context of the title of a Bill to deal with discrimination was not particularly apt; that is why in respect of handicapped persons in the last Liberal Government we proposed it be called the 'Handicapped Persons Equal Opportunity Act'. I take the view that equal opportunity more appropriately reflects the intention of the legislation.

The Hon. C.J. SUMNER: Just to start on an agreeable note, the amendment is acceptable.

Amendment carried.

The CHAIRMAN: The Hon. Mr Gilfillan has an amendment on file.

The Hon. I. GILFILLAN: It is the same as the amendment just carried.

Clause as amended passed.

The Hon. C.J. SUMNER: It has been agreed that clauses 2 to 26 should be postponed and dealt with after clause 27.

Consideration of clauses 2 to 26 deferred.

Clause 27—'Definition of "discriminate".'

The Hon. K.T. GRIFFIN: Several amendments on file to this clause are all directed towards the question of sexuality. My first amendment, which I do not desire to move now, is in respect of subclause (1) and is to a large extent consequential upon the decision of the Committee in respect of subclause (3), which provides that for the purposes of the Act a person discriminates against another on the grounds of sexuality if certain circumstances exist. I would like to deal with this subclause first.

The Hon. C.J. SUMNER: I suggest that we postpone consideration of subclauses (1) and (2).

Consideration of subclauses (1) and (2) deferred.

Subclause (3).

The Hon. K.T. GRIFFIN: Dependent on the key question of discrimination on the ground of sexuality are a number of definitions in clause 4. 'Sexuality' is defined as meaning 'heterosexuality, homosexuality, bisexuality or transsexuality'. It is unlawful to discriminate on the grounds of a person's sexuality in respect of employment, the provision of goods, services and accommodation, in relation to superannuation in various bodies, and in education. In the second reading debate I made a number of points about sexuality and I expressed my concern that it is in the Bill at all, because it is a matter that is not the subject of a report by the working party and has not been the subject of the sort of public discussion that I would have thought would be appropriate in considering such a significant and far-reaching proposition as including sexuality in this equal opportunities legislation. Of course, it is not in the Commonwealth legislation either, which is confined to a consideration of sex, marital status and pregnancy.

The Bill introduces a concept which is different from that of sex, marital status, pregnancy, race or physical impairment by introducing a concept of sexual preference that is largely a matter of choice. It does not take into consideration the variety of views, particularly about homosexuality, bisexuality, and transsexuality, held by a significant number of members of the community who hold, quite genuinely, very strong convictions about homosexuality, bisexuality and transsexuality. For many, it is a matter of religious conviction as much as a matter of moral conviction and persuasion.

This clause, in the context of the Bill as a whole, prefers persons who display the characteristics of homosexuality, bisexuality and transsexuality over the strongly held and honestly and genuinely held views of a substantial group within the community. A number of submissions have been made dealing with this point. In the employment area, the Chamber of Commerce and Industry, the Retail Traders

Association and the Metal Industries Association, referring to sexuality, state:

> Sexuality has been brought within the purview of the Act in Part 3 of the Bill. Our organisations view this inclusion with some concern as the subject tends to ignore many of the moral convictions that underpin our society. Our organisations do not intend to discuss this matter in depth, but with regard to small businesses, educational institutions and occupations that rely on the goodwill of the community we would seek to have exemptions in relation to this clause.
>
> The overt display of a particular sexuality, for example, in clothing and/or personal decoration is likely to be totally unacceptable in a number of situations to the majority of the community. It should be noted also that there is no provision in this Bill similar to that already contained in other legislation with regard to homosexuals and minors. It would appear to us that at the very least this should be included.

The Catholic Education Office referred to this, but more particularly in the context of clause 47 dealing with religious orders or bodies and educational institutions conducted by those organisations or bodies. It also drew attention particularly to some provisions of the Commonwealth Act, of course referring only to matters of sex discrimination as they affected accommodation for employees and students, residential care of children, the functioning of charities, and the conduct of its schools.

The Independent Schools Board has also expressed some concern about this and about the very limited exemptions contained in clause 47 of the Bill. Again, I will not debate that at length, because I have amendments to that clause that I will move in due course. During the second reading debate I said that the inclusion of homosexuality, bisexuality and transsexuality elevates these preferences to a status equal with heterosexuality and that that causes obvious concern, particularly when linked to clause 10 of the Bill which places upon the Commissioner for Equal Opportunity a positive obligation to educate in respect of the various grounds of discrimination covered by the Bill. Of course, interpreted literally (and I think practically, too) that means that the Commissioner for Equal Opportunity will have a positive obligation to promote homosexuality, bisexuality and transsexuality at the same level as heterosexuality in the context of this Bill.

I have indicated that this Bill is a matter of conscience for members of the Liberal Party. No doubt my colleagues on this side will want to express their own views on this subject. I notice that the Hon. Mr Lucas proposes an amendment to subclause (3), and I will certainly listen with interest to what he proposes. There is nothing presently in the law which prevents individuals from making a decision based on genuinely held beliefs against, for example, the employment of homosexuals, transsexuals or bisexuals in whatever area of endeavour they work. There is nothing which requires a partnership or those contemplating the formation of a partnership to override their own genuinely held beliefs in determining whom they may take as a partner; and in the area of small businesses, that is, those businesses which employ less than, say, five employees, again there is nothing in the law to compel the employer to override his or her strongly held beliefs in respect of homosexuality, bisexuality, and transsexuality.

I do not intend to repeat at length the reasons why I am moving this amendment: they were adequately set out in the second reading debate. Suffice it to say that I feel a responsibility towards a very large portion of the community who regard homosexual behaviour, bisexual behaviour and transsexual behaviour as morally abhorrent. I believe that it is not the function of the law to compel them to override those genuinely held convictions based on their own religious or moral beliefs in the way in which this legislation does. If there is a genuinely held conviction based on religious grounds, members of the community should not be compelled to override those beliefs. While I may speak later on this subject after contributions by other members, I think that I have adequately refreshed members' memories as to why I am moving this amendment.

The Hon. R.I. LUCAS: I will address some general comments to the clause and then move my amendment, if that is in order. From the outset, I believe that it is wrong that a homosexual, bisexual or transsexual can be refused, on the sole ground of their homosexuality, bisexuality or transsexuality, for example, the provision of goods and services such as banking, credit, insurance, entertainment, recreation, refreshment, and so on, professional and trade services, and a whole range of goods and services as defined in the Bill. I certainly believe that, in regard to discrimination in the community, anti discrimination legislation should apply in such instances.

It seems unfair that, for example, in a small country community a homosexual could be told that a particular legal service would not be provided solely on the ground of that person's homosexuality. In my second reading contribution I raised a number of other reasons why I considered, in principle at least, that there ought to be the inclusion of the sexuality provision within the proposed Bill. I also raised in that contribution some questions that I had with respect to the practical effect of the inclusion of sexuality in this Bill. In particular, I refer to the question of the possible adverse effects on the viability of businesses and, in particular, small businesses if the sexuality provision is included.

I stress 'possible adverse effects'. It is for that reason that I will move an amendment. The argument that I put in my second reading contribution, which I will repeat briefly in Committee, related to small businesses and employees of small businesses who are involved in the day to day contact with customers and potential customers. We can take examples of receptionists, counter staff, nurses and that sort of occupation where on behalf of the employer the employee comes into day to day contact with the customers of that profession or business. In those sorts of situations it may be that the employment of a homosexual, bisexual or transsexual may deter customers and potential customers from coming to that business.

I do not want to argue whether the customers or potential customers who might be deterred from coming are right or wrong—that is a judgment that they have obviously made—but I am sure that most of the members in the Chamber would agree that in the South Australian community a number of people would be deterred from coming into face to face contact with someone they knew to be a homosexual, bisexual or transsexual. That is a particular moral, religious, social stance or whatever that those people might take.

It is wrong if this Bill allows the small business employer to be punished through the effect on the trading situation of that small business of the prejudices of customers and potential customers. It is not right that the small business employer could be placed in the situation where his or her business is affected because there are prejudiced people in the community. As I said, I am sure that we would all agree that there are prejudiced people in the community. We might like an ideal community, but we do not have one and there are people who are prejudiced or who do not want to come into day to day contact with someone whom they know to be homosexual, bisexual or transsexual. That was the practical concern that I raised in the second reading contribution and that was the reason why Parliamentary Counsel has drafted the amendment. I move:

Page 12—After line 6 insert:

', but, for the purposes of Division II, a person does not discriminate against another on the ground of his sexuality by reason only of the fact that—

(a) he treats the other person less favourably on the basis of his appearance or dress or the manner in which he behaves; and

(b) it is reasonable in all the circumstances that he should treat the other person less favourably on that basis'.

I put to Parliamentary Counsel the concern that I have, and Parliamentary Counsel has come up with the phraseology that we have before us in my amendment. The essence of it is in two parts. I emphasise the practical effect of the second part of that amendment, that is, that it is reasonable. In consultation with Parliamentary Counsel, I understand the effect of the amendment to be that if, for example, the appearance, dress or behaviour of an employee clearly was having or was likely to have a significantly detrimental effect on the business, if the employer was to take action either not to employ or to sack, and if that person went to the Tribunal to complain of discrimination, the employer would have a good chance of making out the grounds that what they had done was reasonable and that the terms of the Anti Discrimination Act would not be brought down on the head of the small business employer by way of compensation or, under the general power of orders, order to re-employ or whatever else the Tribunal may decide to do with respect to that situation.

I understand from discussions with Parliamentary Counsel that that would be seen as reasonable, which is why I emphasise the second part of the amendment as being very important. Equally, if an employer chose not to employ or to sack someone who came along wearing a red and white shirt and an earring, from my discussions it would appear—and I would agree—that it would be unreasonable for that person to be acted against by the employer on the grounds of wearing a red and white or a pink shirt and possibly an earring. As explained to me by Parliamentary Counsel, the word 'reasonable' is of critical importance in this amendment. If the employer could make out a reasonable case that, for example, the business would be affected or was being affected, it would be unlikely that the full power of the Tribunal would be brought down on the employer's head.

I have explained as succinctly as I can the intention of this amendment and some possible interpretations in practice by business and by the Tribunal.

The Hon. DIANA LAIDLAW: I support the amendment. As members will be aware, the Sex Discrimination Act, which this Anti Discrimination Bill supersedes, contained an exemption for small business above six employees. That provision has not been continued in this Bill. It is an issue that very few members have addressed in their second reading speeches and which should be addressed under this provision.

The Hon. Mr Milne has been particularly conscientious in talking about small business interests over the past few weeks in particular, and I highlight his contribution in this respect. I believe that there is a danger that everyone talks about the value of small business to our economy and our State, while the Government and the Opposition make overtures, yet the merit of an issue seems to override the interests of small business. There is a danger that one may consider each measure on its merits and not look at the impact on small business. The collective impact of all these measures, whether Government charges or a measure such as this Bill, can have a disincentive effect on small business operators in this State.

I do not think we should bring back exemptions for small business, because in a lot of cases the most blatant instances of discrimination occur in the small business area, whether sexual harassment or other discrimination. I approve of the Government's action to get rid of that exception. However, in the interests of sexuality there is merit in the amendment. I would not like my remarks to be interpreted as meaning that I am interested only in the aspects of transsexuality or homosexuality because, personally, I believe that instances of heterosexuality in dress and appearance can be equally offensive in the work place. It would only be on the basis of my intensity of feeling about abuse or flagrant exhibition of heterosexuality that I could see justification for this amendment. If it was seen to be slewed up one way, I would not be inclined to support it.

The amendment has considerable merit in the interests of small business. It is about time this Parliament stood up for the interests of small business instead of paying lip service to it. I am also concerned about the interests of individuals, particularly young people, in this State facing unemployment. We must be particularly careful that employers do not throw up their hands and say, 'Really and truly, why don't we use machines to do a lot of this work because Governments and Parliaments are imposing so many conditions and regulations on business?' There seems to be no flexibility for employers in making decisions or in employing who is best for the job. For those reasons, I am pleased to support the amendment.

The Hon. K.L. MILNE: I support what the Hon. Mr Griffin said, and he said it very fairly and accurately with the minimum of emotion. I will not repeat his comments: honourable members know how I feel from my second reading contribution. I fear that those who are promoting this Bill will cause exactly the opposite effect. I would much prefer that this Bill failed in its entirety and that we came at it again with greater consultation, knowing that there is a direct split in the Labor Party (although discipline will not show it), in the Liberal Party and in my own Party.

This is a very serious decision for the future of our society, and I am considering those who feel very strongly about what we have defined as sexuality, that is, homosexuality, heterosexuality and bisexuality. I would say that the majority of people are not yet ready to accept or to find the correct position for those people in our society. That may sound unfair, but a homosexual who is in control does not find it easy to employ heterosexuals—it works both ways. I am thinking of the plight of small businesses, which was referred to by the Hon. Diana Laidlaw, and I include not only delicatessens, small offices or small factories—the normal things that spring to mind when we talk about small businesses—but also large sheep or pastoral properties, which are really small townships or communities in their own right. They are small businesses. One must think of the difficulties in those situations where people are virtually compelled, under non-discrimination rules that do not apply to their way of living, to comply with this measure. I think we will find that the result will be great personal hurt, bitterness and disappointment.

I am also thinking about certain schools, catering for tens of thousands of children, and the clubs, committees, sporting teams and other bodies associated with schools. The Commissioner and the Tribunal will have an enormous task. I would not be a member of that Tribunal for love or money. It will be a most terrible task. I cannot see how members of the Tribunal can possibly be fair, because they will be trying to implement legislation that they must know is highly disapproved of by a large section of the community. Nothing that they say or do will change it.

I am trying to look ahead to what will happen if this Bill passes in its present form and comes into operation. How long will it take for the Tribunal to learn how to handle its job? How many heartaches, character assassinations and tragedies will there be before it settles down, and how many will continue after it has settled down? There is no question in our society at present because of protective legislation that homosexuals are not free to indulge in their practices in certain circumstances—they already have that freedom.

However, the Bill, in trying to protect a relative few, cuts in half the freedom of everyone else.

This is one of the greatest intrusions on the freedom of heterosexuals, homosexuals, bisexuals and transsexuals that one could ever possibly devise. It will cut the freedom of the minority because of the attitude of the remainder. Also, it will cut everybody else's freedom because they are no longer free to choose who they will have in their homes and businesses or with whom they will associate. This is one of the greatest travesties of freedom all round that I have ever come across and I think that we will regret it later. Like the Hon. Mr Griffin, I am fearful that in trying to be fair we will cause a backlash from both sides. All members know that in some parts of our community that feeling already exists, and I do not want to have any part in increasing that feeling.

As I said during my second reading speech, the attempt to bring this matter into this otherwise manageable Bill has ruined it. I think that the introduction of this extra unnecessary provision into a Bill that is seeking to create goodwill is a great pity. I foreshadow that an amendment will be introduced by my colleague, one that I will support. In it he quotes from the long title that the Chamber of Commerce has suggested for this Bill, as follows:

An Act to prevent certain kinds of discrimination and other related behaviour; to provide effective remedies against such discrimination and behaviour; to promote goodwill, understanding and equality of opportunity in the community; and to deal with other related matters.

The Hon. R.C. DeGaris interjecting:

The Hon. K.L. MILNE: It is slightly different, but perhaps members would be kind enough to consider it during the rest of the debate. I would vote for the other suggested title, but believe this is a better one and will support it. We are trying to get rid of the bitterness and prejudice but will not do that with this Bill, I am certain of that. I ask members to consider carefully what the Hon. Mr Griffin has said in relation to this matter. I foreshadow that I will support the amendment to be introduced by the Hon. Mr Lucas. I do not think that the wording of that amendment is quite right yet, but it is certainly some sort of safeguard for both sides where a problem exists. However, when it comes to voting on the subclause, I will seek to have it removed from the Bill.

The Hon. C.J. SUMNER: I ask the Committee to keep clause 27 (3) in the Bill. I will not traverse again the general arguments in relation to this matter as there seems to be little point in doing that. However, I repeat that this is not a Bill promoting heterosexuality, homosexuality, bisexuality or transsexuality. The only thing that the Bill does is say that a person should not be discriminated against because of his or her sexuality; that a person who is employed, for example, in the Public Service and who happens to be a homosexual female should not have that fact brought forward as a consideration in that person's employment promotional prospects in the Public Service; and that a homosexual male working in a company should not have his promotional opportunities determined or adversely affected by the fact that he is a male homosexual. I would have thought that that was a fairly fundamental principle of equity that would be supported by most fair-minded people in the community or in the Parliament.

The Hon. K.L. Milne: That's easy in the Public Service—pick another example.

The Hon. C.J. SUMNER: It is of some concern to me that there are people in this Parliament who would deny those people and seek to allow them to be prejudiced in their employment opportunities or in obtaining of services or accommodation purely on the grounds that they are homosexual. That is the fundamental point of the argument. We are talking about those people not being prejudiced simply because of their sexuality. The Hon. Mr Milne said for me to take other examples, but I do not think that one needs to do that, because other examples flow from the principle that I put in relation to a company or the Public Service in relation to employment. I suggest that the principle is valid wherever it applies. That does not mean that a person who is a homosexual is not obliged to take the lawful directions and commands of his or her employer.

Although I have some sympathy with the sentiments presented by the Hon. Mr Lucas and the Hon. Miss Laidlaw, I do not believe that the amendment the honourable member has moved is necessary. I do not believe that what he is saying in his amendment will, in fact, solve the problems that he has outlined. I believe that it is better to leave this area to what I think are the common law principles. If an employer advises a person that they are to dress in a certain way because that is necessary in that person's business and is the customary way that employees dress in that particular business, and that employee refuses to obey that command with regard to dress, then that employer has a legitimate position to dismiss the employee for failing to carry out that command. I do not believe that a court would say that the way in which a homosexual dresses is an integral part of that person's sexuality and therefore would be caught up by the legislation we are considering today.

So, while I understand the sentiments expressed by the Hon. Mr Lucas, and I suppose I would support the principles that he has outlined and the concerns he has, I do not believe that his amendment is necessary. It enshrines into legislation a certain form of words which may, in the long run, defeat the flexibility that the courts and common law can use in these sorts of circumstances. A recent case in the Australian Current Law of November 1982 is described as 'The Continuing Case of the Caftanned Clerk'. This person was an employee of Telecom and apparently felt that wearing a caftan to work was cool, I suppose, and satisfactory to his status in life and as an employee of Telecom. Well, Telecom had different ideas and disciplined this clerk for continuing to wear the caftan after being directed not to do so.

Initially at first instance in the Federal Court the decision went against Telecom and it was held that such a direction was not proper in the circumstances and that it was not, therefore, proper to discipline the clerk in these circumstances. Subsequently, the matter went to the Full Federal Court and that court overruled that decision and said that it was reasonable for Telecom to give such disciplinary directions. That case turned on the construction of the Telecommunications Act, 1975 and, therefore, is not entirely relevant to the present discussion.

The Hon. R.I. Lucas: Pretty expensive process, all those courts.

The Hon. C.J. SUMNER: What I am suggesting to the honourable member is that his amendment may well lead to more litigation than by leaving the matter to the flexibility of common law. The point I wish to make now is that the Australian Current Law referred to the common law position, as follows:

I thought that there was no doubt as to the common law. He relied primarily on a passage in the judgment of Dixon J. in *R v Darling Island Stevedoring and Lighterage Company Limited;* . . . where it was said: Naturally enough the award adopted the standard of test by which the common law determines the lawfulness of a command or direction given by a master to a servant. If a command relates to the subject matter of the employment and involves no illegality, the obligation of the servant to obey it depends at common law upon its being reasonable. In other words the lawful commands of an employer which an employee must obey are those which fall within the scope of the contract of service and are reasonable. Accordingly, when the award was framed, the expression 'reasonable instructions' was adopted in

prescribing the employee's duty to obey. But what is reasonable is not to be determined, so to speak, *in vacuo*. The nature of the employment, the established usages affecting it, the common practices which exist in the general provisions of the instrument, in this case an award governing the employment, supply considerations by which the determination of what is reasonable must be controlled.

That really should overcome the difficulties that the honourable member has. I return to what I said initially: I believe, while I have some sympathy for the position put by the honourable member, that the form of the amendment may do more harm than good to his cause by setting into legislative framework what I believe is already adequately dealt with by the common law. It seems clear to me that if certain behaviour is addressed as an integral part of an employee's contract of service, as necessarily implied when the employee takes on the job with the employer (for instance, the need to wear a uniform in a bank or building society), then, if a transsexual refused to wear that uniform, if the command was given to wear the uniform and the person said, 'No, I won't', common law provisions would then apply. This Bill would not interfere with that situation and, that being the situation, I do not believe that there is a case for the honourable member's amendments.

In other words, lawful directions include, I believe, directions relating to dress where dress is conceived as part of the contract of employment, as it obviously is in many employment situations. It may not be in this Parliament but, on the other hand, I presume it would be in some parts of the Parliament—perhaps the Library. It may be assumed to be an integral part of the contract of employment for the messengers. So, it depends on each individual situation.

The Hon. R.C. DeGaris: Will the tribunal interpret the common law?

The Hon. C.J. SUMNER: Of course the tribunal will take into account the principles involved in the common law. The only question to be determined will be whether or not this Bill overrides the common law, and I do not think there is any question that it will do so unless the discrimination was on the grounds of sexuality. For that to be the case, one would have to argue that a certain mode of dress is an essential expression of that person's sexuality. I do not believe that that is a position that could be sustained in the light of the principles I have outlined.

The Hon. R.I. Lucas: Do you believe that it may allay concern for, say, potential employers if it is made explicit in the Act, rather than relying on obscure common law, as in the Telecom case?

The Hon. C.J. SUMNER: It is not obscure; they are well established principles in common law.

The Hon. R.I. Lucas: To lawyers.

The Hon. C.J. SUMNER: They are not in Statute, that is true. My concern primarily is not with the argument put forward by the honourable member; I can understand what he is trying to say. Perhaps some work on the amendment may arrive at a satisfactory solution, if the honourable member feels that it is absolutely necessary to arrive at a code in this area. All I am saying is that sometimes putting in Statutes certain provisions can cause more problems than are solved. I have the suspicion that this may be one of those cases where if one leaves it to the courts and common law—

The Hon. J.C. Burdett interjecting:

The Hon. C.J. SUMNER: I have just read them out. The honourable member may have been out of the Chamber. As I said an employer can give a command about dress where dress is implied or otherwise an aspect of the contract of employment.

The Hon. J.C. Burdett: I heard that, but there is nothing else in the common law about discrimination.

The Hon. C.J. SUMNER: No, common law does not deal with discrimination. Common law deals with the rights of the employer in circumstances of the employment contract. This Bill does not interfere with that employment contract except so far as to say that that employer should not discriminate on the grounds of homosexuality. That principle is accepted by the Hon. Mr Lucas, but he merely wishes to put in the Bill some protective clauses for the circumstances that I have outlined. All I am saying is that I do not believe that that is—

The Hon. J.C. Burdett: Common law itself says nothing about discrimination.

The Hon. C.J. SUMNER: The honourable member seems to be off the point. I did not say that. Common law does not say anything about discrimination. Common law does, where there is no award, regulate the relationships between employer and employee in the sorts of commands and directions that can be given by an employer. The position outlined by the honourable member is already covered by the law as it stands and, therefore, in the way that he is attempting to write it into the Bill he may well be creating more difficulties than he solves. That is the argument and, whether or not it is accepted is another matter. For that reason and not because I object to the sentiments expressed by the Hon. Mr Lucas—I believe they are reasonable—I do not believe that, to give effect to what he has outlined as his position, the amendment is necessary.

The Hon. C.M. HILL: I did not speak in the second reading debate on this important Bill.

The Hon. C.J. Sumner: You were on holiday.

The Hon. C.M. HILL: No, I was representing this Parliament at the Seventh Australasian and Pacific Commonwealth Parliamentary Association Seminar, and therefore I was away on Parliamentary business.

The CHAIRMAN: We are looking forward to seeing your report.

The Hon. C.M. HILL: I do not have to make a report but, if the Committee would like one, I am willing to set about that important task. I intend to support the Hon. Mr Lucas's amendment. I do not do it with a great deal of enthusiasm, but it might in some respects improve the Bill, and I intend to do that. If the amendment is carried, I intend to support the amended clause. I believe that this area of discrimination should be considered in the general context of the overall issues that this Bill tends to encompass.

I see nothing wrong with meeting the challenge of this area of discrimination. I have been associated for some years with homosexual men employees of the State or State instrumentalities in the field of the arts and in the general cultural life of this State. I have admiration for their dedication and for the service that they give in their careers. This State owes much to that dedication, and that does not, of course, apply only in recent years during which the arts have blossomed considerably—it applies through the whole history of South Australia and society in general. We owe much to the contributions of these people in those areas.

Coming closer to home, it would seem grossly unfair if any of those persons sought promotion or new employment and were discriminated against on the grounds of that homosexuality. Put simply, that is my view. I do have some doubts that the amendment in its present form will do a great deal, but it may satisfy some of the concerns that my colleagues have expressed, which is why I intend to support it; if it is carried, I intend to support the amended clause.

The Hon. PETER DUNN: I, too, did not contribute during the second reading of the Bill, but I would like to explain my position on this clause. The Attorney said that the Bill does not promote sexuality. Clause 10 (2) distinctly does and provides:

The Commissioner may institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the ground of sex, sexuality, marital status, pregnancy, race or physical impairment.

It does promote sexuality.

The Hon. C.J. Sumner: It promotes research—

The Hon. PETER DUNN: One is drawing a fine line between research and promoting information relating to discrimination on the grounds of sex. That is what that subclause does. This provision is not in Commonwealth legislation and the working party did not report on it.

The Bill provides that an employer cannot discriminate against someone who is a homosexual, bisexual, a transsexual or a transvestite, and that is the question the Hon. Mr Lucas is trying to address with his amendment. I believe the amendment does that and I support it because it spells out clearly what he is attempting. However, the matter that I find disturbing is that it will have the effect on employers that I do not believe we ought to be creating: it will cause them to tell many untruths because, if one is pragmatic, one will realise that if someone is a proven homosexual, transvestite or whatever one does not like about that aspect of a person, the employer will sack him, I can assure the Committee, by telling a lie or by setting him up. That is a fact of life.

We are just making that person into someone he would not otherwise be. That is a most undesirable effect resulting from the Bill by leaving in that sexuality clause. If we left it out people could make up their minds and choose whom they wish to employ on the very grounds that they themselves make up. I cannot see that the desired effect will be achieved by including this sexuality clause—I do not believe it is necessary. The provision will cause antipathy. The fact that it exists will cause antipathy, and that is undesirable at this stage. We will eventually get to a position where we will be legislating to stop employers from employing people for many reasons: they will have to have a certain education standard, a standard of dress, they will have to act correctly and they will need to have an appearance of a certain standard. It is getting to a stage where we are legislating for every possibility. That disturbs me at a time when it is difficult to employ people and when there are so many unemployed. This Bill will not only have the effect of making people annoyed that they have to comply with it when they would probably employ these people normally and find that they do a perfectly good job.

I do not say that I have anything against those people. I think that their work is excellent in many cases and, in fact, it is probably superior. However, because it is written into the law people will have some antipathy towards them. I will support the amendment, but I will vote against the clause.

The Hon. I. GILFILLAN: I think the delicacy and concern about discriminating against homosexuality can be applied to discrimination on any other basis such as race, colour, religion or any other area where in the past society has addressed the question of discrimination. It is society's decision as to whether it accepts discrimination or prejudice against sexuality. I think there are many people who genuinely believe that there should be, as do the Hon. Mr Griffin and my colleague the Hon. Mr Milne. That is a fair enough position to hold in logic and emotion. As the Hon. Mr Dunn said, he is not disparaging people of different sexuality as being inferior, but it is a reflection of his firmly held point of view. I am not challenging the fact that members are entitled to hold those views. I happen to believe they are wrong and they are expressing a prejudice which I believe society, through the Government and Parliament, must decide. I do not intend to labour that point.

I regard discrimination on the basis of sexuality to be on the same footing as the other forms of discrimination covered by legislation. It is no different. It really means that people will be considered for positions and situations as they present themselves as individuals without any prejudice because they are black, married or Roman Catholic or because their sexuality is regarded as different from the so called 'normal heterosexual'. As I have expressed to the Attorney, I am concerned that we want to introduce this legislation with a minimum of fear, trepidation and backlash from a resentful community. To that end I think there are advantages in looking at the Hon. Mr Lucas's amendment.

The actual interpretation of how the legislation will affect an employer is somewhat uncertain. Until we get the as yet undecided area of the Acts Interpretation Act Amendment Bill determined it is unsure whether we can refer to the Attorney's speech for guidance as to what the legislation implies. That is a good reason for overstating what is a desirable goal in the legislation. Even if the amendment is redundant, it does no harm. It may need refining.

The Hon. C.J. Sumner: I am saying the opposite, that it will do harm.

The Hon. I. GILFILLAN: I am not sure about that. I have been concerned that an employer could, by some interpretation of the Bill, be obliged to employ a person who presents in a manner inappropriate for the job, that that manner represents their sexuality and the employer has a fear that he is compelled to employ that person. It was my aim to move an amendment which does what I am outlining. Parliamentary Counsel went to some pains to discuss it with me and said that the Hon. Mr Lucas's amendment will achieve what I am seeking and that it is very difficult to find an alternative. I have a lot of sympathy for Parliamentary Counsel. There has been terrific pressure to find wording for a host of amendments. Perhaps there is room for improvement in this case. I think the amendment aims to remove the scope of the Bill to allow for an unlawful act to be based on the trappings and not the target of the legislation, namely, sexuality.

On that basis I am somewhat curious about comments by the Hon. Mr Lucas and the Hon. Diana Laidlaw on pressures on small business. I do not want to see an amendment which removes pressure from an employer to not show prejudice in employment based on sexuality. If it is good for one, it is good for all. I think the principle attacked by the amendment, which I support, is to protect an employer from being liable to prosecution because of a non acceptance of the trappings which a person may have chosen to display in some way related to their sexuality and, therefore, it is brought into the ambit of the legislation. I think we should prevent that if that is possible, and I think the amendment goes some way towards achieving that.

The Hon. K.T. GRIFFIN: I am prepared to support the amendment because it is an improvement on what is in the Bill. However, if the amendment is carried I will still oppose subclause (3) as amended. I understand what the Attorney is saying, that he does not think the amendment is necessary because it is already reflected in common law. I suggest that that is by no means clear when talking about this sort of legislation and when one is talking about sexuality being a ground upon which it is unlawful to discriminate within the definition of discrimination in the Bill. Therefore, if something is expressed in the form moved by the Hon. Mr Lucas, it is at least likely that it will be clearer than having to rely on the common law which is by no means certain in its application in the context of this Bill. The Attorney says that it may detract from flexibility. In that context I would say that flexibility is really uncertainty. For that reason, I think the amendment has some benefit in clarifying the position and allaying the concerns which I have already

referred to. However, they allay them only to a minimal extent. Notwithstanding that, I think it is important from that point of view.

The Hon. C.J. SUMNER: I have not achieved this high political office without being able to count. On the basis of contributions to date it appears that the amendment has the majority support of the Committee. Therefore, I will not call a division but will reserve my calls for a vote on the substantive clause once the amendment becomes part of the clause. Assuming that the clause is subsequently passed, I might give some attention to the wording used by the Hon. Mr Lucas. I take the expressions of opinion to mean that honourable members would like to see enshrined in the legislation some definitive statement in a Statute covering the points raised by the honourable member in his contribution. I accept that a majority of the Committee is in favour of that, despite my highly persuasive arguments to the contrary. For that reason, given what I see as an acceptance of the Hon. Mr Lucas's position by the Committee, I will not call a division on this amendment. I may give further thought to the precise wording of the Hon. Mr Lucas's amendment as the Bill progresses through the Committee stage here and in another place.

The Hon. R.C. DeGARIS: I will not be long in discussing my position, but I should clearly state my case to the Committee. I also will support the Hon. Mr Lucas's amendment. But I will vote then against the clause. I support the total deletion of the clause. The reason is fairly clear in the views expressed by the Hon. Lance Milne and the Hon. Trevor Griffin: I will not repeat what they have said. I also understand what the Attorney-General and the Hon. Murray Hill have said in relation to it. I understand that the question of employment in the Public Service or in the arts sector, referred to by the Hon. Murray Hill, is a good argument for their case.

The Bill applies not only to the Public Service or to the performing arts but to all fields of employment in this State. It is not fair to place this restriction on all employers in South Australia. Therefore, I oppose the clause. One can look at other applications: the question of education, which was referred to by the Hon. Trevor Griffin, and the question of the small employer, referred to by the Hon. Diana Laidlaw, are just as important in this issue as the points that have been already raised.

I come to the amendment itself. Whilst I appreciate what the Hon. Robert Lucas is trying to do with this amendment, I understand also why the Attorney-General is prepared to accept it because I do not think that it does anything at all. If one looks at the clause—

The Hon. C.J. Sumner: I did not say that I was accepting it, but that I would not divide on it.

The Hon. R.C. DeGARIS: That is a statement of acceptance.

The Hon. C.J. Sumner: That is not right; I am just trying to save time.

The Hon. R.C. DeGARIS: There are other ways of saving time.

The Hon. C.J. Sumner: I made my position clear; don't misrepresent it.

The Hon. R.C. DeGARIS: The Attorney-General has also pointed out in what he has said that the Hon. Robert Lucas's amendment does very little.

The Hon. C.J. Sumner: I do not think that it advances the common law position, and my concern is that it may detract from it.

The Hon. R.C. DeGARIS: The Attorney-General would agree with what I am saying: that the amendment does not do very much at all?

The Hon. C.J. Sumner: That is right.

The Hon. R.C. DeGARIS: I would go slightly further than the Hon. Chris Sumner has said, although I have not looked at it very closely to find out what it means. The clause reads:

> For the purposes of this Act, a person discriminates against another on the ground of his sex if—
>
> *(a)* he treats the other person less favourably by reason of his sexuality or presumed sexuality than in identical or similar circumstances he treats, or would treat, a person of a different sexuality;
>
> *(b)* he treats the other person less favourably by reason of the fact that he does not comply, or is not able to comply, with a particular requirement and—
>
> (i) the nature of the requirement is such that a substantially higher proportion of persons of a different sexuality complies, or is able to comply, with the requirement than of those of the same sexuality as that of the other person; and
>
> (ii) the requirement is not reasonable in the circumstances of the case;

To that is added:

> but, for the purposes of Division II, a person does not discriminate against another on the ground of his sexuality by reason only of the fact that—
>
> *(a)* he treats the other person less favourably on the basis of his appearance or dress or the manner in which he behaves;

That clause does not remove the conditions that already apply in that clause in relation to sexuality. I do not believe that behaviour has anything to do with the question of sexuality; therefore, the amendment does not mean a great deal at all. Whilst I appreciate what the Hon. Robert Lucas intends doing with the amendment, I do not believe that it does it. If we could draft an amendment to achieve what he wants to do, there would be a stronger argument for it, but an interpretation of that clause is that his amendment does very little. It may have something to do with dress or behaviour other than sexual behaviour, but that is about all. For that reason, it is important that I stress that I will vote against that subclause completely and that I understand very clearly why the Attorney-General is prepared not to oppose strongly the amendment.

The Hon. R.I. LUCAS: I do not very often disagree with the Hon. Mr DeGaris, but naturally on this occasion I do. I will take up the point that he made at the end of his contribution with respect to the existing clause 27 (3) *(b)* (i) and (ii) after we have this vote out of the way.

I publicly acknowledge—and I should have done so earlier—that a lot of the work done on the original form of this amendment was done by the member for Mitcham, Stephen Baker, together with Parliamentary Counsel. I thank not only Parliamentary Counsel, but Stephen Baker for his work. When the Hon. Mr DeGaris and others argue that this will do very little—and I think that the Attorney made a related point—the major point with which I respond is that if this legislation is to work it will require goodwill in the community, and goodwill will require understanding by as many people as possible in the community.

There is concern in certain sections of the community, as I indicated, particularly employing sections of the community, with respect to the sexuality provisions. Whilst I can see what the Attorney was arguing about the common law position and whilst the Attorney and the 2 per cent of the community who might be lawyers and well versed in the law may understand what the common law states and may be aware of the Telecom case, etc., the rest of us (the 98 per cent or whatever) need to have things laid out pretty clearly for us and to have it explicit in the Act. Explicitly

laying down in the Act what we are about and what we are trying to achieve will promote understanding. That is a positive achievement from this.

I therefore strongly disagree with the Hon. Mr DeGaris that we will not achieve anything through the passage of this amendment. On the question of the exact wording of the thing, we have conferences and a couple of days of debate ahead of us. Wherever that refinement comes about is a matter for this Committee or the majority of its members to decide. I certainly would welcome any proposals or improvements in this area. With those words, I commend the amendment.

The Hon. K.L. MILNE: During his speech, when the Hon. Mr Lucas was referring to his own amendment, he said words to the effect that he felt that if these amendments are passed the full weight of the Tribunal would not descend on the employer. He was not sure, but he felt that it probably would not. It means that he is not sure at all and that we have a nasty feeling that it might and probably would.

Members all seem to forget, if they ever knew, how difficult it is to run a business, particularly a small business. It is so difficult that most of those in small businesses feel that the constant increase in restrictions, impositions and dangers is done on purpose. It is probably not done on purpose, although for some perhaps it is—some people are delighted with it. It is simply an inexplicable and complete lack of understanding of what it is like out there, especially in economic times like these. Most speakers have taken for granted that there are heterosexual employers who are being unfair to homosexual employees or applicants for jobs.

Of course, that is not always true. There are some very wealthy homosexual employers: some seniors in very big organisations, both semi-government and Government, are homosexuals. I wonder whether we have all considered properly whether this Bill protects the heterosexual who is trying to get into the performing arts, for example.

The Hon. C.J. Sumner: It does.

The Hon. K.L. MILNE: I hope it does. I would like to be quite certain that it does, and I hope that the Bill, if it goes through, will work both ways and that the Tribunal will realise that it works both ways, but I doubt it. The Attorney-General, the Hon. Mr Hill, the Hon. Mr Gilfillan and perhaps one or two other members indicated that the wording of this amendment could be improved, and I, too, believe it could be improved. There is considerable opinion that this is a good idea and that there is room for compromise, but not a bit of it. Like lemmings, we will press on, right or wrong. We are not sure, but we will press on.

The Hon. C.J. Sumner: You're not sure.

The Hon. K.L. MILNE: The Attorney-General said that he was not certain. We are pressing on regardless with a vital clause that is still wrong.

The Hon. C.J. Sumner: No.

The Hon. K.L. MILNE: If it is slightly wrong, it is still not correct. This clause is the key to the Bill. We know it is not to our liking; we do not think it is really correct and that more time is required, but we will not be able to give it more time. In spite of the amendment, I agree with the Hon. Mr DeGaris that the provision is vague for his reasons, and I agree with the Attorney-General for his reasons. It will cause trouble. There will be complaints and appeals galore. It is wishy washy, and it must be wishy washy because this is a wishy washy subject. We will get into a wishy washy atmosphere in trying to interpret the clause. I believe that it will cause trouble and it is a tragedy for all the parties we are trying to protect. As it stands at present, I dissociate myself from it entirely.

The Hon. DIANA LAIDLAW: I indicated at the second reading stage that earlier this month the clause on sexuality caused me considerable anguish, and I do not deny that since then I have continually been troubled. I have considered the arguments for and against the proposition. I believed that they all have merit, and I continue to believe that that is the case. The issue is not black and white: it is certainly not clear cut. By instinct I would like to abstain from voting on this clause, but I know that that is unacceptable. So, with reservations, I will support the Government's provision, as amended, on sexuality.

Many people have asked me to vote against this provision, and I must pay them the courtesy of making a few general comments. I am aware that the Anti Discrimination Act in New South Wales has provided since 1977 that discrimination on the grounds of homosexuality should be prohibited, and over the past few weeks I have spent some time speaking to members of the Chamber of Commerce and Industry and the Employers Federation in that State, both bodies confirming that the provision has not caused their members concern. In fact, the legal advisers of those bodies could recall no cases that were brought to their attention, and one would have thought that, if there was trouble in this area, the members of those bodies would seek legal advice in either instance.

I also learnt from the lawyer of the Chamber of Commerce and Industry in New South Wales that a circular was sent to members a year after the Act was introduced in New South Wales asking for views on the provision. Not one member paid the Chamber the courtesy of replying, so I suggest that that is a further instance where the measure has not caused considerable damage in the employment community in New South Wales.

I acknowledge that I have no great enthusiasm for the sexuality provision in this Bill, but because the Government has decided to include this provision I find it extremely difficult to accept that to delete the provision does not amount to an acknowledgement that one could discriminate on the basis of sexuality. I find that notion absolutely abhorrent and I believe that it just plays into the hands of the bigoted people in our community. That is not acceptable at all. One's sexuality is essentially a private affair, whether that person is heterosexual or homosexual, and it should be kept entirely separate from one's employment unless it directly affects one's work. That is a different matter, and it was addressed earlier by the Attorney.

The opinion of the Christian churches is divided on this issue, and further I believe that the religious question and the question of moral standards are private concerns and matters of individual choice. Again, a position should not be imposed on all citizens by law. I thank members for the opportunity to make those few remarks.

Amendment carried.

The Hon. R.I. LUCAS: I have spoken so far only in relation to the amendment that I moved. During the second reading debate I left open the question relating to the whole subject of sexuality. I say now that the amendment that I have moved covers what I saw as my major concern in relation to possible adverse affects on small business. My major concerns, as outlined in the second reading debate, that it is wrong to discriminate on the grounds of sexuality now takes pre-eminence and I will be supporting the inclusion of the sexuality provisions in the Bill.

The Committee divided on subclause (3) as amended:

Ayes (14)—The Hon. Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, L.H. Davis,

M.S. Feleppa, I. Gilfillan, C.M. Hill, Diana Laidlaw, Anne Levy, R.I. Lucas, C.J. Sumner (teller), and Barbara Wiese.

Noes (7)—The Hons J.C. Burdett, M.B. Cameron, R.C. DeGaris, Peter Dunn, K.T. Griffin (teller), K.L. Milne, and R.J. Ritson.

Majority of 7 for the Ayes.

Subclause (3) as amended thus passed.

Subclauses (1) and (2).

The Hon. K.T. GRIFFIN: I am disappointed that my substantive objection to sexuality staying in the Bill has not been supported by a majority of the Committee. That means that I will not proceed with a number of consequential amendments to the Bill. Because sexuality is now part of the Bill and it is unlawful to discriminate against a person on the ground of that sexuality, I will not move my amendment to clause 27 (l), which really defines the meaning of 'discriminate' in relation to sexuality, marital status and pregnancy.

Subclauses (1), (2), (4) and (5) passed.

Clause 27 as amended passed.

Clause 2—'Commencement.'

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

Page 1, line 23—Leave out 'proclamation' and insert 'a resolution passed by both Houses of Parliament'.

Clause 2 deals with the commencement of the Bill once it becomes law. Apart from clause 39, the law will come into operation on a day to be fixed by proclamation. There is provision in subclause (2) for the Governor to suspend the operation of a particular section of the legislation by proclamation. Subclause (3), however, deals with clause 39, which relates to superannuation and employer-subsidised superannuation schemes. Subclause (3) provides that that clause will come into operation:

(a) on a day to be fixed by proclamation for the purposes of this paragraph (being a day not less than six months after the date of the proclamation), that section shall come into operation in respect of employer-subsidized superannuation schemes established after that day;

and

(b) on a day to be fixed by proclamation for the purposes of this paragraph (being a day not less than two years after the date of the proclamation), that section shall come into operation in respect of employer-subsidized superannuation schemes established before the day fixed for the purposes of paragraph *(a)*.

The Attorney-General's second reading explanation indicated that it was not the Government's intention to proclaim clause 39 immediately, because the Commonwealth Government had suspended the operation of its legislation in relation to superannuation for, I think, something like two years, and was proposing to investigate the superannuation law itself, as well as referring the matter to the Human Rights Commission.

I remember reading last week, I think, a newspaper report that indicated that that reference had now been made by the Commonwealth Attorney-General to the Human Rights Commission, which is undertaking an investigation. The State Attorney-General said that the Government would consider the result of that inquiry and the result of its own negotiations with the superannuation and life insurance industry before proclaiming this clause to come into operation.

I am unhappy about clause 39 being included in the legislation because there needs to be a lot more work done on it. Parliament is being asked to give its imprimatur to a provision which is not so specific as it ought to be, leaving a considerable amount of the substance to be negotiated in the future and to be the subject of regulation. In accordance with the stand that I have taken in Government and Opposition, I believe that it is wrong for those matters of substance to be left to regulation, which can only be the subject of disallowance if one Party has the numbers in one or other House of Parliament and, in that event, no amendments can be made.

The proclamation which is referred to in clause 2 (3) is made by the Government making a recommendation to the Governor, in Executive Council, and it is not subject to any form of Parliamentary scrutiny. For that reason I propose to move that in place of 'proclamation', we insert 'a resolution passed by both Houses of Parliament'. This will mean that the Legislative Council and the House of Assembly will both be required to make a decision as to when clause 39 will come into operation and, in making that decision, both Houses will have to have before them all the results of any negotiations, the decision by the Human Rights Commission and any legislative provisions in the form of regulations that the Government of the day proposes.

This gives a more appropriate level of Parliamentary scrutiny over an area that is presently vague and takes it away from the proclamation process, which gives no Parliamentary involvement at all. If the resolution is passed by one House, it must also be passed by the other House, although there is no requirement that it be passed on the same day. There are a number of consequential amendments. So, I will use the first amendment as a basis of a test to see if my concept is acceptable to a majority of the Committee.

The Hon. C.J. SUMNER: This is completely unnacceptable to the Government. It is an unacceptable procedure. The Government has indicated its view in relation to the proclamation of the Bill, in particular the sequential proclamation of clause 39. If the honourable member is so concerned about clause 39, the correct course of action for him to take is to vote against the clause. To suggest, having passed a Bill through the Parliament, that the Government should then be fettered as to when it brings that Bill into operation is quite unacceptable as a procedure for the Parliament.

The general situation, as you know, Mr Chairman, is that Bills either come into effect upon the Governor giving an assent or, as is more common these days, there is a specific clause in Bills to say that they come into effect on a day to be fixed by proclamation. That is in this clause. In addition, there is the further clause that parts of the Bill can be proclaimed on different days at different times, that is, the Bill can be proclaimed sequentially. In addition, clause 39, even once it is proclaimed, has an inbuilt further delay. I think that the amendment moved by the honourable member is unnecessary. My second reading explanation indicated the commitments that have been given by the Government in respect of this matter, and I believe that that should suffice.

I do not believe that once the Bill passes the Parliament there is a need for a further resolution to be passed by both Houses of the Parliament to bring the Bill into operation. If the honourable member is not happy with clause 39, rather than adopting this procedure, he should address it by voting against it.

The Hon. K.T. GRIFFIN: It is not an unacceptable procedure; it is quite clearly set out—a resolution of both Houses of Parliament. Nothing is clearer than that. I am recommending and moving an amendment to establish that procedure because I believe the principle that is in the Bill in so far as it relates to superannuation is important. The Government has admitted that it is not intending to bring the provision into operation for some time. Because of the reasons why it is not going to bring it into operation and the fact that it is so vague, I believe it is important for the two Houses of Parliament to be involved, once again, in the final decision as to when clause 39 comes into operation.

The Hon. K.L. MILNE: I think that that describes the difference between what is being done here and what is

normal in a Bill handling more or less one subject. This is not a Bill on superannuation; it is a Bill on anti discrimination or equal opportunity. I do not think that one can ask this Parliament to make a final decision on something that has not yet been decided.

The Hon. C.J. Sumner: It's in the Bill.

The Hon. K.L. MILNE: We want to know, before this Bill is proclaimed, that what is being done in the superannuation area is, in fact, satisfactory. We have had enough trouble with superannuation and there will be more troubles soon with some of the schemes. If this is to be vague for some time—

The Hon. C.J. Sumner: It's not vague: it's in the Bill.

The Hon. K.L. MILNE: It is vague to me, anyway. I think that Parliament is entitled to say, 'We will approve it in principle but would you please tell us what you are going to do with the question of superannuation?'. The Attorney-General is bringing anti discrimination measures into a Bill that has not yet been drafted. He might do something else. He does not know what it is going to—

The Hon. C.J. Sumner: We have drafted it; it's in the Bill.

The Hon. K.L. MILNE: That's only the skeleton. That is the difference—you are leaving something to be decided afterwards. We are not deciding on the clause—we are deciding on the principle only. It is only fair in a matter as emotive as superannuation—it is very emotive in the context of men and women—and I believe it is a reasonable request. I support it.

The Hon. C.J. SUMNER: The Hon. Mr Milne and the Opposition want to have their cake and eat it too. There is no question of that. The clause relating to superannuation has been discussed and it has been subject to consultation as much as any other clause in the Bill. The life assurance industry has been closely involved in discussion with the Public Actuary about the Bill and about that particular clause. Its major concern is not the clause—its concern is that this clause should not be brought into effect in South Australia until some attempt has been made at the Federal level to introduce a national provision dealing with superannuation. That is why we have the provision relating to the proclamation of clause 39. The clause in the drafting has been discussed at great length with the industry and the Public Actuary. This procedure is unacceptable. Honourable members are saying that they will include clause 39 but the Government cannot bring it into operation until it brings it back to Parliament.

The Hon. K.T. Griffin: What's wrong with that?

The Hon. C.J. SUMNER: If you are that concerned about clause 39 you should vote against it: that is the honest thing to do.

The Hon. J.C. Burdett interjecting:

The Hon. C.J. SUMNER: The honourable member is going home at 10 o'clock and that will be a blessing to all of us.

Members interjecting:

The Hon. C.J. SUMNER: If you are not happy with the clause vote against it. Do not say that it is in the Bill and that you will leave it there, that it is vague and unsatisfactory and that therefore in order to bring it into operation it must come back to Parliament. That is an unacceptable way of legislating. If your concern about the clause is honest honourable members should take it out of the Bill. They should not leave it in the Bill and then say that it has to come back to Parliament by resolution of both Houses. Either you are satisfied with the drafting of clause 39 or you are not.

Members interjecting:

The Hon. C.J. SUMNER: We are saying that clause 39, in terms of the discussions that we have had is satisfactory. Our concern is that it should not be brought into existence on a one-off basis in South Australia—unless that is absolutely necessary or unless we find that no-one else and the Commonwealth in particular do not so move. I have told the industry that I prefer national legislation to be moved by the Commonwealth, which is why I have pressured the Commonwealth Attorney-General to refer the matter to the Human Rights Commission. If it is taken up at Commonwealth level clause 39 could become redundant. If it is not, the clause ought to be able to come into operation.

The Hon. J.C. Burdett: We are saying that it is not up to the Government—it should come back to Parliament.

The Hon. C.J. SUMNER: As the honourable member knows, under normal procedure once a Bill is passed it can be brought into operation by proclamation. If honourable members are concerned about the drafting of the clause they should not pass it—it is not an honest way of going about legislating.

The Committee divided on the amendment:

Ayes (12)—The Hons J.C.Burdett, M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, I. Gilfillan, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, K.L. Milne, 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, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Majority of 3 for the Ayes.

Amendment thus carried.

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

Page 1—
Line 25—
Leave out "proclamation" and insert "resolution".
Line 29—
Leave out "proclamation" and insert "a resolution passed by both Houses of parliament".
Line 31—
Leave out "proclamation" and insert "resolution".
After line 33 insert new subclause as follows:
(4) For the purposes of subsection (3)—
"date of the resolution" means—
(a) where a resolution is passed by both Houses of Parliament on the same day—that day;
or
(b) where a resolution has been passed by both Houses but on different days—the last of those days.

Amendment carried; clause as amended passed.

Clause 3 passed.

New clause 3a—'Transitional provision.'

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

Page 2—After clause 3 insert new clause as follows:
3a. A decision or order of the Sex Discrimination Tribunal or the Handicapped Persons Discrimination Tribunal in force under either of the repealed Acts immediately prior to the commencement of this Act shall, upon that commencement, be deemed to be a decision or order of the Tribunal made and in force under this Act.

This is a transitional provision that ensures amongst other things that orders made for exemptions obtained under the existing legislation continue to exist as if they had been made or granted by the proposed Tribunal.

The Hon. K.T. GRIFFIN: I am willing to support that. It is just a transitional provision.

New clause inserted.

Clause 4—'Interpretation.'

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

Page 2, line 8—Leave out definition of 'detriment'.

The amendment is to delete the definition of 'detriment' which is defined as including humiliation or denigration. That is relevant in the context of determining discrimination. For example, under clause 28 it is unlawful for an employer to discriminate against a person in determining who should be offered employment or in the terms on which he offers employment, and it is unlawful for an employer to discrim-

inate against an employee by subjecting him to any other detriment. Detriment is not defined in either the Handicapped Persons Equal Opportunity Act or the present Sex Discrimination Act.

During the second reading debate I indicated that I think it is unwise to include that definition, because it is an invitation to employees to take action where they feel humiliated or denigrated in the context of employment when in fact it may not be any form of discrimination on the grounds of sex, race or whatever. I certainly do not support the need for an employer to denigrate or humiliate an employee. If there is an altercation between an employer and an employee in respect of, say, the work performance of the employee, the quality of the work, the hours of attendance or whatever, it is quite conceivable that the employee will feel humiliated if the dressing down is undertaken in the presence of other persons, or he may even feel denigrated.

While I do not condone that, it may be a natural consequence of an employer reprimanding an employee. I do not believe that that should be within the definition of 'discrimination'. As I say, it will be an invitation to employees in that position, and perhaps others, to embark on a course of complaint based on that feeling rather than establishing real discrimination. I much prefer 'detriment' to be left to the interpretation of the Tribunal and, if necessary, the Supreme Court. I think it is much safer in the context to which I refer.

The Hon. C.J. SUMNER: I believe that the amendment should be rejected. It is not acceptable to the Government.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. Peter Dunn. No—The Hon. J.R. Cornwall.

Majority of 1 for the Ayes.

Amendment thus carried.

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

Page 2, line 13—After 'statutory office' insert 'but does not, for the purposes of sections 28 (2), 49 (2) and 63 (2), include the holder of judicial office under the Local and District Criminal Courts Act, 1926, or the Supreme Court Act, 1935.

This amendment would remove from the definition of 'employee' a judge of the Local and District Criminal Court and of the Supreme Court for the purposes of sections 28 (2), 49 (2) and 63 (2). The point that I made during the second reading debate was that 'employee' as defined in the Bill includes a judge in either of those jurisdictions. Ordinarily, and constitutionally, judges are not employees of the Crown; they hold a statutory office. If this legislation had been shown to the judges—and I am not sure whether or not it has been—I am sure that they would have objected to it because, even though they are described as employees for the purpose only of this Bill, they are put into that category of being employees.

If they are employees for the purposes of the Bill, it really means that there are instances where judges of the Supreme Court or the District Court might be required to appear before the Tribunal. The Tribunal comprises a person who is not necessarily a judge of the Local and District Criminal Court, but may be, or may be a legal practitioner of not less than seven years standing. That means that a judge of the Supreme Court, for example, may be required to attend before the Tribunal, and there is a right of appeal from the Tribunal to the Supreme Court.

I believe that there is a very serious infringement of the separateness of the judiciary from the Executive here and that, in fact, it puts judges in a most invidious position. It is for that reason that I want to exclude judges at both levels from the definition of 'employee'.

The Hon. C.J. SUMNER: I do not think the amendment is necessary, but I will accept it subject to one amendment. The honourable member seems to have forgotten his old friends once again.

The Hon. K.T Griffin interjecting:

The Hon. C.J. SUMNER: I suppose them too. He has forgotten his old friends the magistrates. I believe that the clause needs to be amended. I am having a draft amendment prepared at the moment to include holders of judicial office under the Local and District Criminal Courts Act; the Supreme Court Act, 1935; the Magistrates Act, 1983; and the Industrial Conciliation and Arbitration Act, 1972.

The Hon. K.T. GRIFFIN: I am happy to include them. It was an oversight at the time. They do hold judicial office and I am happy for the amendment moved in that amended form.

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

Page 2, line 13—After 'statutory office' insert 'but does not, for the purposes of sections 28 (2), 49 (2) and 63 (2), include the holder of judicial office under the Magistrates Act, 1983, the Local and District Courts Act, 1926, the Industrial Conciliation and Arbitration Act, 1972, or the Supreme Court Act, 1935.'

The CHAIRMAN: Is The Hon. Mr Griffin happy to withdraw his amendment?

The Hon. K.T. GRIFFIN: I have no objection to withdrawing it.

Amendment carried.

The CHAIRMAN: I point out that at page 3, again after line 13, there seems to be a similar requirement. The Hon. Mr Griffin has two amendments; the next is to line 13 at page 3. Would a similar provision suit that?

The Hon. K.T. GRIFFIN: No, this is moved in a different context. I move:

Page 3, after line 13—Insert new definition as follows: 'the Senior Judge means the person for the time being holding or acting in the office of Senior Judge under the Local and District Criminal Courts Act, 1926'.

I am seeking to insert a definition of 'Senior Judge' because later in the Bill I am seeking to have a provision inserted that the Senior Judge exercise certain responsibilities in respect of the Anti Discrimination Tribunal or the Equal Opportunity Tribunal. Perhaps it would be appropriate in the context of this clause to explain the responsibilities that I see the Senior Judge assuming. I see the Senior Judge assuming general oversight of the operation of the Tribunal, but not appointing the Presiding Officer or Deputy Presiding Officer, which has still to be a function of the Governor in Council. However, when those officers have been appointed, whether they are already judges of the Local and District Court, or are legal practitioners of not less than seven years standing, they will then be, to some extent, accountable to the Senior Judge for the conduct of the Tribunal.

At present they are not accountable to anyone: they are totally independent. That is undesirable administratively and, from the point of view of accountability, it is desirable that some judicial officer has ultimate responsibility for the Tribunal subject, of course, to the Act. When we were in Government we brought several tribunals directly under the authority of the Senior Judge in areas such as planning and motor fuel distribution, and other appeals tribunals. Those areas were brought under the more direct jurisdiction of the Senior Judge so that he could at least have ultimate responsibility for management.

I also want to give the Senior Judge responsibility for choosing the Presiding Officer and two members from the panel to constitute a Tribunal to hear a particular case. In

addition to the objective of facilitating efficient administration, that is desirable because it minimises even more the risk of undue influence in the selection of members from the panel to hear a complaint before a tribunal. The Senior Judge decides the lists and what judges sit where. I would see the Senior Judge having that sort of function in relation to the Tribunal.

I would also see the Senior Judge having a responsibility to make rules for the conduct of proceedings. While there is a certain informality, the need for basic rules on the conduct of proceedings was referred to in the Law Society submission to the Attorney-General drawing attention to the problem of lack of definition as to the proceedings, the form of the proceedings, the forms prescribed, and so on. I believe that a person such as the Senior Judge, in consultation with the Presiding Officer, should make rules for the conduct of proceedings. The Senior Judge does that now under the Local and District Criminal Courts Act.

In order to bring the Tribunal under the umbrella of the intermediate courts, the Senior Judge should have an overriding responsibility and, if he follows his normal practice, it will mean that he will have only a supervisory responsibility and not an intrusive responsibility. The amendments do not provide that the Senior Judge can intrude in the day-to-day proceedings but in the management of the affairs of the Tribunal and so on. That is why I moved the amendment. One person becomes ultimately responsible where the buck stops, and that person is the Senior Judge. That will facilitate the working of the Tribunal sitting in one or more forums, panels, or however it is described. This is an important management tool and I hope that the Government will be persuaded to accept it.

The Hon. C.J. SUMNER: I am not at all persuaded by that argument. I do not think that it has any merit whatsoever in this particular case. The senior judge really has no role with respect to this Tribunal. It is not part of the Appeals Tribunals; it is not part of any other tribunal in which the senior judge has any jurisdiction. The fact is that with respect to, for instance, the Planning Appeal Tribunal, they are judges of the Local and District Criminal Court, whereas the President of this Tribunal may not be a judge at all or conceivably may be a Supreme Court judge. What if he is a Supreme Court judge?

The Hon. K.T. Griffin: It won't be, will it?

The Hon. C.J. SUMNER: It might be. Why not? Let us have a look.

The Hon. K.T. Griffin: You say, 'holding judicial office'.

The Hon. C.J. SUMNER: Clause 16(3) provides:

> A person is not eligible . . . unless he is a person holding judicial office under the Local and District Criminal Courts Act, 1926 or a legal practitioner of not less than seven years standing.

I think that there is an argument that a Supreme Court judge is in fact a legal practitioner of not less than seven years standing.

The Hon. R.C. DeGaris: It's not a very good one, though, is it?

The Hon. C.J. SUMNER: In any event, that is a fairly subsidiary argument. The fact is that it is not appropriate in this case to give the senior judge the authority that the honourable member wishes to give him in this case. For instance, the Commercial Tribunal legislation, which was promoted by the Liberal Party when in Government and which passed this Parliament during the time of the Tonkin Government, with the Hon. Mr Griffin as Attorney-General, does not provide for the senior judge to have any authority over that Tribunal; the Chairman of that Tribunal might be a Local and District Criminal Court judge or a legal practitioner of not less than seven years standing.

The Hon. R.C. DeGaris interjecting:

The Hon. C.J. SUMNER: There is no case whatsoever that I can see for having the Senior Judge involved in this. If one wants to have a comprehensive District Court that brings in all these tribunals—the Residential Tenancies Tribunal, the Commercial Tribunal, the whole lot of them—perhaps there is a case for it, but that is not what we are debating at present. I believe that, if one is establishing a specialist tribunal, as being established with the Commercial Tribunal, as has been established with this legislation (which existed until now and which the honourable member did not include in the Bill that he introduced relating to handicapped persons in 1981), and if one is talking about looking at it as a comprehensive scheme, perhaps it could be considered as a matter of policy.

However, I do not believe that merely with respect to this one tribunal—the Equal Opportunity Tribunal—we should say that somehow or other the Senior Judge should have authority over it. It is not appropriate; it is a separate tribunal; it is not part of the appeals division; it is not part of the Courts Department; it is not part of the District Court; it is a separate tribunal, established by separate Statute. When this particular Bill is passed—

The Hon. R.C. DeGaris interjecting:

The Hon. C.J. SUMNER: All I am putting to the honourable member is that it should be the Chairman of that Tribunal who is appointed in accordance with this Act and who should be responsible for the Tribunal, and to place in effect another administrative bureaucratic layer in the system is not justifiable in any circumstances for any reasons in this Act unless one wants to integrate all these tribunals into the jurisdiction of the Local and District Criminal Court and the Senior Judge.

That is a broad policy question that should not be addressed in relation to this one Tribunal. The legislation setting up the Commercial Tribunal (introduced by the honourable member's colleague) did not give the Senior Judge any authority. The Handicapped Persons Equal Opportunity Tribunal, introduced by the Hon. Mr Griffin himself only two years ago, did not give the Senior Judge any such responsibility, and for good reasons, I believe, because there is no case for that where one is talking about a separate tribunal established, as this one is, by its own act of Parliament.

The Hon. K.T. GRIFFIN: With the Handicapped Persons Equal Opportunity Tribunal, one person was the presiding officer and two persons would sit as part of the Tribunal. There was not a panel of 12 persons as we have here, where the Bill says that the presiding officer of a particular tribunal makes a selection according to the expertise relevant to the subject matter of proceedings. With the Handicapped Persons Equal Opportunity Tribunal, it is not the presiding officer who makes the selection from a panel of 12 on the basis that, as he has a certain sort of matter to deal with today, he will have people of a certain inclination sitting on the Tribunal: it is the person presiding over the Tribunal under this Bill saying who he will have.

The Hon. C.J. Sumner: It happens in the Industrial and Supreme Courts.

The Hon. K.T. GRIFFIN: The person there is the Chief Justice who allocates the list on a roster basis, which is clearly established months in advance.

The Hon. C.J. Sumner: He can appoint anyone he likes.

The Hon. K.T. GRIFFIN: Of course he can, but he acts judicially.

The Hon. C.J. Sumner: So will the Chairman.

The Hon. K.T. GRIFFIN: The Attorney-General said himself that the person who will be the presiding or deputy presiding officer will not necessarily be a judge and may be a legal practitioner. There is no supervision at all. I am saying that, as part of a comprehensive scheme to remove as much as possible the bias that there is a potential for in this legislation, it ought to be someone of the status and

independence of the senior judge who has the responsibility for allocating cases and for choosing persons from the panel of 12 to sit on certain cases.

The Hon. C.J. Sumner: That's a ludicrous proposition.

The Hon. K.T. GRIFFIN: It is not. It is a protection against the potential for bias which is built into the legislation. It is all very well to say that I did not do it in 1981, because the circumstances were different then. The Tribunal was different.

The Hon. C.J. Sumner: You were in Government then.

The Hon. K.T. GRIFFIN: In 1975 I was not in this place to influence the Sex Descrimination Act.

The Hon. C.J. Sumner: What about the Commercial Tribunal?

The Hon. K.T. GRIFFIN: There is a case to bring all these tribunals together. However, that is for another day.

The Hon. C.J. Sumner: Well, don't muck it around with this Bill.

The Hon. K.T. GRIFFIN: I am not messing it around and I am not introducing another bureaucratic layer. I am saying that one senior independent judicial officer will make certain decisions. He is not going to get involved in the day to day running. He will say, 'These are the lists,' and he will consult with the presiding officer in respect of rules of conduct and be able to say, 'This is the roster for cases and for the panel so that we do not demonstrate any bias in selection of members of the panel.' That is what I am on about and why I believe that we must have somebody of that status making the decision. It is appropriate that it be the Senior Judge in the context of the decisions that he already makes in respect of a number of other tribunals which are, in one way or another, serviced by judicial officers.

The Committee divided on the amendment:

Ayes (10)—The Hons M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

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

Pair—Aye—The Hon. J.C. Burdett. No—The Hon. J.R. Cornwall.

Majority of 1 for the Ayes.

Amendment thus carried.

The Hon. K.T. GRIFFIN: I intimate that I do not intend to proceed with my amendments to lines 28 and 29, etc., leaving out the definition of 'sexuality'.

The Hon. DIANA LAIDLAW: I wish to ask questions concerning the definitions of 'transsexual' and 'transsexuality'. Is the definition of 'transsexual' in the Bill a correct definition or is it so broad that it includes transvestites? I make this point because the Hon. Ms Wiese, on at least two occasions, has gone to great lengths to distinguish between the two. I felt that perhaps the Government had deliberately blurred the two in this case. I have no hassles with including 'transsexual' in this Bill, but I have some reservations about 'transvestites'.

The CHAIRMAN: We have jumped the gun, but perhaps the Attorney-General had better reply to the question. We have overlooked an amendment.

The Hon. C.J. SUMNER: I would have thought that it covers sexuality, which included transvestite.

The Hon. Diana Laidlaw: So, it is fairly broad, although you are using the definition of transsexual?

The Hon. C.J. SUMNER: Yes.

The Hon. BARBARA WIESE: The definition is sufficiently broad that it would cover transvestites if it were challenged. That is not unreasonable because it is not reasonable that transvestites should be discriminated against any more than it is reasonable that transsexuals or homosexuals should be discriminated against. A more important point that needs to be taken into consideration, in regard to the question of transsexuals, is that it is necessary for the definition of a transsexual to be broad enough to cover people who have undergone reassignment surgery as well as people who are in their transition period to reassignment surgery. For transsexuals who are part of a reassignment programme in any accepted clinic, it is necessary for them to have lived in the role of the sex to which they aspire for a period of at least two years prior to surgery taking place. It is necessary to provide protection under the law for people in that transition period. Therefore, it is necessary to have a reasonably broad definition to cover both post and pre-reassignment cases.

The CHAIRMAN: I would like to draw the Committee's attention to the fact that I overlooked one of the Hon. Mr Griffin's amendments and I intend to go back to that.

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

Page 2, line 34—Leave out 'Anti Discrimination' and insert 'Equal Opportunity'.

This is in relation to the tribunal. If we are calling this the Equal Opportunity Act, we ought to call it the Equal Opportunity Tribunal, and therefore I move that amendment.

Amendment carried.

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

Page 3, after line 37 insert new subclause as follows:

(2) A reference in this Act or in the repealed Sex Discrimination Act, 1975, to the provision of a service does not include, and shall be deemed never to have included, the carrying out of either of the following fertilisation procedures:

(a) artificial conception;

or

(b) the procedure of fertilising an ovum outside the body and transferring the fertilised ovum into the uterus.

This puts into the Bill the provision already in the Family Relationships Act Amendment Bill to exclude the *in vitro* fertilisation and AID programmes from the operation of the Sex Discrimination Act in that Family Relationships Act Amendment Bill. I am seeking to do the same in relation to this Equal Opportunity Bill—to exclude its operation from the IVF and AID programmes.

The Hon. C.J. SUMNER: This matter has been debated in the context of the family relationships legislation. It was determined on that occasion so I do not intend to debate it again. What the honourable member is trying to do has probably no effect on the Commonwealth Sex Discrimination Act. However, be that as it may, the Government's position is that this Act should cover those procedures, at least at this stage. As the matter has been debated previously I do not intend to say anything further.

The Hon. ANNE LEVY: In his amendment the Hon. Mr Griffin talks about artificial conception, yet he wishes it to cover the AID and the IVF programme. Why does he say 'artificial conception' and not 'artificial conception by donor', if that is what he means?

The Hon. K.T. GRIFFIN: I must confess that I thought it was an exact mirror of the amendment passed in the Family Relationships Act Amendment Bill. It was intended that the same provisions carried then should be reflected here. If there is a difference in wording between the two, I am willing to move it in the amended form. I understood that it was identical, but I did not check it because of that belief.

The Hon. C.J. Sumner: I will not divide on this matter, as it has been determined already in regard to another Bill. I merely indicate that I oppose the amendment.

The Hon. K.L. MILNE: I seek clarification as to exactly what we are doing.

The Hon. K.T. GRIFFIN: The position is that I moved an amendment to the Family Relationships Act Amendment Bill that would have prevented the Sex Dicrimination Act

being used, for example, to compel Flinders Medical Centre or Queen Elizabeth Hospital from making available IVF or AID procedures to a single woman or unmarried couple because there was the case that I had heard of, at least proposed, before the Supreme Court to challenge the right of the fertility teams at those two hospitals to make decisions that were to make the IVF procedure, for example, available only to married couples, even though there were unmarried couples on the waiting list. A case had been referred to me as being potentially a source of difficulty and concerning a single woman seeking to use the Sex Discrimination Act to compel the fertility clinic to include her in the programme. In the Family Relationships Act Amendment Bill I moved an almost identical amendment that was carried with the Hon. Mr Milne's support to ensure that no-one could use the Sex Discrimination Act to override the decisions of Flinders Medical Centre and Queen Elizabeth Hospital.

The Hon. K.L. Milne: But that Act will now be repealed.

The Hon. K.T. GRIFFIN: That is why I hope that it is going into this Bill. We are not sure when this Bill, if it finally passes, will come into effect. So, the Sex Discrimination Act is in force now, but I want to be doubly sure that, when this Bill is brought into effect and repeals that Act, it has the clause in it providing, for example, that the IVF programme is not subject to the provisions of the Equal Opportunity Act—this new Act. This amendment does exactly as the amendment supported by the Council in the Family Relationships Act Amendment Bill did. It is really a mirror of that because the Sex Discrimination Act ultimately will be repealed.

Amendment carried; clause as amended passed.

Clause 5—'Interpretative provisions.'

The Hon. I. GILFILLAN: I move:

Page 4, line 3—After 'referred to' insert ', and that ground is a substantial reason for his act'.

I believe that the clause currently allows for action, even if it is unsuccessful, or it could encourage action on quite trivial territory. I think that is unnecessary, bearing in mind the overriding aim of the Bill. As it is currently worded there could be any one of 100 reasons why an employer takes a certain attitude or a certain action to an applicant for a job or an employee. It could be defined or suspected as being part of the area of discrimination against which this Bill is moving, and it could quite unnecessarily clog up the Tribunal and cause unnecessary concern and consideration. I think my amendment identifies that, for the purposes of the Bill, the action needs to have been significant in the mind of an employer in causing whatever action the complaint is lodged against.

The Hon. K.T. GRIFFIN: I have an amendment on file to oppose subclause (2), but I will not proceed with it. I think the Hon. Mr Gilfillan's amendment is suitable, because it places the emphasis where I believe it should be placed. For that reason, I indicate my support for it.

The Hon. C.J. SUMNER: I oppose the amendment, but I will not divide because the numbers are against me. I point out that the amendment limits what is in section 8 of the Commonwealth Sex Discrimination Act. In so far as it limits what is in that Act I doubt whether it will have any practical effect. I oppose the amendment but, in view of the numbers, I will not divide the Committee on it.

The Hon. ANNE LEVY: I am not sure whether the Hon. Mr Griffin and the Hon. Mr Gilfillan are aware of the corresponding provision in the Federal Act, as mentioned by the Attorney. It provides:

Whether or not the particular matter is the dominant or substantial reason for the doing of the act—

The Hon. I. Gilfillan: My amendment is not 'the substantial' but 'a substantial' reason.

The Hon. ANNE LEVY: The Federal Act specifically states, 'Whether or not'. The Hon. Mr Gilfillan's amendment will be in marked conflict with the Federal Act, and I think the honourable member's fear that the clause will lead to clogging up of the Tribunal is quite unjustified.

Matters will not go to the Tribunal without first going to the Commissioner, and in most cases matters that the Commissioner feels are trivial will end at that level after the Commissioner has determined that the matter is trivial and that no further action will be taken. Because of a filtering at Commissioner level, the Tribunal will not be clogged up at all.

Amendment carried; clause as amended passed.

Clauses 6 to 9 passed.

Clause 10—'Functions of the Commissioner.'

The Hon. R.I. LUCAS: I move:

Page 4, line 23—Leave out 'positive,'.

In regard to clause 10 (1), in my view the Commissioner's fostering and encouraging informed and unprejudiced attitudes is positive in itself, and I think the use of the word in that subclause is superfluous. One aspect concerning the use of the word 'positive' is that certain groups and people have either misunderstood or misinterpreted the intent of that word, and the argument goes that people in the community who have genuine moral and religious objections, for example, to homosexuals, transsexuals or bisexuals will in effect have the Commissioner coming down upon them, forcing them to have positive views towards homosexuals, transsexuals or bisexuals, contrary to their own religious beliefs. I think the removal of the word 'positive' will remove the possibility of that misunderstanding or misinterpretation with respect to the duties or functions of the Commissioner. I believe that just requiring the Commissioner to 'foster and encourage informed and unprejudiced attitudes' sits very neatly with the whole intent of this Bill.

The Hon. C.J. SUMNER: I oppose the amendment. The wording of the clause was taken from the Handicapped Persons Equal Opportunity Act. It is for that reason that that wording was picked up and included in this provision. It does not refer to adopting positive attitudes to any of the particular things mentioned in the provisions, but simply refers to a positive attitude towards the elimination of discrimination. I think that is the distinction.

The Hon. K.T. GRIFFIN: I support the amendment. I know that this wording appears in the Handicapped Persons Equal Opportunity Act, but that relates only to physical impairment. As I indicated earlier in relation to the major debate on sexuality, I have a concern about this clause in the sense that it provides, for a positive obligation upon the Commissioner to promote, foster and encourage certain attitudes with respect to sexuality, marital status, pregnancy, race or physical impairment.

Although I have lost the major battle on clause 27, I still take the view that on the area of sexuality the Commissioner ought not to have the responsibility for fostering and encouraging certain attitudes in the community, placing sexuality on an equal basis with marital status, pregnancy, race or physical impairment. I support the Hon. Robert Lucas's amendment because it improves the Bill. I will proceed with my own amendment and, if that is not carried, I will certainly have to consider very seriously whether I will support the clause as it then is.

The Hon. K.L. MILNE: We have all been worried about whether this clause tells the Commissioner to promote some of the things that people would prefer not actually to be voted on. I would like to move an amendment so that instead of stating that the Commissioner shall foster and encourage amongst members of the public informed and unprejudiced attitudes, it should state that the Commissioner

shall discourage amongst members of the public uninformed and prejudiced attitudes, with a view to eliminating discrimination. That is a very different thing.

The Hon. C.J. Sumner: No, it is negative.

The Hon. K.L. MILNE: Of course it is negative: that is what is intended. People are hoping that it will be negative and that he will discourage amongst members of the public uninformed and prejudiced attitudes.

The Hon. C.J. Sumner interjecting:

The Hon. K.L. MILNE: In that way he cannot be accused of promoting it. It might get a lot of heat out of those who are opposed to the Bill if it was put in this form. I still agree with the suggestion of the Hon. Mr Lucas, but I will seek to move this amendment after that.

The CHAIRMAN: The Hon. Mr Lucas has moved an amendment, but we will have to take the Hon. Mr Milne's amendment before that. Would the Hon. Mr Lucas have the courtesy to withdraw his amendment so that we can deal with the Hon. Mr Milne's?

The Hon. R.I. LUCAS: No; I do not believe that it adds anything. It is much better in the way in which it has been phrased. It is quite simple just to remove the word 'positive', as I have already moved.

The CHAIRMAN: The Hon. Mr Lucas will put everything in a bit of a jam without achieving much at all. If he will not withdraw it, I will have to put his amendment before the Hon. Mr. Milne moves his.

The Hon. I. GILFILLAN: I support the Hon. Mr Lucas's amendment, but I will not waste the Committee's time by talking to it.

The Hon. C.J. SUMNER: I indicated that the Government opposes the Hon. Mr Lucas's amendment but, in the light of the numbers, I will not seek to divide.

Amendment carried.

The CHAIRMAN: Does the Hon. Mr Milne realise that his amendment has now lapsed?

The Hon. K.L. MILNE: Why can I not move an amendment to the clause as amended?

The CHAIRMAN: The honourable member can, but he would need to reword it.

The Hon. K.L. MILNE: I will seek to recommit it.

The CHAIRMAN: We have clause 10 sorted out.

The Hon. K.T. GRIFFIN: We have not, because I have an amendment. I move:

Page 4, lines 24 and 28—Leave out 'sexuality'.

I have already spoken to this. I believe it is important to remove that from the responsibility of the Commissioner in terms of education.

The Committee divided on the amendment:

Ayes (9)—The Hons M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, K.L. Milne, and R.J. Ritson.

Noes (10)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, R.I. Lucas, C.J. Sumner (teller), and Barbara Wiese.

Pair—Aye—The Hon. J.C. Burdett. No—The Hon. J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: I indicated that I would oppose this clause, although I believe that the educational obligation on the part of the Commissioner is important. In the light of the fact that the vote on my amendments was lost—

The CHAIRMAN: Order! There must be sufficient quiet so that I can hear the member who has the call.

The Hon. K.T. GRIFFIN: In the light of the result of the division, it is obvious that I will not succeed in deleting this clause, and therefore I do not intend to divide again. I, like the Attorney, can count the numbers, and I appear to have lost this issue.

The Hon. C.J. SUMNER: I merely wish to reiterate that I think that the honourable member's opposition to clause 10 is based on a misconception. It is not giving the Commissioner the power to adopt an educational promotional role in relation to sexuality but merely in relation to discrimination on the grounds of sexuality. That is what the clause refers to, and to suggest that that somehow or other is a matter of education that might promote a person's particular sexuality seems to me to be a misreading of the Bill, but I do not want to get into debate beyond that.

The Hon. R.I. LUCAS: I must admit that I was taken somewhat by surprise by the result of the division, so I merely say that the reason I took the position I did on that matter was because in my view it was consistent with the attitude that I took in regard to clause 27, namely, that I voted to include provisions on sexuality in the Bill. Having been successful in removing the word 'positive' from clause 10, I was happy with the context of clause 10 therefore applying to the notion of sexuality, that is, talking about informed and unprejudiced attitudes, and that was the reason for my vote on the last division and, therefore, supporting the retention of sexuality in clause 10 (2) with which we are dealing at present.

The Hon. K.T. GRIFFIN: I do not agree with what the Attorney-General has just said. The fact that the Commissioner is to foster and encourage informed and unprejudiced attitudes must of necessity involve an assertion as to the appropriateness of the behaviour in respect of which the Commissioner is fostering certain attitudes. I strongly believe that it will involve a stronger promotion of homosexuality, bisexuality and transsexuality at the same level as heterosexuality than the Attorney-General has conceded, and for that reason I have a very strong view about the educational responsibilities of the Commissioner in respect of sexuality.

The Hon. C.J. SUMNER: I agree to disagree.

Clause as amended passed.

New clause 10a.—'Advice, assistance and research to be furnished or carried out by the Commissioner.'

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

Page 4, after clause 10 insert new clause as follows:

10a (1) The Commissioner may furnish advice upon any matter within the purview of this Act and, if a written request for any such advice is made to the Commissioner, then, subject to subsection (2), the Commissioner shall either furnish the advice in writing to the person by whom it was requested, or notify that person in writing that he declines to furnish the advice.

(2) The Commissioner shall—

(a) if requested to do so by a handicapped person—

(i) inform and advise him of the benefits, assistance or support that may be available to him in respect of his physical impairment;

(ii) assist him to gain acess to any such benefits, assistance or support; or

(iii) assist him, to the extent the Commissioner thinks desirable, to resolve any problem faced by him as a result of his physical impairment in relation to his participation, or attempts to participate, in the economic or social life of the community;

(b) publish advisory documents as to the benefits, assistance and support available to handicapped persons;

(c) institute, promote or assist in research and the collection of data relating to handicapped persons, the problems faced by such persons as a result of their impairments, and the ways in which those problems may be resolved,

and may do anything else necessary or expedient to assist handicapped persons to participate in the economic and social life of the community.

(3) For the purposes of subsection (2), a handicapped person is a person who has a physical impairment which in itself, or in conjunction with other factors such as the nature of his physical environment, the attitude of others towards him or his own psychological reaction to his impairment, substantially

reduces his participation, or his capacity to participate, in the economic or social life of the community.

This is a reflection of the clause in the Handicapped Persons Equal Opportunity Act that gives additional responsibility to the Commissioner in respect of handicapped persons. I think that it is important, if we are looking to promote equality of opportunity for persons with disability, and because it was in the 1981 legislation, to continue with it in this Bill.

New clause inserted.

Clause 11—'Special functions of the Commissioner in relation to persons with intellectual impairments.'

The Hon. R.I. LUCAS: I move:

Page 4, line 36—Strike out 'positive'.

This is virtually the same amendment as that moved to clause 10 (1) and it removes the word 'positive' again from the responsibility of the Commissioner so that the Commissioner shall foster and encourage amongst members of the public informed and unprejudiced attitudes to persons who have intellectual impairments. My argument does not include any notion of misuse by anyone in the community with respect to the word 'positive' in this clause. It is simply that I believe that the word 'positive' is superfluous. Informed and unprejudiced attitudes in themselves connote notions of positive elements and therefore I believe 'positive' to be superfluous. To be consistent with clause 10 (1) I have moved for its deletion.

Amendment carried; clause as amended passed.

Clause 12—'Annual report by Commissioner.'

The Hon. R.I. LUCAS: I move:

Page 5—

Lines 2 and 3—Leave out 'thirty-first day in December' and insert 'thirtieth day in September'.

Lines 8 to 10—Leave out subclause (2) and insert subclause as follows:

(2) The Minister shall cause a copy of a report furnished to him under subsection (1) to be laid before each House of Parliament within fourteen sitting days of his receipt of the report if Parliament is then in session, but if Parliament is not then in session, within fourteen days of the commencement of the next session of Parliament.

This amendment is very similar to an amendment moved and passed in the Commissioner for the Ageing Bill. It tightens the annual reporting provisions of the Commissioner. The terms of the Bill state that the Commissioner has until 31 December in each year to report to the Minister. Most statutory offices and officers are required to report in much shorter time than that—an average of about three months—and I am moving to amend the date to 30 September.

Clause 12(2) also tightens it up. The existing clause in the Bill states that the Minister shall, as soon as practicable, after his receipt of a report submitted to him by the Commissioner, table it in the Parliament. When similar phrases have been used in other Statutes, they occasionally enable the Minister to delay the tabling of the report in the Parliament. I believe we ought to stipulate a set period within which the Minister should table the report in the Parliament so that members of Parliament can be informed as to the annual report of the Commissioner as quickly as possible. It is a usual amendment in a large number of Statutes and known as the fourteenth sitting day amendment. I will not explain in further detail. It will place a strict time limit on the Minister in which to table the report.

The Hon. C.J. SUMNER: The amendments are not acceptable. As to the date on which the report must be prepared, 31 December is quite reasonable. The honourable member has not had to deal with the practicalities of preparing reports. I agree, as a matter of principle, that those reports should not be unduly delayed and should be produced as soon as possible, but one only has to see what happens in a Government department or Commission when a report has to be prepared. The amount of time and resources that have to be put into the preparation of such reports is absolutely enormous. In some departments it virtually stops the functioning of the department for a time while the report is being prepared. The honourable member may not believe that, but I assure him that in my experience with some reports—for instance, the report of the Commissioner of Consumer affairs—they consume an enormous amount of time for preparation. When the report comes out I would prefer it to be a good report and prefer the preparation of it to not unduly interfere with the normal operations of the department. If a crisis comes up in the department and we have an unrealistic time limit for the preparation of the report, the department cannot cope and cannot bring in public servants from outside to get the report prepared because people in the department have the knowledge in order to prepare the report.

While I am in sympathy with the honourable member's position about the earlier receipt of reports, and I agree with that, I think that the three months, given the practicalities of getting reports out, is too tight a time limit. As I say, if one has to get it out in that time limit, instead of being able to spread it over a slightly longer period of time, it really can be enormously disruptive to the running of a department, although honourable members opposite may not accept that, in a time when most people who are responsible for writing reports are stretched to the limit in terms of the amount of time they have to put into their duties. It is purely on that practical basis that I ask the Committee not to accept the amendment. As I say, I consider that, in the perfect world, if it were possible to add staff to the department, fine: but one cannot do that. All I say to the honourable member is that I am quite happy to see 31 December in any Bill and for that to be the norm, but to place unreasonable demands on departments for the production of reports does not do us any good.

The Hon. K.L. MILNE: As one who has had to produce reports of various kinds, and speaking from experience, it is nearly always impossible to carry this out by 30 September. Statistics to the end of June do not come in until, at the earliest, some time in August. So it leaves very little time to prepare a report, even if they got on with it in advance. It is not a question of whether we would like to see it. For most organisations this is physically impossible on a time basis.

The Hon. R.I. LUCAS: I was hoping that the Attorney-General would support this amendment. As he is not supporting it I will need to convince my learned colleagues, the Democrats. The Attorney-General is asking us to accept that the Commissioner for Equal Opportunity requires six months to prepare an annual report.

The Hon. C.J. Sumner: That is true.

The Hon. R.I. LUCAS: If it requires the Commissioner for Equal Opportunity to take six months to prepare an annual report, I would like to know what is going on with respect to equal opportunity during that six month period.

The Hon. C.J. Sumner: They are getting on with their job instead of pouring all their resources into writing the report.

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: That may be the problem. Let us look at the Bill concerning the Commissioner for the Ageing—one of the innovations of this Government. The Commissioner for the Ageing is a new statutory officer required to undertake a whole variety of functions with respect to the ageing; and those functions took up a page and a bit of the Bill. That Bill provided that 'the Commissioner shall not later than the 30th day of September in each year', which is three months, and was part of the Government's

legislation. I am seeking to amend this Bill to be consistent with the other Bill introduced only in this session, which had a three month period. If the Attorney-General is going to follow through with this six month argument for the Commissioner for Equal Opportunity, then he should be following through with the argument for the Commissioner for the Ageing. Having had a look at the reporting provisions of the 100-odd statutory corporations in South Australia and outlining those in *Hansard* and, in addition, having had a look at some 100 other statutory authorities which are bodies unincorporate, I believe that the average reporting period for the majority of those statutory authorities, offices and QUANGOS in South Australia is somewhere between three and four months.

Why does the Equal Opportunity Commissionsr require six months to prepare a report when for the vast majority of similar bodies and officers in South Australia a shortened period of three to four months is required? If we allow the Equal Opportunity Commissionsr to report by 31 December, and we do not sit in January and early February, it means that if there is only a three to four week session in February-March we have a chance possibly of collecting the report somewhere in March, about nine months after the end of the year for which the Commissioner is meant to report.

The whole point of accountability of statutory authorities and QUANGOS in South Australia is that we ought to be getting this sort of annual information at a time when it is appropriate and relevant for us as members of the Parliament to do something about it. What is the use of getting information about the calendar year 1983-84 near the end of the following calendar year? If we miss the reporting requirement in March, and if we accept the second part of the Attorney's amendment— 'as soon as practicable'—we may not get a report until July or August when we sit again.

In my Address in Reply speech earlier this year, I cited a number of statutory officers' annual reports which had not been presented to this Parliament until about 12 months after the end of the particular financial year with respect to which they were meant to report. If nine months is ludicrous, 12 to 15 months is even more ludicrous.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: The Attorney says that there is not much use in carrying on in this Bill about this matter. If one does not carry on about this matter in this Bill, one does not get another opportunity. One final example I cite to try to convince the Hon. Mr Gilfillan and the Hon. Mr Milne is that the one body in Australia which has done the most with respect to annual reporting provisions of QUANGOS and statutory authorities is the Senate Standing Committee on Finance and Government Operations, chaired by Senator Rae, and in at least three of its seven reports that committee makes reference to the need for an annual reporting provision or an annual reports Act and recommends that, for most of the statutory officers and QUANGOS in the Commonwealth arena, the annual reports ought to be presented within three months to the Parliament—not to the Minister, with some sort of delay mechanism occurring from him, but within three months to the Commonwealth Parliament.

The Hon. R.C. DeGaris: The Auditor-General does it all right.

The Hon. R.I. LUCAS: There is a very good argument. The Hon. Mr DeGaris says that the Auditor-General complies with the report by generally the first week in September, sometimes the last week in August, and that is with respect to the financial year. If the Auditor-General can go through the whole ambit of financial relations and activities of the Government and Government departments and present a report within two months, certainly within three months, then to accept the Attorney's argument that the Commissioner for Equal Opportunity needs a reporting provision of six months is unacceptable and ludicrous.

So, with that evidence to support my argument I urge the Australian Democrats, having supported the Commissioner for the Ageing provision (a similar provision in that Bill), to take another step towards ensuring proper accountability of statutory officers and QUANGOS in the South Australian context.

The Hon. C.J. SUMNER: I really reject and resent the honourable member's proposition of the reporting time for the Commissioner for Equal Opportunity and his argument that the Commissioner must be able to prepare a report within three months.

To draw an analogy between the Auditor-General and the Commissioner for Equal Opportunity is ludicrous in the extreme. The fact is that the Auditor-General has a large staff. It is unfortunate that we have got on to a debate on a general issue, which nevertheless is an important issue, on a Bill of this kind. What the honourable member should do (I would be happy for him to do this if he feels that way) is to introduce a Bill dealing with a reporting period for statutory authorities throughout the Government sector, and we can consider it then, as well as the next amendment. This is a common provision.

I know the difficulties that public servants have in preparing reports and, if the honourable member wants to have in legislation unrealistic time tables that will not be met, so be it. But I can tell him that, if he places 30 September in every piece of legislation, it will be ignored. It will not be ignored deliberately by Ministers: it will be ignored because it is physically impossible in some circumstances to get reports out within three months.

The honourable member may find that hard to believe, but I can tell him that in areas involving detailed reports such as those by the Commissioner for Equal Opportunity and the Commissioner of Consumer Affairs—two areas with which I am familiar, especially the latter—an enormous amount of resources must go into the production of reports. The honourable member can put it in if he wishes, but it will not be complied with. He will end up getting reports that tell us nothing. Because of the time limit set down, people will just dash them off and will not be able to give them adequate consideration, and they will say, 'This is the Parliamentary deadline.' They will either do that or ignore it in order to present a decent report.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: It is all very well for the honourable member to do that when at the same time he comes into the Parliament and complains about additional staff for Government departments. He cannot have it both ways. If you want to accept this, fine; if the Commissioner can do it, she will: if she cannot, she will not.

The Hon. I. GILFILLAN: I intend to oppose the amendment.

Amendment negatived.

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

Page 5, line 5—After '10' insert ', 10a'.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 5, lines 8 to 10—Leave out subclause (2) and insert subclause as follows:

(2) The Minister shall cause a copy of a report furnished to him under subsection (1) to be laid before each House of Parliament within fourteen sitting days of his receipt of the report if Parliament is then in session, but if Parliament is not then in session, within fourteen days of the commencement of the next session of Parliament.

The Government's argument accepted by the Democrats in the last amendment was that the Commissioner required six months to prepare a report. The Minister has received his report some time in December probably of that year.

The present Bill provides that the Minister shall 'as soon as practicable after his receipt' table the report in Parliament. I will not go on at length repeating the arguments against that; suffice to say that there are a number of instances where Ministers have not expeditiously tabled 'those annual reports' in Parliament. This is a usual amendment and gives the Minister a reasonable period—14 sitting days, which is generally five sitting weeks—to present the report to Parliament.

I hope that the Government and the Australian Democrats can see the wisdom in placing at least some restriction on the reporting provision of the Minister to Parliament, having received the annual report from the Commissioner.

The Hon. C.J. SUMNER: Again, I hope that we do not get into an extensive debate on this Bill on what is a general principle. I have sympathy for what the honourable member says, but it is another case whereby introducing an amendment of this kind may make the situation worse. Rather than reports being produced immediately or as soon as practicable, there may be a bureaucratic tendency to leave the tabling of the report to the end of the expiry time. The clause as it stands at the moment is the more usual wording, that is, as soon as practicable. I ask the Committee to maintain the clause as it stands at this stage. I would be quite happy to consider a Bill put forward by the Hon. Mr Lucas, in view of his interest in this topic, which deals with the whole question of reporting of statutory authorities and Government departments, where reports are required. It might be that on a reasonable consideration of the procedure suggested by the honourable member that that might be —

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I am concerned that we consider it not in relation to a Bill where it is really a side issue, to say the least, but that we consider it in relation to a Bill where we can substantially debate the issues. As I have said, I accept and have some sympathy for the position adopted by the honourable member in relation to accountability. I am saying that in most Bills and most Acts of Parliament the procedure proposed by the honourable member is not used; the procedure used is as it is in the Bill. I am saying that we should support what is in the Bill at the moment and not get into a protracted debate about an issue which is irrelevant to the Bill, and then by all means I suggest that the honourable member should introduce a Bill which the Government and Parliament can directly address in relation to the reporting of statutory authorities. I think that is a reasonable proposition.

The Hon. K.L. MILNE: Can the Attorney indicate any other Acts which have this reporting procedure set down? I think this point is worrying everyone. I am sympathetic. However, if the amendment creates a precedent, it is better to make a change across the board, perhaps when the honourable member's report on statutory authorities is ready. I am more sympathetic toward making a change across the board rather than for one Bill, because that may not have the effect intended.

The Hon. C.J. SUMNER: I cannot answer the honourable member's question. It may be that the Hon. Mr Lucas's suggestion is already in some Bills. However, I would say that in the great majority of Bills the formulation is that which is used in the Equal Opportunity Bill that we are considering. It is certainly my impression that the great majority of Bills talk about tabling as soon as practicable and do not have a specific time limit. Although I understand what the honourable member is doing, I interpret 'as soon as practicable' as being before the five weeks suggested by the honourable member. Although he is achieving finiteness, I would think he is extending the time within which a report should be tabled under the Bill as proposed by the Government. 'As soon as practicable' seems to me to be a much shorter time than 14 sitting days. The honourable member would be giving up what is really an earlier time in order to have finiteness in the time within which the report should be produced. I do not think that there is any doubt about that. I would say that in the great majority of Acts 'as soon as practicable' is the formula that applies.

The Hon. R.I. LUCAS: In answer to the Hon. Mr Milne, a recent example concerned the legislation associated with the Commissioner for the Ageing. I moved a similar amendment, which the Government accepted, in regard to a 14 sitting day stipulation. Exactly the same provision applies in regard to legislation covering the Adelaide Festival Centre Trust, the Builders Licensing Board, the Environmental Protection Council, the South Australian Psychological Board, the State Theatre Company, SGIC, the South Australian Superannuation Board, the West Beach Recreation Reserve Trust, and the South Australian Lotteries Commission—I could go on and on. It is quite a common reporting provision in the South Australian statutes. The Attorney is correct in saying that the majority of reporting provisions in the past have used 'as soon as practicable' or 'as soon as possible'. In many instances the 14 sitting days reporting provision applies.

The Attorney's argument that by including this provision we will, in effect, extend the time for reporting is nonsense. In regard to the 'as soon as practicable' provision, if a report can be tabled within three days, that is less than 14 days, and it can be done in exactly the same way. All it requires is an attitude of public accountability from the Attorney and other Ministers to the Parliament and the people. The 14 sitting day provision simply prevents the abuse to which I have already referred that occurs in relation to a number of authorities where there is this open ended let out provision for Ministers whereby reports are not made for some 12 months following the conclusion of the reporting year.

The Hon. C.J. Sumner: Where have they not tabled them?

The Hon. R.I. LUCAS: That is right; they have not tabled them in 12 months.

The Hon. C.J. Sumner: Were they required to?

The Hon. R.I. LUCAS: No, because the 'as soon as practicable' clause applied. That can mean that matters can be left for 12 months.

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

The Hon. R.I. LUCAS: It is true: I have instanced such cases. The Attorney is wrong on that. I have put in *Hansard* already details of a number of QUANGOS in South Australia which, because of this reporting provision have not reported within 12 months. Some of them have not reported for two to three years. That has occurred because of this open ended provision.

The Hon. C.J. Sumner: Are you suggesting that reports have been prepared and not tabled for two or three years?

The Hon. R.I. LUCAS: I am saying that I know of instances where that has occurred. There are occasions where through lack of staff, so they say within QUANGOS, or lack of good organisation within those organisations they have been unable to organise reports within time.

The Hon. C.J. Sumner: Preparation of the report.

The Hon. R.I. LUCAS: Right. But equally, there are instances where the governments have used the 'as soon as practicable' let out clause to not table reports as soon as that could practicably occur.

The Hon. C.J. Sumner: For 12 months?

The Hon. R.I. LUCAS: Twelve months from the end of the reporting year to when the report was tabled, although it may well have been received within three or six months, depending on the reporting requirement. However, I will not prolong that argument. I was simply responding to a matter raised by the Hon. Mr Milne. The amendment would not be setting a precedent. A substantial number of similar

reporting provisions exist within our statutes, and I have instanced them.

The Hon. L.H. DAVIS: I want to underline the point made by the Hon. Robert Lucas. I have made similar observations on many occasions in this Chamber. I have cited the example of Broken Hill Proprietary Company Limited, which is Australia's largest company. It is required, as indeed all listed public companies on the stock exchanges of Australia are required to do, to file its annual report and its annual statements of account within a three-month period from the end of the financial year.

The Hon. C.J. Sumner: We're already debated and decided that issue.

The Hon. L.H. DAVIS: I just want to back-up the observations made by my colleague. It is time that this place recognised the importance of bringing in contemporary documents, whether in regard to Government departments or statutory authorities.

The Hon. K.L. MILNE: If we look at what happens in the Parliamentary case, the Minister has been or should have been through the report in the draft form so that by the time the report has been printed he has already seen it and been through it, I cannot see that there is any disadvantage for a Minister in having to lodge it with Parliament. He will do it eventually and the sooner that he or she does it the better. I do not see that is a great deal of inconvenience when in the procedures the Minister will have done it and been through it already. So, we are not giving any added burden to the Minister or the Department in doing that.

The Hon. C.J. Sumner: Who are you supporting now?

The Hon. K.L. MILNE: I am supporting the Opposition.

The Hon. I. GILFILLAN: For convenience, I had better signal my reaction. I hope that we will not spend a lot of time debating this; it seems a very minor issue on the whole basis of the Bill, but there may be a point. I take the lead from the Attorney. I have an obligation: it is the Government's Bill. If it is a pettifogging argument, I do not want to get involved in it. He has made a point (I do not know whether it is just opposing debate) and so has the Hon. Robert Lucas. I am in a dilemma. I intend to vote with the Government.

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14—'Immunity from liability.'

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

Page 5, lines 19 and 20—Leave out 'or purported exercise, or the discharge, or purported discharge' and insert 'or discharge'.

This would mean that the clause would read:

No personal liability shall attach to the Commissioner for an act or omission on his part in good faith and in the exercise or discharge of his powers or duties under this Act.

There has been a constant debate about whether or not 'purported' ought to be in there in respect of the exercise and discharge. In some circumstances it is appropriate to leave 'purported discharge' in there. We have generally moved to the position where with tribunals we do not include it, and in some cases with investigators or commissioners. In this instance I believe that it is inappropriate for the Commissioner to have this protection, and that she ought to have the protection only when she is acting in good faith and in the exercise and discharge of her powers and duties.

The Hon. C.J. SUMNER: I am a bit bemused by the honourable member's amendment in this case. The clause that has been drafted is the normal protection given to statutory office holders in the exercise of their duties. Honourable members are really limiting the protection they give to the Commissioner if they accept the amendment moved by the Hon. Mr Griffin. It is always assumed, when we talk about purported exercise, that that is an exercise within the authority of the Commissioner within the Act and *bona fide*. However, if one removes those words, as the honourable member seeks to do, one is definitely restricting the immunity which the Commissioner has and which other statutory office holders in these circumstances have had.

The Hon. K.T. GRIFFIN: There has been some debate about it over the past few years, but my point has always been (although I have tended to compromise on it from time to time) that strictly a person with the powers of a Commissioner should have no personal liability where that person acts in good faith and in the exercise or discharge of powers or duties granted by the Act.

I have always argued that 'purported exercise' or 'purported discharge' being included means that if the Commissioner acts in good faith but acts outside the powers and duties granted under the Act, the fact that the Commissioner has acted in good faith is, in the context of what the Bill provides, sufficient to give immunity.

I say that where there are wide powers it should only be in exceptional circumstances that that additional immunity is given where a Commissioner acts outside his or her powers or duties granted under the Act and that ordinarily the community ought to be able to expect that the Commissioner acts within that power. That is the argument, and I do not think it is limiting the power of the Commissioner in any way.

The Hon. C.J. Sumner: You mean the immunity?

The Hon. K.T. GRIFFIN: It means that the Commissioner has to be careful how she acts and ensures that the Commissioner is acting in accordance with the powers and duties conferred by the legislation.

The Hon. C.J. SUMNER: It will leave the Commissioner who has acted in good faith in discharge of her duties but who subsequently turns out to be acting outside the power given to the Commissioner by the Act liable to potential personal liability. That is the effect of the honourable member's amendment, because he says that the Commissioner must act both in good faith and in the exercise of the powers or duties. So, if the Commissioner acts in bad faith, but in the exercise of the powers and duties under the Act, then personal liability might attach, or if the Commissioner acts in good faith but has misinterpreted her powers under the Statute and therefore does not act within the authority given to her by the Statute, again personal liability would attach.

That is really a very onerous obligation to place upon the Commissioner and it could be quite a deterrent to the Commissioner's carrying out her duties under the Act. If at every point in time she must stop and get legal opinions on what she is doing I believe it does take away the immunity which she needs to properly carry out her responsibilities under the Act.

The Government's drafting would mean that, if the Commissioner acted in good faith but outside her powers for some reason, no personal liability would attach, and I believe that that is a reasonable position.

Amendment negatived; clause passed.

Division II—The Anti Discrimination Tribunal.

The Hon. K.T. GRIFFIN: In the light of the amendment that was carried earlier to change the title of the Tribunal to the Equal Opportunity Tribunal, I move:

Page 5, line 24—Leave out 'Anti Discrimination' and insert 'Equal Opportunity'.

Amendment carried; heading to Division II as amended passed.

Clause 15—'The Tribunal.'

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

Page 5, line 25—Leave out 'Anti Discrimination' and insert 'Equal Opportunity'.

This amendment is also consequential on the change of name of the Tribunal.

Amendment carried; clause as amended passed.

Clause 16—'Presiding Officer and Deputy Presiding Officers.'

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

Pages 5 and 6—Leave out paragraph (a) of subclause (4) and insert paragraph as follows:

(a) he shall be appointed—

(i) if he is the first, or one of the first, to be appointed — for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment;

and

(ii) in any other case — for a term of office of three years, and, upon the expiration of his term, shall be eligible for re-appointment.

This clause deals with the Presiding Officer and the Deputy Presiding Officers. The Bill provides that a person who is appointed to the position of Presiding Officer or Deputy Presiding Officer is to be appointed for such term of office not exceeding three years as the Govenor may determine, specified in instrument of appointment. That means that the Presiding Officer can be appointed for one year, two years, or three years—not just for the first period of office but also for subsequent periods of office. While I am prepared to agree to appointment for a period that is shorter than three years in the first instance, I believe that the officers of the Tribunal should be appointed for fixed terms thereafter. The Law Society would prefer to see the Presiding Officer appointed for seven years in order to give security of tenure. Its submission stated:

It is vital for the successful operation of the Act and for its acceptance by the community that the body called on to exercise the wide and potentially intrusive powers conferred by clause 92 of the Bill have at least the following characteristics:

(a) a refined sense of justice in order to perceive the signs and symptoms of objectionable discrimination;

(b) an independence which secures it against all matter of subtle and not so subtle pressures exerted by various sections of the community and which ensures that it has and retains the confidence of the whole community;

(c) a security of tenure that enables its members in a spirit of sensitivity and impartiality to develop a consistent jurisprudence for the orderly administration of the Act and to apply it with ever increasing confidence and understanding.

The Law Society made the point that short periods of tenure of office do not give that independence which is necessary, and I mentioned that in my second reading contribution. At least, if we can get to the point of fixed terms, we are part of the way towards ensuring that Presiding Officers and members of panels are less susceptible to influence because of their desire to be reappointed if they perform or display particular qualities. The amendment provides for the initial term of office to be for a period not exceeding three years, allowing staggering in retirements: thereafter there will be fixed terms of three years.

The Hon. K.L. MILNE: I indicate that the Democrats will support this amendment. It is similar to something we had in mind ourselves and we see no reason to change our position.

The Hon. C.J. SUMNER: It seems at though the Hon. Mr Griffin was not being particularly vigilant when he introduced the Handicapped Persons Equal Opportunity Act. Of course, this clause is a direct take from section 12 of that Act and section 8 (1) of the Sex Discrimination Act. The Government picked that up and felt that the Hon. Mr Griffin had done such a good job in introducing the Handicapped Persons Equal Opportunity Act and, as he considered that it was quite appropriate to have a clause of this kind in that Act—

The Hon. I. Gilfillan: This isn't helping. Attorney, you are wasting time.

The Hon. C.J. SUMNER: I am trying to inject a little humour into the situation.

The Hon. I. Gilfillan: That's impossible.

The Hon. C.J. SUMNER: I would not worry about it. I would also like to point out that the Law Society apparently was not as vigilant in 1981 as it was on this occasion.

Amendment carried.

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

Page 6, lines 10 to 13—Leave out paragraph *(a)* and insert paragraph as follows:

(a) he shall be appointed—

(i) if he is the first, or one of the first, to be appointed—for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment;

and

(ii) in any other case—for a term of office of three years,

and, upon the expiration of his term, shall be eligible for reappointment.

This amendment involves the same principle.

Amendment carried; clause as amended passed.

Clause 17—'Panel.'

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

Page 6, line 33—Leave out 'by the Presiding Officer or a Deputy Presiding Officer'.

I would like to suggest that this was consequential on the amendment that I moved to the definition clause to include a definition of 'Senior Judge'. The reason for including the Senior Judge, as I explained at that time, was, among other things, that it be an independent person somewhat removed from the day to day operation of the Tribunal to select persons to sit on particular tribunals—remembering that there may be more than one tribunal sitting at any one time on different matters. My amendment is designed to follow up that amendment, which would put the responsibility for selection of persons to sit on tribunals with the Senior Judge.

The Hon. C.J. SUMNER: Once again, I think that this is one of those nonsensical amendments, but I have not said that about every amendment that has been moved. Honourable members would agree that involving the Senior Judge in this procedure is really a ludicrous proposition.

The Hon. K.T. Griffin: That's not so, and you know it.

The Hon. C.J. SUMNER: It is utterly inappropriate. As I said before, I do not know why the honourable member wants to bring the Senior Judge into this procedure: he has enough to do as it is. In any event, it does not add anything. There will be a Presiding Officer on this Tribunal who should have the responsibility and who should not be subject to being told what to do by the Senior Judge. It is just not appropriate. If one wants to make it broad, as I said in a previous debate, and if one wants to go into the question of whether all these tribunals should come under the Local and District Criminal Courts, that is fine. However, it is a discreet and separate tribunal and it should be treated as such. However, I agree that for some obscure reason earlier in the debate the Senior Judge got into the Act, so I guess that there is not much I can do about it. However, I indicate that I oppose the amendment which to some extent, in any event, is independent of whether or not the Senior Judge is written into the Act.

[*Midnight*]

The Hon. I. GILFILLAN: By way of clarification, I understand from the Attorney-General's remarks that he is taking this amendment as a *fait accompli.* I do not understand the connection.

The Hon. C.J. SUMNER: As I understand it, the honourable member argued previously to insert in the definition clause the definition of 'Senior Judge'. As part of the argument he said that the Senior Judge should have certain responsibilites, one being to select the people who should be on the Tribunal. The amendment that the Hon. Mr

Griffin now moves is to take away from the Presiding Officer or Deputy Presiding Officer the power to select the people in the Tribunal. That was part of the argument he put when dealing with the definition of 'Senior Judge' and I assume that, as the Committee accepted his amendment on that, it also accepted the argument upon which the amendment was based. That may not be the case.

The Hon. K.T. GRIFFIN: The initial appointments of Presiding Officer and Deputy Presiding Officers and the 12 members of the panel are made by the Governor in Council, which means that the Government makes those appointments, but in the day to day determination of who will sit on what cases, who will be the Presiding Officer and the two members of the panel for a particular case, where there is real potential for partiality, I am seeking to remove the responsibility for appointment or selection for a particular tribunal from the Presiding Officer to the Senior Judge. That is where my earlier comments are relevant to this clause.

Amendment carried.

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

Pages 6 and 7—Leave out subclause (2).

I notice from various amendments circulated that the Hon. Lance Milne shares my view that subclause (2) ought to be removed. This is the provision to which I made specific reference in my second reading speech and which refers to the persons whom the Minister is to select for appointment to the panel of 12 persons. The subclause provides:

(2) In selecting nominees for appointment to the panel, the Minister shall ensure that each nominee has expertise that would be of value to the Tribunal in dealing with the various classes of discrimination to which this Act applies and shall have regard to—

(a) the experience;
(b) the knowledge;
(c) the sensitivity;
and
(d) the enthusiasm and personal commitment,

of those who come under consideration.

I made the point then, and reiterate now, that it appears very much as though there is to be some initial bias in the panel. If that is not the position it certainly appears to be. The Law Society again made a comment in relation to clause 17 (2)*(d)* on 'enthusiasm and personal commitment' and stated:

This criterion is a veiled authorisation to 'weigh' the panel in favour of complainants. Even if it be thought that this legislation requires something of a pioneering spirit (and that may certainly be justified in the case of the Commissioner, see clause 10), it is totally incompatible with the necessary judicial impartiality and independence demanded of a body that is committed to doing justice according to law rather than to sentiment; the more so because of the powers conferred on this Tribunal.

That sums up my position on subclause (2) and I thus move to delete it.

The Hon. C.J. SUMNER: I have the strongest possible objection to the removal of subclause (2). I will concede and am quite happy to move an amendment to delete paragraph *(d)* relating to enthusiasm and personal commitment.

The Hon. I. Gilfillan: I have that on file.

The Hon. C.J. SUMNER: I am happy to support that amendment. I think that was what the Hon. Mr Griffin mainly directed his attention to during the second reading debate. It is absolutely inappropriate to remove subclause (2) altogether. Under the existing legislation we have a requirement that one of the members of the Handicapped Persons Equal Opportunity Tribunal should be a person with a substantial physical impairment; on the Sex Discrimination Tribunal—

The Hon. K.L. Milne: That is a different thing altogether.

The Hon. C.J. SUMNER: If the honourable member has not yet realised that this Tribunal is to replace those two tribunals, then we are in some difficulty. The Sex Discrimination Tribunal is required to have at least one woman on it; with respect to the Handicapped Persons Equal Opportunity Tribunal, at least one person with a substantial physical handicap must be on it. What is meant by subclause (2) is that the persons nominated to the particular panel should have what is called 'expertise' in the area, at least. In some sense it is already a watering down of the provisions of the existing legislation. But to suggest that on a panel constituted to hear cases involving handicapped persons one should put on that tribunal, if one does not want bias or anything, people who have been nominated because they have some feeling, expertise or knowledge in the area of racial discrimination or ethnic minority groups, seems to me to be an absurdity.

Therefore, we should have in the legislation at least some guidance for the person (who is now going to be the Senior Judge—even more removed from the Tribunal itself) who is to select the Tribunal. One will have the situation of the Government nominating 12 persons to the panel, some of them being persons presumably who will be nominated with physical handicaps, some because of their expertise in the area of race relations, and some because of their interest in the issues of sex discrimination. That is what will happen. Then, not to require the panel selected for a particular hearing to reflect that expertise, I believe, undercuts the Bill. If the Senior Judge were then to select, as he would be entitled to—

The Hon. K.T. Griffin: That is clause 20. We are talking about how the Minister selects the panel.

The Hon. C.J. SUMNER: Then the argument is even stronger. Surely the Government should have the responsibility for appointing people with expertise in these fields. One cannot pluck people out of the air from the community with no interest or expertise in the area. Obviously, we will be appointing people with some expertise in the areas of racial discrimination and sex discrimination. That is what happens under the existing Tribunal. Although I am prepared to concede the deletion of paragraph *(d)*—I accept the arguments put by the honourable member in debate on that point—I feel that the deletion of the remainder of the subclause is really not consistent with the objects of the Bill.

The Hon. K.L. MILNE: I see the argument that the Attorney is putting. One can see from the Hon. Mr Gilfillan's amendment that he would like to get rid of the word 'sensitivity' and the words 'enthusiasm' and 'personal commitment'. I think that that has some relevance. I see what the clause is meant to do. However, I would have thought that that was handled in clause 20 (2), on page 7. I do not think that there is any necessity for this amendment, which is just overstressing the point about which experts should be on the panel.

The Hon. Anne Levy: Clause 20 involves selecting them from the panel—you must have the panel first.

The Hon. K.L. MILNE: I am prepared to consider a rewording of this clause. I would prefer the clause to be redrafted and recommitted later, because it does not make sense to me at present. It does not describe what the Attorney-General is trying to do.

The Hon. Anne Levy: Have you read it?

The Hon. K.L. MILNE: Many times, and discussed it with a number of people. It makes sense to some of those people and not to others. I am prepared to consider its being recommitted.

The Hon. I. GILFILLAN: I believe that there is reason for the clause. I intend to move an amendment to remove

what I think are unnecessary criteria from the Bill. I will be looking for support for that amendment.

The CHAIRMAN: The Hon. Mr Griffin has moved to delete that part of the subclause down to the words 'regard to' in line 38, where the Hon. Mr Gilfillan's amendment starts.

The Hon. K.L. MILNE: I want the clause deleted, unless it is redrafted.

The CHAIRMAN: That is what we are attempting to do. We are attempting to delete the subclause down to the words where the Hon. Mr Gilfillan's amendment commences. If the Hon. Mr Gilfillan's amendment is not then accepted we will delete the rest of the clause and both you and Mr Griffin should then be satisfied.

The Hon. I. GILFILLAN: I want to strike out the whole of the subclause.

The Committee divided on the amendment to strike out lines 35 to 38 in subclause (2):

Ayes (10)—The Hons M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, K.T. Griffin (teller), Diana Laidlaw, C.M. Hill, R.I. Lucas, K.L. Milne, and R.J. Ritson.

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

Pair—Aye—The Hon. J.C. Burdett. No—The Hon. J.R. Cornwall.

Majority of 1 for the Ayes.

Amendment thus carried.

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

Page 6, lines 39 to 43—page 7, line 1—To strike out all words in these lines.

Amendment carried.

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

Page 7, lines 2 to 5—Leave out subclause (3) and insert subclause as follows:

(3) A member of the panel shall be apointed—

(a) if he is one of the first to be appointed—for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment; and

(b) in any other case—for a term of office of three years, and, upon the expiration of his term of office, shall be eligible for reappointment.

This has already been decided, because it relates to the period of office of members of a panel; that is, the initial period of appointment up to three years and thereafter fixed terms.

Amendment carried; clause as amended passed.

Clauses 18 and 19 passed.

Clause 20—'Constitution of the Tribunal for the hearing of proceedings'.

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

Page 7, lines 35 and 36—Leave out 'presiding officer or a deputy presiding officer' and insert 'senior judge'.

Again, this is part of the package of responsibilities that I am seeking to give to the senior judge; that is, instead of the presiding officer selecting two members from the panel to sit on the Tribunal, that responsibility is given to the senior judge. I have already explained the amendment in detail.

The Hon. C.J. SUMNER: I believe this is one of the sillier amendments put up by the Opposition. I have argued it before. I can do no more than formally oppose the amendment at this stage.

Amendment carried.

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

Page 7, lines 38 to 41—Leave out subclause (2).

This amendment relates to the selection of members from the panel for a particular hearing. I relate it to clause 17 (2). To a very large extent I think that the senior judge in making the selection should be able to choose on a roster basis from those who are available to sit on a Tribunal.

The Hon. C.J. SUMNER: If I considered the honourable member's previous amendment silly, I am afraid that I have run out of expletives for this one. I know the issue has been debated before in relation to clause 17 and similar principles. However, I find it extraordinary, in relation to a Bill which is to replace the Handicapped Persons Equal Opportunity Act and the Sex Discrimination Act, in which there are specific provisions to include representatives of the physically handicapped and women, that the Opposition is now depriving those groups of representation.

If the senior judge selected, for instance, a panel comprising a male president and two male panel members in a sex discrimination case involving a woman, there would be uproar in the community. A similar situation would apply concerning a complaint in relation to the handicapped. The honourable member does not understand the realities of the legislation. He should know from his contact with disabled people that it is done on a rotational basis. If a complaint of discrimination based on a physical disability came before the Tribunal and the two panel members selected on a rotational basis had expertise in race or sexual discrimination, there would be an uproar.

The Hon. K.T. Griffin: I don't agree with that.

The Hon. C.J. SUMNER: The honourable member agreed with it when the equal opportunity legislation was passed. The idea is very simple: instead of having three separate panels there is one panel; where previously there was a person on the panel who had a physical handicap and someone else, there is now the president, and a similar situation applies in relation to a sex discrimination matter under the Sex Discrimination Act.

The Hon. K.T. Griffin: You need three panels.

The Hon. C.J. SUMNER: We do not need three panels.

The Hon. R.J. Ritson: Why not try a court?

The Hon. C.J. SUMNER: It is a court—it is a Tribunal. The practical consequences of the honourable member's amendments are such that the Tribunal's findings will not be given any weight by those in the community who are concerned about discrimination.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: The honourable member can go out and ask any of the disabled people he has had considerable dealings with in the community over the past five years whether they will be satisfied with a Tribunal which potentially, because of the honourable member's roster system, will end up—

The Hon. K.T. Griffin: It would be no roster system. I was speaking generally.

The Hon. C.J. SUMNER: On your suggestion you would end up with two people placed on the panel because of their expertise in racial actions. It will not be accepted this is a retrograde step in terms of legislation that we already have in place.

The Hon. K.L. MILNE: On behalf of the Democrats I want to move an amendment at the appropriate time to subclause (2).

The CHAIRMAN: The Hon. Mr Griffin has moved to delete the whole of the clause, but the Hon. Mr Milne can move his amendment.

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

Page 7, line 39—Leave out 'presiding officer or deputy presiding officer' and insert 'senior judge'.

The Hon. K.T. GRIFFIN: I accept the amendment. It is consequential on the matter for which I successfully gained support earlier. As the Hon. Mr Lance Milne has indicated that he prefers to leave in subclause (2), I will not proceed with my amendment. I do not accept the criticism made by the Attorney by way of interjection. I indicated that diffi-

culties will occur in trying to get tribunals to deal with different areas of discrimination covered by the Bill and in trying to get the tribunals from one panel. As I indicated at the second reading stage, it would appear that it would be better to identify the people who will hear certain sorts of complaints of discrimination rather than to give a particular officer the right to select. It is the selection process which suggests that there is a preference which is not proper in the context of a *quasi*-judicial tribunal's responsibilities. That is the point that I am making.

The Hon. Anne Levy: And expertise is not relevant?

The Hon. K.T. GRIFFIN: Of course expertise is relevant. As I have indicated, I will not proceed with my amendment.

The Hon. K.T. Griffin's amendment withdrawn.

The Hon. K.L. Milne's amendment carried; clause as amended passed.

Clause 21—'Conduct of proceedings.'

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

To leave out subclause (2).

I heard the debate on the way through, but I would like to have it explained again. I cannot see why the rules of evidence should not apply to this set of circumstances in the Tribunal. What we are trying to do is not perhaps ultra cautious but very cautious indeed, and rightly so in this Bill, which is quite extraordinary in parts.

We should abide by normal rules where possible. The Attorney said that this is a usual matter; the Tribunal normally in this kind of Act would not be bound by the rules of evidence, but I do not understand the significance of it. It sounds wrong to me, and unless I have an explanation that I can accept I will move my amendment.

The Hon.C.J. SUMNER: A clause similar to clause 21(2) is found in legislation, probably more commonly now than it was. A similar clause is in the Industrial Conciliation and Arbitration Act, for instance, and the Industrial Court may inform in that manner. It is not bound by the rules of evidence.

The Hon. K.L. Milne: What does that mean?

The Hon. C.J. SUMNER: It means that one is not strictly bound by the laws relating to hearsay or to relevance, although I do not imagine that a judge would tolerate irrelevancies. It primarily means that one is not put to all the strict rules of evidence that apply in a criminal case, for instance, where the liberty of the subject is at stake, and the case must be proved in all its particulars by direct evidence. It means that in a normal criminal case, for instance, one may not give hearsay evidence. It may be that in a case such as this one can in certain circumstances; the judge might accept certain hearsay evidence. With respect to the proof of documents, procedures are set out in the Evidence Act which have to be strictly adhered to in a criminal trial, but which may not have to be in a case before this Tribunal. This is the situation in the Industrial Court. It is also the situation under the Handicapped Persons Equal Opportunity Act, which was introduced in 1981.

The Hon. Diana Laidlaw: And the Sex Discrimination Act.

The Hon. C.J. SUMNER: Yes. It is also in section 77 of the Commonwealth Sex Discrimination Act; so it is not an uncommon law. It is in the industrial arena.

The Hon. K.L. Milne: It is in the Acts that are now coming in?

The Hon. C.J. SUMNER: Yes. It means that one is not bound strictly by the rules of evidence that are primarily applicable in a criminal case.

The Hon. R.J. RITSON: I address some remarks through you, Sir, to the Hon. Mr Milne on this subject. What the Attorney-General says is true: in many areas of administrative law there are short cuts before tribunals and boards by which lawyers and rules of evidence are dispensed with.

The Hon. C.J. Sumner: And in courts: in the Industrial Court.

The Hon. R.J. RITSON: Yes, but particularly I do not want distraction from the Leader at the moment; I want to complete a sentence. In many areas of administrative law where boards and QUANGOS deal with citizens' rights, the rules of evidence and rights of representation by lawyers are dispensed with for one reason only—it is said that this gives citizens a chance for simple, quick and cheap solutions to their disputes. In many cases, this is so.

I do not necessarily dispute the question that this Tribunal, along with other similar ones, should have those short cuts, but the Hon. Mr Milne has raised a genuine concern, because in so many of these other administrative *quasi* judicial bodies there is a right of full appeal to the court. So that where the expedient solution to a simple dispute fails, the disputants have the opportunity to have justice before the court as of right—a full appeal. I believe that the shadow Attorney-General (Mr Griffin) will argue later in this debate that such should be the case here.

So, I say to the Hon. Mr Milne that I do not necessarily object to the short cuts in this case, but I ask him, when we come to the question of rights of full appeal to the Supreme Court, to consider the arguments that will be advanced by the shadow Attorney-General so that this QUANGO that takes the short cuts, abandons the rules of evidence, does not give the right of legal evidence, and has the right of awarding unlimited damages, is a QUANGO from which one could have full right of appeal to the Supreme Court. I accept the Hon. Mr Sumner's argument but I do ask the Hon. Mr Milne to consider the arguments on right of appeal when the Hon. Mr Griffin raises them.

The Hon. K.T. GRIFFIN: I am not inclined to support the Hon. Mr Lance Milne because, as the Attorney-General said, this form of words has been incorporated in a number of pieces of legislation—in particular the Sex Discrimination Act and the Handicapped Persons Equal Opportunity Act. It is correct that in the Industrial Court a similar provision applies. As I understand it, there are rules established for the conduct of proceedings (and that is something to which I will address some remarks shortly on another amendment). It is important to have some rules of procedure established so that the parties know the basic framework within which they will operate.

The submission from the Law Society addresses this in some detail. I do not intend to incorporate that in *Hansard,* but merely say that the view expressed in that submission by the Law Society was that there is an obligation on the Tribunal to act judicially and that it is still required to apply the principles of natural justice. While the Tribunal may inform itself of any matter in such manner as it thinks fit, the principles of natural justice would not be satisfied unless the parties knew what the Tribunal was proposing to use for the informing of its mind with the opportunity to protest against or to criticise the manner being proposed.

I accept that they are basic principles which are applicable even in the context of the subclause which is under debate at the moment. I pick up what the Hon. Dr Ritson has indicated, and that is that there has to be an adequate right of appeal, in this instance to the Supreme Court. That again is a matter that we will address at a later stage of the Committee consideration of the Bill. I am anxious to widen that right of appeal to ensure that this very point is covered in the initial proceedings of the Tribunal. The clause is sufficient provided that in the course of the debate we give adequate rights of appeal.

The Hon. K.L. MILNE: I thank honourable members for their explanations. I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

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

Page 8, line 20—After 'this Act' insert 'and any directions of the Senior Judge'.

This amendment picks up the point I made about rules of conduct and procedure. A later amendment will empower the Senior Judge to make rules, as he does under the Local and District Criminal Courts Act. I believe it is important to have some directions and rules, and that is why I seek to include in this clause a reference to the directions of the Senior Judge.

The Hon. C.J. SUMNER: This is part of the old argument, which I have lost. I will not call for a division.

Amendment carried; clause as amended passed.

Clause 22 passed.

The Hon. C.J. SUMNER: I will not proceed with new clause 22a at this stage. I will give further consideration to this matter when the Bill is dealt with in the House of Assembly.

Clauses 23 to 26 passed.

Division II—Discrimination by employers.

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

Page 13, line 1—Leave out 'by employers' and insert 'in employment'.

There was a feeling amongst employer groups that the use of the words 'by employers' was not satisfactory in that it appeared to be negative, as if the Bill was aimed at employers, which it is not. My amendment adopts more neutral language.

The Hon. K.T. GRIFFIN: I support that. I have the same amendment on file. It is more appropriate that the words 'in employment' be used.

Amendment carried.

Clause 27 passed.

Clause 28—'Discrimination against applicants and employees.'

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

Page 13, line 3—After 'determining' insert ', or in the course of determining,'.

This amendment is designed to align the Bill more closely with the arguably wider language of section 27, dealing with application forms, and section 14, dealing with discrimination against applicants and employees, of the Commonwealth Act.

The Hon. K.T. GRIFFIN: I support that.

Amendment carried.

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

Page 13, line 5—After 'terms' insert 'or conditions'.

This amendment is consequential.

Amendment carried.

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

Page 13, after line 6—Insert new paragraph as follows:

(aa) in the terms or conditions on which he employs the employee;

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 29—'Discrimination against agents.'

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

Page 13, line 16—After 'determining' insert ', or in the course of determining,'.

This is again designed to align the Bill with the Commonwealth Act, particularly sections 27 and 15, dealing with commissioned agents.

Amendment carried.

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

Page 13, line 18—Leave out 'on which he engages' and insert 'or conditions on which he offers to engage'.

This is part of the same argument.

Amendment carried.

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

Page 13, after line 19—Insert new paragraph as follows:

(aa) in the terms or conditions on which the agent is engaged;

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 30—'Discrimination against contract workers.'

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

Page 13, after line 33—Insert new paragraphs as follows:

(aa) in the terms or conditions on which he allows the contract worker to work;

(aab) by not allowing him to work;

Again, this is designed to align the Bill with the Commonwealth Act, particularly section 16, dealing with contract work.

The Hon. K.T. GRIFFIN: I support it.

Amendment carried; clause as amended passed.

The Hon. C.J. SUMNER: I take the opportunity of thanking honourable members for their contributions tonight. I think that we have, with one or two very minor exceptions, including a transgression or two of my own, managed to deal with the Bill in a rational and a well argued way, given the conflicting viewpoints that there have been on the issues that have been before us. I thank honourable members for that and I look forward to seeing them tomorrow to resume the consideration.

The CHAIRMAN: I would like to thank them, too.

Progress reported; Committee to sit again.

ROAD TRAFFIC ACT AMENDMENT BILL (No. 3)

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

ADJOURNMENT

At 12.50 a.m. the Council adjourned until Thursday 1 November at 2.15 p.m.