LEGISLATIVE COUNCIL

Thursday 1 November 1984

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

PAPER TABLED

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

Pursuant to Statute—

Legal Services Commission of South Australia—Report, 1983-84.

QUESTIONS

FREEWAYS

The Hon. M.B. CAMERON: Has the Minister of Agriculture, on behalf of the Minister of Transport, a reply to a question I asked on 19 September concerning freeways?

The Hon. FRANK BLEVINS: The Minister of Transport advises that, in view of the importance of promoting uniformity in road traffic legislation throughout Australia, the States use the National Road Traffic Code for guidance. At present the code does not contain a requirement that motorists must use the left lane on multi-laned roads except when overtaking. The matter has been considered on a number of occasions at a national level. However, the provision of such a requirement in the code has not been recommended.

This decision follows extensive studies undertaken by the National Roads and Motorists Association and the Office of Road Safety in Canberra, which indicated that the advisory signs such as 'Use Left Lane Except When Overtaking' or 'Keep Left Unless Overtaking' were sufficient to cause the majority of motorists to actually keep left unless overtaking or preparing to execute a right turn. In addition, it was also recognised that most States, including South Australia, have provision in their traffic laws to enable the police to take action with respect to drivers who fail to show reasonable consideration for other road users. A driver travelling in the right hand lane could, if he were interfering with the movement of other traffic, be prosecuted under section 45 of the Road Traffic Act which states that 'a person shall not drive a vehicle without due care or attention or without reasonable consideration for other persons using the road'.

My colleague has been given to understand that in the European situation there is now a trend not to insist that drivers travel on the inside lane of a multi-laned road as it has proved to be difficult to police and is not cost effective from a safety point of view. Even so, the Minister intends to raise the matter again with Federal authorities and at ATAC.

Although it would be inappropriate for South Australia to act unilaterally, my colleague has called for a further review of the matter and the Transport Department is currently conducting this investigation. If mandatory requirements are thought inadvisable, a programme of publicity, additional courtesy signs, and campaigns of enforcement of the appropriate rules under section 45 of the Act will be drawn up to ensure that driver behaviour in this area is improved.

The Hon. M.B. CAMERON: I have a supplementary question. What European countries are now not insisting that drivers travel on the inside lane? Do they include Germany, Great Britain and France? Will the Minister supply the information on which he based his reply?

The Hon. FRANK BLEVINS: I shall be very happy indeed to refer the honourable member's question to my colleague in another place and bring back a reply as soon as possible.

FINGER POINT SEWAGE WORKS

The Hon. M.B. CAMERON: Has the Minister of Agriculture a reply to the question I asked on 13 September about the sewage treatment works at Finger Point?

The Hon. FRANK BLEVINS: Sufficient funds are not available in the Engineering and Water Supply Department's Capital Works Programme to construct a sewage treatment works at Finger Point owing to the need to provide for other priorities. Other methods of funding the project have been considered, including the Commonwealth Government's Community Employment Programme. The project, however, would not meet the management and labour intensity criteria necessary for funding under that scheme. In these circumstances, the present methods of protecting public health in the vicinity of the disposal point will continue for the foreseeable future.

PARADENTAL COURSES

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about paradental courses at the Gilles Plains TAFE college.

Leave granted.

The Hon. J.C. BURDETT: Last night's *News* carried a story about quite a large number of courses at the Gilles Plains TAFE that have been axed, even though some of them are partly completed. That is rather extraordinary. My interest relates to paradental courses. The first course I refer to is for dental hygienists, which is the only course of its kind in Australia. It is a 15-month course with only about 12 students at a time. There is a severe shortage of dental hygienists in the community and the shortage will be greater if funding cannot be reinstated so that a new intake begins in February 1985.

The other course involved that I understand has been cancelled is the post trade dental technicians course. Twelve students have given up two nights a week for two years and have completed six terms, with only one more term to be completed to finish the course. They have been cut off, having done all that work. I am informed that to reinstate the hygienists course will require $3 300, and to complete the post trade dental technicians course will require $1 700. I am told that the course for dental prosthetists, for technicians to deal directly with the public—a course which was the subject of Bills before the Council and a Select Committee report and which is self funding—has not been cancelled. One would expect that to be the case, as it is self funding.

I am informed that one of the large problems at Gilles Plains has related to energy, in short, its electricity bill, and that the whole amount in issue in regard to these courses is $50 000. First, will the Minister confirm that the course for the technicians who are to deal directly with the public has not been cancelled and that it is proceeding? Secondly, in regard to the dental hygienists course and the post trade dental technicians course, will the Minister, as a matter of urgency, make representations to see that the public is not deprived of persons trained in these areas and that the courses are reinstated as soon as possible?

The Hon. J.R. CORNWALL: The answer to both of those questions is 'Yes'. I can confirm that the dental prosthetist course, which is being conducted, albeit indirectly, on a user pays basis, will proceed. With regard to the other matters

that the honourable member has raised in some detail, at this stage I have not been officially informed, so that I am most certainly no better informed of the details than is the honourable member who raises the question. However, as with the question of speech pathologists, for example, which was raised by the Hon. Dr Ritson a couple of weeks ago, I will certainly take whatever action is deemed desirable and I will make whatever representations may be necessary to ensure that the two courses to which the Hon. Mr Burdett referred specifically (that is, the dental hygienist course and the post-trade dental technician course) are reinstated as soon as possible.

There has been some cut of funding, obviously, to the Gilles Plains college. The question of how the college lives within the allocated budget is substantially a matter for the council of that college. The question of funding is primarily a matter for the Federal Government, but neither of those things alters the fact that we need, certainly, as the Hon. Mr Burdett said, to continue to train dental hygienists. On the face of it, at least, the decision, which will apparently disadvantage those people who are already in the post-trade dental technician course (and only relatively small amounts of money are involved) does not seem to be either wise or desirable.

COSTIGAN REPORT

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

Leave granted.

The Hon. K.T. GRIFFIN: At lunch time today the final Costigan Report—

The Hon. C.J. Sumner: I will give a statement on it.

The Hon. K.T. GRIFFIN: I will ask the Attorney-General a question about it. Today, at lunch time, the Costigan Report was released publicly in Victoria, that is, those parts of it that are able to be published. In that part which has been published is a 62 page section, 'Extortion in South Australia', which relates to some investigations that Mr Costigan made in South Australia into the Ship Painters and Dockers Union, which he concluded had a core membership now of something like 20 to 25 members. He found that in South Australia the branch was involved in workers compensation frauds, fraudulent use of false names, addresses and dates of birth, social security and taxation frauds, and extortion rackets, that extortion being in the nature of holding shipowners to ransom when ships are in port and unable to leave without work being undertaken by that union. As a result of that blackmail, large sums of money changed hands to buy the release from port of those ships. That is a matter of some considerable concern to us in South Australia, because of the fact that we are trying to develop our port facilities and encourage shippers to use Port Adelaide as against Portland and the port of Melbourne.

A significant concern is that the Costigan Report that has been released contains findings of extortion and criminal acts which are against both State and Federal law. A number of solutions could probably be suggested to overcome the problem. The first is the establishment of a joint Federal/State task force comprising police and lawyers, to put together the appropriate material that is necessary to launch a series of prosecutions for breaches of both State and Federal law. Secondly, a solution which will protect the Port of Adelaide is to move for deregistration of that union.

In the light of the report and the very serious findings that Mr Costigan has made public in relation to the South Australian activities of the union, will the Attorney say, first, whether the State Government would be prepared to initiate actions through the Federal Government to deregister that union and, secondly, whether the Government would support a joint Federal/State task force including police and lawyers with a view to prosecuting members of the union for the breaches of State and Federal laws which Mr Costigan highlighted in the published reports and which may well have been developed more fully in the unpublished volumes?

The Hon. C.J. SUMNER: I had intended to indicate at the beginning of Question Time that the Costigan Report was today tabled in the House of Assembly by the Premier following suggestions that it should be tabled in this Parliament. The Commonwealth Government indicated that it would like that to happen, and made that request to the South Australian Government. The Premier has tabled the report and the House of Assembly has authorised the publication of the Costigan Report, being the same report that was tabled in the Victorian Parliament. I believe that that has overcome any potential difficulties with privilege that the media might have been concerned about in South Australia.

In regard to the honourable member's questions, I point out that the full Costigan Report has only just come to hand: some of it has been tabled and made public. A number of things may flow from the report. Certainly, the Inter-Governmental Committee will consider any further action that may be required by way of references to the National Crime Authority. A special meeting of the Inter-Governmental Committee will be held in December to consider whether any references are requested by the National Crime Authority following the tabling of the report. Of course, it will be for the National Crime Authority to make recommendations to the Inter-Governmental Committee, but we have taken the precaution of scheduling a meeting in December to consider proposed references by the National Crime Authority.

With respect to other action that may occur, either prosecutions within South Australia or joint State/Federal task forces, decisions in that regard will have to await a full study of the report that has been tabled. Likewise, any action to deregister a union that might be referred to in the report, including the Ship Painters and Dockers Union in South Australia, is a matter that would have to be considered following a full perusal of the report and, indeed, the evidence upon which any conclusions that Mr Costigan came to are based.

In summary, the Inter-Governmental Committee will consider the Costigan Report after it has been considered by the National Crime Authority. The State Government will obviously look at the report with a view to ascertaining whether there is any action necessary purely on a State basis arising out of the report, whether that be criminal prosecutions or any proceedings for deregulation. Thirdly, if there is any case for a State/Federal action outside the purview of the National Crime Authority and the Inter-Governmental Committee then that, too, will be considered, but at this stage what needs to be done is a thorough study of the report.

RURAL ADJUSTMENT POLICY

The Hon. PETER DUNN: I seek leave to make a brief explanation prior to asking the Minister of Agriculture a question about the Australian Rural Adjustment Unit's policy.

Leave granted.

The Hon. PETER DUNN: The Minister has no doubt read today's *News* and the headline 'Labor gains rural under-

standing', which has taken the ALP a fair time. The article states:

An improved understanding now existed between the Federal Government and people in rural areas, the Prime Minister, Mr Hawke, said here.

The article continues later:

'Despite popular opinion I can't make it rain or prevent floods,' Mr Hawke said.

That presupposes that he has been trying to do that. Involved with that is the Australian Rural Adjustment Unit. The article continues:

The Australian Rural Adjustment Unit, a non-profit independent body based at the University of New England, will now be known as the Rural Development Centre.

Mr Hawke said the change reflected the consideration of wider issues of concern to all people living and working in rural regions, rather than just agriculture.

The State Government acts as an agent for that Unit. Therefore, will the Minister say what changes have been made by the new Rural Development Centre to the criteria that allow other than agriculturalists to benefit from its former wellknown operations?

The Hon. FRANK BLEVINS: I have read the article to which the honourable member refers. I think that it is an excellent article. It spells out very clearly indeed the strong rapport and warm understanding between the Labor Party, both State and Federal, and rural industry. I think that the article expresses that very well and I thank the Hon. Mr Dunn for bringing it to the attention of the Council. Mr Kerin and I would have been far too modest to do that, so we owe the Hon. Mr Dunn our thanks. With regard to the Unit to which the Hon. Mr Dunn referred, my understanding is that this is a private foundation based in New South Wales. I do not have detailed knowledge of this foundation, but will certainly have inquiries made to ascertain what has occurred with that foundation, apart from it having its name changed. When I have that information, in the spirit of co-operation between Ministers of Agriculture, Parliament and rural producers, I will bring back that reply.

DEATH OF Mrs GANDHI

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

That this Council expresses its profound regret at the death of the Prime Minister of India, Mrs Indira Gandhi, and extends to the Government and people of India its deepest sympathies.

I am sure that all honourable members would wish to express these sympathies to the Government and people of India at the recent tragic death of the Indian Prime Minister. All honourable members would know that India and Australia have much in common and share many aspects of a common heritage. As a result, for many years Mrs Gandhi and India had close ties with Australia through the Commonwealth of Nations and other areas of mutual interest.

Mrs Gandhi had a very high reputation in the international community and was a leading figure in the non-aligned movement. There is no doubt that in that movement, in the non-aligned nations in the world, and as a positive factor creating peace in the world, her influence will be sadly missed. Within India—the most populous democracy in the world—Mrs Gandhi has been the dominant political figure for almost two decades. In the light of these common bonds between India and Australia, and in the sad circumstances of Mrs Gandhi's death, I ask the Council to pass this motion. In so doing, I am sure that we would all hope that the Indian nation will overcome the crisis that has befallen it. I would suggest that you, Mr President, and the Speaker of the House of Assembly, either through the Commonwealth Parliamentary Association or directly, convey these sympathies to the Indian Government.

The Hon. M.B. CAMERON (Leader of the Opposition): The Opposition supports the motion. It is a matter of regret that such a motion is necessary. There is no doubt that the Prime Minister of India was held in very high regard by the international community. Certainly, it was a great shock, I am sure, to all people who believe in democracy to find that the Prime Minister of the largest democracy on earth has been assassinated. It is to be hoped, of course, that out of this event the new Prime Minister and the Government of India are able to ensure that that democracy continues and that the violence that we are at present hearing about is contained. Certainly, it is a matter of regret that a woman who has led that nation, as the Leader of the Council has said, for almost the entire past two decades, had to suffer such an end to what has been an exceptional life and career as the leader of that country. The Opposition supports the motion.

The Hon. I. GILFILLAN: The Democrats support the motion. We feel the deep tragic loss that India shares with all peoples who look to democracy and leadership from elected representatives. It is particularly troubling to see the prevalence of assassination and physical intrusion into the democratic process in an attempt by opposing forces to impose their will. I believe it is that, as well as the death of a revered politician and statesman, that we are also acknowledging in this motion.

It seems that the penalty for public office, of offering to serve the people of one's nation, is even more than ever now fraught with the risk of meeting violent death. We add our support to the motion of sympathy to the people of India and express our abhorrence at this form of expression of opposition to political forces. We thoroughly reject the forces that resulted in this assassination.

The Hon. ANNE LEVY: I would briefly like to add my support to this motion. Although the Leaders of the Parties have spoken to the motion I had intended as you, Mr Acting President, would know, to speak on this subject. I am sure that we all feel for India with its tragic loss of its Prime Minister, Mrs Gandhi, particularly in the very sad circumstances in which it occurred. Mrs Gandhi has the distinction of being the longest serving popularly elected woman Prime Minister ever in history. Although she was not the first woman Prime Minister, having been beaten to that title by Mrs Bandaranaike of Sri Lanka and Mrs Meir of Israel, she served longer in that position than any other woman in history. I feel that this adds an extra dimension of tragedy to the sad events of yesterday. I support with all my heart the expressions of sentiment in the motion moved by the Attorney-General.

Motion carried.

QUESTIONS RESUMED

OMBUDSMAN

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question concerning the Ombudsman.

Leave granted.

The Hon. R.I. LUCAS: Last year the Ombudsman, in his annual report, indicated that he would be reviewing the reasons for the existence of some QUANGOS or statutory authorities in South Australia and would be seeking to make recommendations about the abolition of some QUANGOS. The Ombudsman's Report for the last financial year, which was tabled yesterday, pursues this line. Page 20 of the report states:

The thrust of my comments in last year's annual report was to advise that when I do receive complaints about bodies which could be categorised as QUANGOS and which fall within my jurisdiction, I would examine each one on its merits to determine whether or not it had become obsolete and had, for all intents and purposes, turned into a QUANGO and could no longer justify its existence.

There is no indication in the Ombudsman's Report that he has resiled from the position he stated in his last annual report. It would appear obvious that the Ombudsman is going QUANGO hunting without a proper permit. The Ombudsman Act is quite clear in that he can review any administrative act of a department or QUANGO, but it certainly does not give the Ombudsman the power to recommend the abolition of QUANGOS. It would appear that the Ombudsman, if he does as he has indicated, will be acting without the authority of his constituting Act. If that is the case, it would be improper for a senior statutory officer in South Australia to be acting contrary to his Act and clearly action would need to be taken by the Government to pull the Ombudsman into line.

When I first raised the question with the Attorney-General some two weeks ago he indicated that he had had a quick look at the Ombudsman Act. The Attorney, with a wry smile on his face, indicated that he 'had some doubts as to whether the Ombudsman Act gives the Ombudsman the authority to do what he indicates'. The Attorney-General further indicated that he would raise the question with the Premier. First, does the Attorney-General agree that it would be improper for a statutory officer to be acting without the authority of his constituting Act? Secondly, has the Attorney-General raised this matter with the Premier, and can he indicate what action he or the Premier will be taking with respect to the Ombudsman and, if not, will the Attorney-General ensure that the report can be brought back to this Chamber as soon as possible?

The Hon. C.J. SUMNER: The situation has not advanced any further than it had last week when I answered the question of the honourable member during debate on the Appropriation Bill. Now, another Ombudsman's report has been tabled and the Ombudsman expresses a view this year similar to the view he expressed last year. I will express a view today similar to the one I expressed last week, but I have not taken the matter any further than that.

The Hon. R.I. Lucas: Have you had a chat to the Premier yet?

The Hon. C.J. SUMNER: No, I have not yet spoken to the Premier about the matter raised by the honourable member. But, I will, and I think the point that he raised was not without some merit and at least could be looked at. As I said in the Committee stage of the Appropriation Bill the Ombudsman's charter is to investigate administrative acts, not to concern himself with policy. As I said then, I would doubt that the Ombudsman Act gave the Ombudsman the authority to embark on an examination of statutory authorities as such, as opposed to the individual administrative acts carried out by public servants or employees of statutory authorities within those authorities.

In the light of the honourable member's raising this matter and indicating to the Council his view that the Ombudsman is going QUANGO hunting without a permit, and in the light of my, at this stage, cursory examination of the Ombudsman Act, I will certainly refer the matter to the Premier, who is responsible for the Ombudsman. If, after discussions with the Premier, there is a need for a more formal opinion on the topic, then I will obtain that. I am quite happy to advise the honourable member and the Council of the results of my discussions with the Premier. I imagine that the Premier would discuss the matter with the Ombudsman.

The honourable member has also asked whether a statutory officer must act within the Statute laid down by the Parliament. That is quite clear: actions that go beyond the power given in a statute would not be authorised by Statute and, therefore, it is not a proper exercise of the power of a statutory officer. The question in this case is whether or not the Ombudsman's embarking on recommendations relating to statutory authorities is beyond the power of the Ombudsman as laid down in his Act. That is the question upon which I have expressed a tentative opinion, but I will need to express a more formal opinion should that become necessary. In the light of the honourable member's considerable interest in this matter I certainly will take the matter further and bring back a reply in due course.

ASER DEVELOPMENT

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General, as Leader of the Government in this place, a question about the ASER development site.

Leave granted.

The Hon. L.H. DAVIS: The recent possible discovery of the archway of an old railway tunnel or building on the site of the Adelaide Railway Station redevelopment follows on last year's discovery of the basement of the old destitute asylum in Kintore Avenue, which led to Adelaide's first archaeological dig, the photographing and recording of the site, and the recovery of artifacts of the 1850s and 1860s, including bottles, ceramics, glasses, shoes, and building material. While a selection of the more aesthetic artifacts was made and the artifacts preserved I was dismayed to learn recently that the balance of the artifacts, after primary sorting, was thrown out, apparently because there was no room to store them.

I find it quite extraordinary that such a cavalier attitude is taken to artifacts so discovered, given that they could provide valuable cross reference for later discoveries, for research and also they are useful for display purposes. It highlights the lack of certainty of which Government department or statutory authority is responsible for this important area. I understand that the History Trust of South Australia has nominal control of portable heritage. The development of the ASER plan, which has been widely criticised by conservation and planning groups, the Adelaide City Council and a number of individual experts, has been very secret in its operations. Given that it is a $160 million project which undoubtedly is of public interest, a general view has been expressed by experts that plans, models and financial details of the project should be available rather than the frustration caused by the secrecy which has generally surrounded the project.

A particularly important aspect of the ASER development is the fact that it is on a site which is potentially rich in history. Colonel Light's first survey department is located in the vicinity; railway buildings dating back to 1856 and a funeral platform were also located on the site. I am appalled to learn that there is apparently no formal arrangement whereby any discovery of a structure or artifact of apparent historic value should be referred to the Heritage Conservation Branch or some other appropriate person or body in Government for assessment and recording. First, will the Government take immediate steps to correct this situation? Secondly, when will the Government amend the Heritage Act to ensure that proper procedures are established in this important area?

The Hon. C.J. SUMNER: I do not wish to traverse all the allegations made by the honourable member in his usual way. Nevertheless, as he knows, the Government does have a particular interest in heritage matters. Overall, it has had

a very good record in this area. The discovery of some potential heritage item on the ASER project site has prompted the honourable member to raise this question. I will refer the matter to the appropriate Ministers, presumably the Premier and the Minister for Environment and Planning, and bring down a reply.

GRAND PRIX

The Hon. R.C. DeGARIS: I ask the Attorney-General, as Leader of the Government in this place, whether he will ensure that the Council is informed of the organisation of the Grand Prix in South Australia. The organisation of the 1984 Olympic Games was handed over to a private company and a profit of $100 million resulted. Therefore, will the Government, in considering the organisation of the Grand Prix, look at the question of handing over the organisation of it to the private sector?

The Hon. C.J. SUMNER: I am sure the private sector will be intimately involved in many aspects of the staging of the Grand Prix in Adelaide. I answered a question on this topic from the Hon. Mr Griffin only two days ago and indicated that the final contractual arrangements have not been signed but that, when they were signed, I was sure that the Premier (and I will take this responsibility in the Council) would make a statement to Parliament outlining plans for the staging of the Grand Prix in Adelaide, beyond the information that has already been made publicly available.

This is something that I will still take up with the Premier, following the final signing of the relevant contracts. At that stage I am sure that the Council will be fully informed about the proposed arrangements and will be informed about what legislation might be necessary and other matters relating to the arrangements. When reporting I am sure that I will be able to advise the honourable member of what role the private sector will be playing in the staging of the Grand Prix.

ROAD TRAFFIC ACT AMENDMENT BILL (No. 3)

Second reading.

The Hon. FRANK BLEVINS (Minister of Agriculture): I move:

That this Bill be now read a second time.

It confines itself entirely to that area of the Road Traffic Act which deals with drink driving, and seeks to remedy certain deficiencies and anomalies which have been identified over a period of time. None of the underlying principles of the Act will be affected.

The Bill seeks to overcome two problems which are creating difficulties in relation to the taking of blood tests. As the Act stands at present, police must inform motorists who have been required to submit to an alcotest or breath analysis that they are also entitled to a blood test. The situation currently exists where a driver who has been lawfully required to submit to the initial alcotest (which as honourable members will be aware is merely a screening device) can still compel police to arrange for a blood test to be taken even though the test was negative. This of course is a complete waste of time and money. However, it is a loophole in the law of which some mischievous persons are purposely availing themselves in order to frustrate the legal process.

Currently when the police upon request take a driver to have a blood test, the driver has complete discretion on the location of the blood test and police are required under the Act to facilitate the request. In one particular case a person was arrested in the southern suburbs for driving with an excess blood concentration and, when asked whether he wished for a blood test to be taken, he said that he wanted it done at the Lyell McEwin Hospital at Elizabeth. Police suggested the nearby Flinders Medical Centre, but he declined. Due to the distance and time which would have been involved in travelling to Elizabeth, police refused the request as being unreasonable. The case was subsequently dismissed because no blood sample was taken. This Bill seeks to correct this type of anomaly by introducing the element of reasonableness in these situations.

The Act currently gives the court the power to order the defence to pay certain expenses when convicted for driving under the influence of alcohol or driving with the prescribed concentration of alcohol in the blood. This Bill will give the court similar power when a defendant is convicted for failing to submit to an alcotest or breath analysis. Also, the court will be able to order a convicted defendant to meet reasonable costs associated with time and mileage when a police officer is transporting a person to a medical practitioner to have a blood test.

The amending Bill provides for the resolution of an ambiguity to make clear that all alcotests or breath analysis requested by police officers are performed within two hours of the occurrence of the event giving rise to the request. Under the current provisions of the Act a defendant may require the Government Analyst and authorised breath analysis officers who sign certificates to attend the trial. As it is not necessary to give notice for the attendance of these witnesses until the actual day of the trial, in practice the witnesses have to attend all contested cases, not knowing whether notice will be served or not. This results in unnecessary expense and inconvenience. This Bill will require the defendant to give two clear days written notice to the complainant before the commencement of the trial.

Finally, the Bill includes a provision to extend the operation of the random breath-testing provisions until 30 June 1985. As honourable members would be aware, these provisions would otherwise expire on 1 January 1985, which would not allow sufficient time for the report of the Select Committee on the Review of the Operation of Random Breath Testing to be brought down and considered by Parliament. I seek leave to have the remainder of the explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation. Clause 3 amends section 47d of the principal Act, which provides that a court convicting a person of an offence against section 47 (1) (driving under the influence of intoxicating liquor or a drug) or section 47 (2) (driving with more than the prescribed blood alcohol level) may order the person to pay to the complainant a reasonable sum to cover certain specified expenses incurred in connection with the offence. The clause amends this provision so that it also applies to offences against section 47e (3) (refusing or failing to submit to an alcotest or breath analysis). The clause also amends the provision so that the complainant may recover reasonable expenses incurred in facilitating the taking of a sample of the defendant's blood and providing for the presence of a member of the police force pursuant to section 47f (2) and (2a).

Clause 4 amends section 47da of the principal Act which provides for random breath testing. Subsection (7) of that

section provides for the provisions to expire on 1 January, 1985. The clause amends this subsection so that the provisions will not expire until 30 June 1985. Clause 5 amends section 47e of the principal Act, which provides that the police may in certain circumstances require a person driving or attempting to drive a vehicle to submit to an alcotest or breath analysis or both. The circumstances referred to are where a member of the police force believes on reasonable grounds that a person has, while driving or attempting to drive a vehicle, committed any of certain specified offences, behaved in a manner indicating his ability to drive is impaired or been involved in an accident. Subsection (2) of this section presently provides that an alcotest or breath analysis must be performed within two hours after 'the behaviour or accident referred to in subsection (1)'. The clause amends subsection (2) so that it more clearly also applies to the case where there is a belief that one of the offences referred to in subsection (1) has been committed. Under the clause, the alcotest or breath analysis is required to be performed within two hours 'after the occurrence of the event giving rise to the belief referred to in subsection (1)'.

Clause 6 amends section 47f, which presently provides at subsections (1) and (2) that a person required in accordance with the Act to submit to an alcotest or breath analysis may request that a sample of his blood be taken by a medical practitioner nominated by him and that, where such a request is made, the member of the Police Force to whom it is made shall do all things necessary to facilitate the taking of the sample. The clause substitutes for subsections (1) and (2) new subsections which make two changes in substance. First, the right to request the taking of a blood sample is not to apply in a case where the person has been required to submit to an alcotest only. Secondly, the blood sample is to be taken by a medical practitioner nominated by the driver, but, under the new provision, where it becomes apparent to a member of the Police Force that there is no reasonable likelihood that a medical practitioner nominated by the driver will be available to take the sample within one hour at a place not more than 10 kilometres distant, or the driver does not nominate a particular medical practitioner, the sample is to be taken by any medical practitioner who is available for the purpose.

Clause 7 amends section 47g of the principal Act which contains evidentiary provisions relating to drink driving offences. The clause substitutes for the present subsection (3c) a new subsection that deals with the same matter but is worded in a way designed to remove certain doubts arising from the present wording. The clause amends subsection (5) so that it provides evidentiary assistance in relation to the requirement that a person who has submitted to a breath analysis be informed and warned as to the matters referred to in subsection (2a) of the section. The clause also substitutes for the present subsection (6) a new subsection providing that a certificate under subsection (4) or (5) shall not be received as evidence in proceedings for an offence against section 47 (1) or 47b (1)—

(a) unless a copy is served on the defendant not less than seven days before the commencement of the trial;

(b) if the defendant has not less than two days before the commencement of the trial served written notice on the complainant requiring the person who signed the certificate to attend at the trial;

or

(c) if the court, in its discretion, requires the person to attend.

Under the present subsection (6) the defendant may require the attendance of the person who signed the certificate by giving written notice to that effect at any time before the commencement of the trial.

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

LAND AND BUSINESS AGENTS ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Land and Business Agents Act, 1973. Bill read a first time.

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

That this Bill be now read a second time.

This Bill comprises the most extensive amendments to the Land and Business Agents Act, 1973, since that Act was first passed by this Parliament. It is the result of a decision by this Government to proceed with a major restructuring of the occupational licensing legislation governing those involved in the real estate industry (other than legal practitioners). Land agents, land brokers and land valuers at present have separate licensing boards regulating their respective occupations. Two of those three groups are subject to the principal Act; land valuers are licensed by the Land Valuers Licensing Board, established under the Land Valuers Licensing Act, 1969.

The Bill repeals the Land Valuers Licensing Act, but incorporates appropriate of its substantive provisions into the Land and Business Agents Act. The principal Act is renamed to become the Land Agents, Brokers and Valuers Act, 1973, to more accurately reflect its new scope. The Bill constitutes the Commercial Tribunal (established under the Commercial Tribunal Act, 1982) as the licensing authority for the purposes of the Act. It abolishes the existing Land and Business Agents Board, the Land Valuers Licensing Board and the Land Brokers Licensing Board. The result is that land agents, land brokers and land valuers will all be licensed by the one licensing authority under the one Act.

A number of other significant reforms are proposed. First, so-called 'Rental Referral Agencies' will become subject to the new Part VIIIB of the legislation. Contracts entered into by those agencies with consumers seeking information about the availability of residential accommodation will be required to be in writing setting out all their terms and conditions. Each contract will have implied into it a condition that due care and skill must be exercised in providing information as to the availability of rental accommodation. Moreover, the Bill contains a provision enabling the proclamation of a code of conduct governing the operations of these agencies in more specific detail. As with the other occupational groups regulated by the Act, breaches of the Act or of such a code will render the offender liable to disciplinary action under the new Part IX.

This scheme of regulation of rental referral agencies is significant in that it represents the first serious attempt to come to grips with the problems consumers have with certain agencies of this kind in this State. It also represents the first example of the use of a system of 'negative licensing' in this State and possibly in this country. It is hoped that this system of regulation will provide an effective regime for the protection of the consumer without the significant expense a traditional positive licensing regime would involve.

Secondly, there are a number of important amendments to Part X of the Act, in particular, sections 88, 90 and 91. These amendments are intended to remedy a number of anomalies found to exist in the application of all three sections to contracts for the sale of small businesses. The Bill seeks to give effect to two key principles in this context: first, that the purchaser of such a business is entitled to a

statement of prescribed particulars relating to the business. The information provided on that statement is to relate to the site upon which the business has been conducted, to the vendor's interest therein, and to the financial position of the business. It is information that a prudent purchaser needs to consider in order to establish on reasonable and informed grounds the viability of his or her proposed purchase. Secondly, this information must be provided sufficiently prior to the creation of a binding legal obligation on the purchaser to ensure a reasonable opportunity to consider same and if necessary seek professional advice.

Section 91 as amended will require that the statement of prescribed particulars relating to the business ('the prescribed statement') be delivered not less than five clear business days prior to the date of settlement. New section 91a guarantees that the prospective purchaser has at least five clear business days to consider that information. If the prescribed statement is given five days or more prior to the formation of the contract, no cooling off period applies. If it is given after the contract, then a five-day cooling off period applies. If it is given less than five days before the contract is signed, the cooling off period is the balance of the five days; that is, the period of time necessary to ensure that the purchaser has a total five clear business days in which to consider the information and consult his or her advisers in relation to the propsed purchase, if need be.

These provisions overcome a major defect in the existing section 91, namely, that the prescribed statement can be given at any time prior to the signing of the contract, even if the purchaser is as a result given only moments to digest the significance of the disclosures. This more comprehensive system necessitates amendment of sections 88 and 90. Neither will apply to the sale of 'land' where the 'land' involved is part of the sale of a business. In short, the intention is that sections 91 and 91a will be the sole repository of the provisions governing the sale of a small business.

A number of subsidiary amendments are also proposed to eliminate anomalies in the provisions relative to sales of small businesses. The limited definition of 'business' contained in the Act is amended to overcome the decision in *Kerr v Townsin & Townsin*, 98 LSJS345. His Honour Judge Brebner there found that the sale of a truck used in a carrying business, sold on the basis that the owner/driver would receive certain work, did not comprise a sale of a business for the purposes of the Act. His Honour observed in the course of his judgment that the manner in which 'business' was defined in the Act implied a number of limitations on the term. The Bill removes those limitations. In addition, the definition of 'date of settlement' is amended both to ensure that it is the date on which title is actually conveyed and to clarify the application of sections 91 and 91a to the sales of business regardless of whether or not a written contract is entered into.

Thirdly, the Bill substantially increases the penalties contained in the Act to a more appropriate level. In most cases, a four or five-fold increase is proposed. This is indicative of the Government's desire to ensure that penalties in consumer legislation remain at levels which amount to effective deterrents. Fourthly, in providing for the transfer of the jurisdiction of the various licensing boards to the Commercial Tribunal, standard provisions intended to be common to all jurisdictions exercised by that Tribunal have been adopted, wherever appropriate. Each licensed occupation will derive the benefits of continuous licensing and will be subject to essentially the same disciplinary provisions. Likewise, the Commissioner for Consumer Affairs is made responsible, subject to the directions of the Minister, for the administration of the Act.

Fifthly, the Bill effects a number of minor 'housekeeping' amendments; these are detailed below. Finally, in the course of preparation of this legislation, extensive consultation with a number of interested parties occurred, including the Real Estate Institute of South Australia Inc., several rental referral agencies, the Australian Institute of Valuers Inc. (South Australian Division), the Land Brokers Society, the Law Society of South Australia and Mr B. Shaw, principal of Shaw Jones Tiller Pty Ltd. In most cases, detailed and thoughtful submissions were received and, wherever appropriate, regard has been had to those submissions in the development of this measure. I acknowledge the contribution by all submitters in the preparation of this Bill; in particular I acknowledge the contributions of the Real Estate Institute and Mr Shaw to the proposed changes to sections 88, 90 and 91. 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. Under the clause, the commencement of specified provisions may be suspended. Clause 3 amends the long title so that it makes reference to the licensing and control of land valuers and to the repeal of the Land Valuers Licensing Act, 1969. Clause 4 changes the short title of the principal Act to the 'Land Agents, Brokers and Valuers Act'. Clause 5 amends section 3 of the principal Act which sets out the arrangement of the Act. Clause 6 amends section 4 of the principal Act so that it provides for the repeal of the Land Valuers Licensing Act.

Clause 7 amends section 5 of the principal Act so that it includes further transitional provisions conferring licences upon valuers already licensed under the Land Valuers Licensing Act and dealing with the transfer of power from the Land Agents Board and the Land Brokers Licensing Board to the Commercial Tribunal or the Commissioner for Consumer Affairs provided for under subsequent clauses of the measure.

Clause 8 amends section 6 of the principal Act which provides definitions of expressions used in the Act. The amendments are generally of a formal or consequential nature; however, attention is drawn to the new definitions of 'land valuer' and 'rental accommodation referral business'. 'Land valuer' is defined as meaning a person who carries on the business of valuing land on behalf of any other person. 'Rental accommodation referral business' is defined as meaning the business of providing for fee or reward information relating to the availability of premises for occupation under residential tenancy agreements but as not including the business of publishing advertisements on behalf of others.

Clause 9 provides for the repeal of Part II of the principal Act which provides for the establishment of the Land Agents Board. The clause replaces the provisions of Part II with new sections 7 and 8. Proposed new section 7 empowers the Governor to grant exemptions by regulation. In addition, under the proposed new section, the Minister may, upon the application of a person, grant an exemption to the person and, if he thinks fit, refer such an application to the Commercial Tribunal for its recommendations on the matter. Proposed new section 8 provides that the Commissioner for Consumer Affairs shall be responsible for the administration of the measure subject to the direction and control of the Minister.

Clause 10 increases the penalty for an offence against section 13 (acting as an agent without a licence) from $1 000 to $5 000. Clause 11 provides for the repeal of section 14 of the principal Act which provides for applications for agents licences. The clause substitutes for the existing pro-

visions the standard form provision for licence applications to the Commercial Tribunal established in the Consumer Credit Act and the Second-hand Motor Vehicles Act. Under the proposed new section, provision is made for each licence application to be advertised and for the Commissioner for Consumer Affairs or any other person to object to and appear before the Tribunal to oppose the application.

Clause 12 makes an amendment to section 15 that is consequential to the provision for licence applications to be heard by the Commercial Tribunal instead of the Land Agents Board. Clause 13 amends section 16 of the principal Act which sets out the conditions which must be satisfied for a corporation to be licensed as an agent. In providing for the discretions to be exercised by the Commercial Tribunal, instead of the Land Agents Board, the opportunity has been taken to recast subsections (1), (2) and (3). In addition, the clause makes new provision providing for the Tribunal, on application by the Commissioner or any other person, to vary or revoke a condition of an exemption under the section, that is, an exemption from the requirement that the directors and other persons having control of the corporation must themselves be licensed agents or registered managers.

Clause 14 repeals sections 17 and 18 which deal with the grant of agents licences and annual licence fees and returns. The grant of agents licences is now to be provided for by proposed new section 14 (8). The clause inserts a new section 17 which provides for the same matter as present section 18 but in the standard form established in the Consumer Credit Act and Second-hand Motor Vehicles Act. Clause 15 amends section 19 which provides that where a licensed agent dies, the business may, with the approval of the Land Agents Board, be carried on by an unlicensed person for a limited period. The clause replaces the reference to the Board with a reference to the Tribunal.

Clause 16 provides for the repeal of section 20 which deals with the surrender of agents licences. This matter is to be dealt with in proposed new section 17 (7). Clause 17 increases the penalty for an offence against section 21 (acting as a salesman without being registered) from $500 to $2 000. Clause 18 amends section 22 of the principal Act which prohibits a person from employing a person as a salesman unless he is registered and employed on a full-time basis. The clause increases the penalty for these offences from $500 to $2 000. The clause replaces references to the Board with references to the Tribunal and removes paragraph *(a)* of subsection (3) the operation of which is exhausted.

Clause 19 increases the penalties for offences against the section (salesmen being in the service of more than one agent; payments by an agent to a salesman not in his service) from $200 to $1 000. Clause 20 amends section 24 of the principal Act by deleting reference to the Board and substituting reference to the Tribunal. Clause 21 repeals section 25 of the principal Act which deals with applications for registration as salesmen. The clause substitutes new section 25 which deals with the same matter as present section 25 but in the standard form established in the Consumer Credit Act and the Second-hand Motor Vehicles Act. Provision is made for the advertisements of applications. The Commissioner or any other person may object to an application. Provision is made for the Tribunal to conduct a hearing of the application at which the applicant, the Commissioner and any objector may be heard. Clause 22 amends section 26 of the principal Act—reference to the Board is changed to reference to the Tribunal. A consequential amendment is the striking out of subsection (2).

Clause 23 repeals section 27 of the principal Act and substitutes new section 27 which deals with the duration of registration of registered salesmen. The provision follows the standard format established under the Consumer Credit and Second-hand Motor Vehicles Acts. Registration continues until the death of the salesman or cancellation or surrender of registration. Provision is made for annual payment of fees and lodgment of returns. Failure to do either by the prescribed date results in a notice from the Registrar requiring compliance. Failure to comply with the notice within 14 days of service of the notice results in suspension of registration. The Registrar is to cause the fact of suspension to be advertised in a newspaper with State wide circulation. Where suspension continues for six months, automatic cancellation occurs.

Clause 24 amends section 29 of the principal Act. Reference to the Board is deleted and replaced by reference to the Tribunal. The penalty provided in the section is raised from $200 to $500. Clause 25 amends section 30 of the principal Act. The penalties provided in that section are increased and reference to the Board is deleted and replaced by reference to the Tribunal. Clause 26 repeals section 31 of the principal Act (application for registration as a manager) and replaces it with new section 31 which deals with the same subject matter. The new provision follows the standard format established under the Consumer Credit and Second-hand Motor Vehicles Acts. Provision is made for the advertisement of applications. The Commissioner or any other person may object to an application. Provision is made for the Tribunal to conduct a hearing of the application at which the applicant, the Commissioner and any objector may be heard. Clause 27 amends section 32 of the principal Act—reference to the Board is deleted and replaced by reference to the Tribunal.

Clause 28 repeals sections 33 and 34 of the principal Act (grant of registration; annual registration fees and returns) and substitutes new section 33 which deals with substantially the same material. The provision follows the standard format established under the Consumer Credit and Second-hand Motor Vehicles Acts. Registration of a manager continues until his death or the surrender or cancellation of the registration. Provision is made for the annual payment of fees and lodgment of returns. Failure to do either by the prescribed date results in a notice from the Registrar requiring compliance. Failure to comply with the notice within 14 days of its service results in suspension of registration. The Registrar is to cause the fact of suspension to be advertised in a newspaper with State wide circulation. Where suspension continues for six months, automatic cancellation occurs.

Clause 29 amends section 35 of the principal Act. Reference to the Board is altered to reference to the Tribunal. The penalty provided in the section is raised from $200 to $500. Clause 30 amends section 36 of the principal Act. Reference to the Secretary is altered to reference to the Registrar. The penalty of $200 is lifted to $1 000. Clause 31 amends section 37 of the principal Act. The penalty of $200 is lifted to $1 000 and reference to the Secretary is altered to reference to the Registrar. Clause 32 amends section 38 of the principal Act. Reference to the Secretary is altered to reference to the Registrar; reference to the Board is altered to reference to the Tribunal; penalties are increased from $200 to $1 000. Clause 33 amends section 39 of the principal Act. Penalties are increased from $200 to $1 000; reference to the Secretary is altered to reference to the Registrar.

Clause 34 repeals section 40 of the principal Act. Clause 35 amends section 41 of the principal Act. Penalties are increased from $200 to $1 000 and reference to the Board is altered to reference to the Registrar. Clause 36 amends section 42 of the principal Act—the penalty provided for a contravention of that section (obligations of agent to render an account) is increased from $500 to $2 000. Clause 37 amends section 43 of the principal Act—the penalty provided for a contravention of that section (rendering a false account)

is increased from $2 000 to $5 000. Clause 38 amends section 44 of the principal Act—the penalty provided for a contravention of that section (agent to supply copy of contract) is increased from $500 to $2 000. Clause 39 amends section 45 of the principal Act by increasing the penalties provided in that section from $500 to $2 000.

Clause 40 amends section 46 of the principal Act—reference to the Board is deleted and replaced by reference to the Tribunal; the penalty provided for a contravention of subsection (3) (agent having an interest in land or business that he is selling) is increased from $1 000 to $5 000. Clause 41 amends section 47 of the principal Act. The penalty for contravention of the existing section is increased from $1 000 to $5 000. A new subsection (2) is added—'licensed agent' is defined to include a person whose usual place of residence is outside South Australia and who holds a licence issued outside South Australia to carry on the business of an agent outside South Australia. Clause 42 amends section 48 of the principal Act—the definition of 'the Board' and 'nominated member' are struck out.

Clause 43 provides for the repeal of sections 49 to 54 of the principal Act which provide for the establishment of the Land Brokers Licensing Board. Clause 44 amends section 55 of the principal Act (land brokers to be licensed) by increasing the penalty from $1 000 to $5 000. Clause 45 repeals section 56 of the principal Act (application for licence to be a land broker) and replaces it with new section 56, dealing with the same subject matter. The new provision follows the standard format established under the Consumer Credit and Second-hand Motor Vehicles Act. Provision is made for the advertisement of applications. The Commissioner or any other person may object to an application. Provision is made for the Tribunal to conduct a hearing of the application at which the applicant, the Commissioner and any objector may be heard. Clause 46 amends section 57 of the principal Act—reference to the Board is replaced by a reference to the Tribunal.

Clause 47 provides for the repeal of sections 58, 59 and 60 of the principal Act and the substitution of new section 58. The new section covers substantially the same material as the repealed sections—the duration of land brokers licences. The new provision follows the standard format of the Consumer Credit and Second-hand Motor Vehicles Acts. A licence continues until the death of the land broker or the surrender or cancellation of the licence. Provision is made for the annual payment of fees and lodgment of returns. Failure to comply by the prescribed date results in a notice from the Registrar requiring compliance. Failure to comply with the notice within 14 days of its service results in suspension of the licence. The Registrar is to cause the fact of suspension to be advertised in a newspaper with Statewide circulation. Where suspension continues for six months, automatic cancellation occurs.

Clause 48 amends section 61 of the principal Act. The clause increases penalties under the section and changes references to the Board to references to the Tribunal. The clause inserts a new provision enabling the Tribunal, on the application of the Commissioner or anyone else, to revoke or vary an exemption from a provision of the section, or to impose conditions on such exemptions or to vary the period of such exemptions. Clause 49 amends section 63 of the principal Act. The penalty for a contravention of that section (which imposes requirements in relation to trust accounts) is increased from $2 000 to $5 000.

Clause 50 amends section 63a of the principal Act—references to the Board are altered to references to the Tribunal; the penalty for contravention of the section is increased from $1 000 to $5 000; and other consequential changes are made. Clause 51 amends section 66 of the principal Act—reference to the Board is altered to reference to the Commissioner. Clause 52 amends section 67 of the principal Act—immunity from liability for any act done in compliance with the Part. The clause alters the reference to the Board to a reference to the Tribunal and the Commissioner. Clause 53 amends section 68 of the principal Act—reference to the Board is changed to reference to the Tribunal. Clause 54 amends section 69 of the principal Act—certain references to the Board are altered to the Commissioner, others are altered to the Tribunal.

Clause 55 amends section 70 of the principal Act—reference to the Board is changed to reference to the Tribunal, and reference to the Secretary is changed to reference to the Registrar. Clause 56 repeals section 71 of the principal Act, which empowers the Board, in considering a claim against the consolidated interest fund, to require the production of any relevant document. The Tribunal (which is now to consider such claims) has power to require such production under the Commercial Tribunal Act. Clause 57 amends section 72 of the principal Act—reference to the Secretary is altered to reference to the Registrar; reference to the Board is altered to reference to the Tribunal. Other consequential changes are made. Clause 58 amends section 73 of the principal Act. Reference to the Board is deleted and altered to reference to the Commissioner.

Clause 59 amends section 74 of the principal Act. Reference to the Board is altered to reference to the Commissioner. Clause 60 amends section 75 of the principal Act. Reference to the Board is altered to reference to the Commissioner. Clause 61 amends section 76 of the principal Act. Reference to the Board is altered to reference to the Commissioner. Clause 62 repeals Part IX of the principal Act (which deals with investigations, inquiries and appeals) and substitutes new Parts.

New Part VIIIA deals with land valuers. New section 77 provides that a person shall not carry on business as a land valuer unless licensed—the penalty is $5 000. New section 78 deals with applications for licences. The provision follows the standard format established under the Consumer Credit and Second-hand Motor Vehicles Acts. Provision is made for the advertisement of applications. The Commissioner or any other person may object to an application. Provision is made for the Tribunal to conduct a hearing of the application at which the applicant, the Commissioner and any objector may be heard. New section 79 provides that a person is entitled to hold a licence if the Tribunal is satisfied that he is over 18 years of age, a fit and proper person and has the prescribed qualifications and at least four years practical experience in the preceding 10 years, or held a licence under the Part or the repealed Land Valuers Licensing Act within the five years preceding the application.

New section 80 deals with the duration of licences and follows the standard format established for such provisions under the Consumer Credit and Second-hand Motor Vehicles Acts. A licence continues in force until the death of the land valuer or the surrender or cancellation of the licence. Provision is made for the annual payment of fees and lodgment of returns. Failure to comply by the prescribed date results in a notice from the Registrar requiring compliance. Failure to comply with the notice within 14 days of its service results in the suspension of the licence. The Registrar is to cause the fact of suspension to be advertised in a newspaper with State wide circulation. Where suspension continues for six months, automatic cancellation occurs.

New Part VIIIB deals with rental accommodation referral businesses. New section 81 provides that a rental accommodation referral contract shall be voidable at the option of the party other than the operator unless the contract is in writing and signed by the parties, and contains all terms and conditions binding the parties and in particular, fixes the fee payable by the party other than the operator and

the period for which, the frequency with which and the means by which, information is to be provided on the availability of premises for occupation. The operator must, forthwith upon signature of a contract, provide a copy to the other party and a notice in the prescribed form. Payment made in pursuance of a voidable contract does not affirm the contract. Where a voidable contract is avoided, moneys paid in pursuance of it by the party other than the operator are recoverable. New section 82 provides that it is an implied condition of every rental accommodation referral contract that the operator shall exercise care and skill in the provision of information and in particular, to ensure the accuracy of the information.

New Part IX deals with disciplinary powers. New section 83 provides that this Part applies to licensed agents, former licensed agents, registered managers or former registered managers, registered salesmen or former registered salesmen, licensed land brokers or former licensed land brokers, licensed land valuers or former licensed land valuers, operators or former operators of rental accommodation referral businesses. An operator in relation to such a business includes a person with a legal or equitable interest in the business, or who has or participates in the control or management of the business. New section 84 deals with inquiries. The Tribunal may hold an inquiry to determine whether proper cause exists for disciplinary action against a person to whom the Part applies. An inquiry shall not be held except in relation to matters alleged in a complaint made by a person (including the Commissioner) to the Tribunal, or in relation to matters disclosed in an investigation conducted by the Commissioner as a result of a complaint lodged with the Tribunal. Where the Tribunal decides to hold an inquiry, it must give the person the subject of the inquiry reasonable notice of the inquiry.

New section 85 deals with disciplinary action. If satisfied that there is proper cause for taking disciplinary action against a person, the Tribunal may—

(a) reprimand the person;

(b) impose a fine not exceeding $5 000;

(c) in the case of a person who is licensed or registered—suspend the licence for a specified period, pending fulfilment of specified conditions, or until further order or cancel the licence or registration;

(d) disqualify the person permanently, for a period, until the fulfilment of conditions or until further order, from holding a licence or registration;

(e) in the case of an operator or former operator—prohibit him from being an operator permanently, for a specified period, until the fulfilment of conditions or until further order.

A person convicted of an offence in relation to matters the subject matter of an inquiry shall not be fined in respect of those matters. Where the Tribunal cancels a licence to carry on business or prohibits a person from operating the business, the Tribunal may rule that the order will have effect at a future date and impose conditions as to the conduct of the business in the interim. It is an offence to contravene a condition imposed under the section. New section 85a deals with causes for disciplinary action. There shall be proper cause for such action against a licensed agent or former licensed agent if the licence was improperly obtained, he or an employee has been guilty of a breach of this Act or any other Act or law or has acted negligently, fraudulently or unfairly, or in the case of a licensed agent, he is an undischarged bankrupt or is unable to pay his creditors or has ceased to be a fit and proper person, or, in the case of a body corporate, a member of the governing body has ceased to be a fit and proper person or has ceased to be licensed or registered as a manager under section 16.

Under subsection (2), such action may be taken against a person who is or has been a registered manager nominated as a registered manager in respect of the business of a licensed agent if the registration was obtained improperly, he or any other employee has been guilty of a breach of the Act or any other Act or law or acted negligently, fraudulently or unfairly or if he is an undischarged bankrupt or has ceased to be a fit and proper person. Such action may be taken against a person who is or has been a registered manager (other than one referred to in subsection (2)) or a registered salesman if the registration was obtained improperly, he has been guilty of a breach of this Act or any other Act or law or has acted negligently, fraudulently or unfairly, or in the case of a person who is registered, he has ceased to be a fit and proper person. Such action may be taken against a licensed land broker or a former licensed land broker if the licence was improperly obtained, he or an employee has been guilty of a breach of this Act or any other Act or law or has acted negligently, fraudulently or unfairly, or, in the case of a licensed broker, has ceased to be a fit and proper person.

Such action may be taken against a licensed land valuer or former licensed land valuer if the licence was improperly obtained, he or an employee has breached this Act or any other Act or law or acted negligently, fraudulently or unfairly or in the case of a licensed broker, if he has ceased to be a fit and proper person. Such action may be taken against an operator or former operator if he or an employee has breached this Act or any other Act or law or acted negligently, unfairly or fraudulently. This section (except subsection (6)) applies in relation to conduct whether occurring before or after the commencement of this section. New section 85b provides that where the Tribunal takes disciplinary action against a person, the Registrar must make a record of that fact, and advise the Commissioner.

Clause 63 amends section 86 of the principal Act which provides certain protection to purchasers of subdivided land. The clause removes subsection (7) which provides that it is not competent for any person to waive his rights under the section. This provision is to be covered by a general provision (proposed new section 92) to be inserted by clause 69. Clause 64 amends section 87 in a way that corresponds to the amendment proposed by clause 63.

Clause 65 amends section 88 which provides for the cooling-off period for purchasers of land. The clause increases the penalty for an offence against subsection (2) (the demanding or receipt of an excessive deposit or a down-payment in respect of the sale of land) from $500 to $2 000. The clause excludes from the operation of the section land that is sold as part of the sale of a business. This is now to be dealt with under proposed new section 91a. The clause amends the section so that, in order for the section not to apply where a purchaser receives independent legal advice, the legal practitioner must sign a certificate in the prescribed form as to the giving of the advice. Finally, the clause removes the definition of 'business day' which is to be included in the general interpretation section, section 6 of the principal Act.

Clause 66 amends section 90 of the principal Act which provides for purchasers of land to be provided with certain information relating to the land before settlement. The clause provides for the particulars relating to land required under paragraphs *(a)* and *(b)* of subsection (1) to be as prescribed by regulation. The clause increases the penalty for an offence against subsection (5) (failure on the part of an agent to give the information as required) from $500 to $2 000. The clause rewords subsection (6) so that the remedy provided to a purchaser under subsection (7) *(b)* is available without the necessity for the purchaser to establish that he has suffered loss by reason of the fact that the provisions of the

section have not been complied with. The clause increases the penalty for an offence against subsection (9b) (failure on the part of an auctioneer to give the information as required) from $500 to $2 000. The clause removes subsection (10) which provides that it is not competent for a person to waive his rights under the section. This matter is to be covered by proposed new section 92. Finally, the clause provides that the section is not to apply to land sold or to be sold as part of the sale of a business. The provision of information in relation to such a sale is now to be covered under the provision dealing with the sale of small businesses, section 91.

Clause 67 amends section 91 of the principal Act which provides for the provision of information to the purchaser of a small business. Under the section, as amended by the clause, the vendor or prospective vendor of a small business will be required to serve upon the purchaser a statement signed by the vendor and any agent of the vendor setting out the rights of a purchaser under proposed new section 91a and containing the prescribed particulars relating to the small business and any land sold or to be sold as part of the sale of the small business. This statement is to be served at least five clear business days before the date of settlement. Proposed new subsection (1a) provides that a statement complies with the section if it was prepared accurately not more than fourteen days before the making of the contract and if it is accompanied by a statement that provides for any variation in the information that has come to the knowledge of the vendor before service upon the purchaser. Proposed new subsection (1b) provides that where an auctioneer proposes to offer a small business for sale by auction he must make the statement required under subsection (1) available for public perusal at his office at least three days before the auction and at the place of the auction and he must publish an advertisement specifying the times and places at which the statements may be inspected.

Under new subsection (2), where the section is not complied with the purchaser may apply to a court for an order under the section. Under new subsection (4) it is a defence to proceedings under subsection (3) that the failure to comply with the section was not due to a lack of diligence. Under subsection (5) a council or other authority that has placed any encumbrance over land shall, on the payment of the prescribed fee, provide a person required under this section to provide particulars of the change with such information as he may reasonably require. New subsection (5a) provides that no person shall incur any criminal or civil liability nor shall a contract be attacked by reason of any error in information provides in accordance with this section. The provisions of the section are in addition to the provisions of any other Act or law. A reference to prescribed particulars is a reference to the prescribed particulars in relation to land that would be required in a statement under section 90 (1) in relation to the land. A reference to a purchaser or vendor is—where the contract is written, a reference to the person or persons named in the contract as purchasers or vendors—where there is more than one purchaser or vendor, a reference to any one or more of the purchasers or vendors.

Clause 68 inserts new section 91a which deals with cooling-off periods for the sale of small businesses. Under the new section, a purchaser under a contract for the sale of a small business may by instrument in writing served or posted before the prescribed time, give notice to the vendor of his intention not to be bound by the contract and it shall be deemed to have been rescinded at the time of service or post. If a contract is rescinded, the purchaser is entitled to the return of moneys paid by him under the contract, except any moneys paid to the vendor in consideration of an option to purchase the business subject to the sale. A vendor, who before the prescribed time requires payment of moneys by a purchaser other than money payable in consideration of an option to purchase the business or a deposit not exceeding 25 per cent of the total consideration, shall be guilty of an offence. The new section does not apply in respect of a contract for the sale of a small business:

(a) where section 91 statements have been served personally or by post on the purchaser not less than five business days before making the contract;

(b) where the purchaser has received independent legal advice and the legal practitioner has verified the advice in the prescribed form;

(c) where the sale is by auction; or

(d) where the business is offered, but not sold, at auction and sold to a bidder at the auction by contract entered into on the same day as the auction for a price not exceeding the amount of the person's bid.

'Prescribed time' is defined as meaning:

(a) the expiry of five clear business days after the day on which secion 91 statements are served personally or by post on the purchaser or prospective purchaser;

or

(b) the date of settlement,

whichever occurs first.

A reference to a vendor or purchaser has the same meaning as in section 91 as amended by the Bill. Clause 69 repeals sections 92 to 95 and substitutes new sections 92, 93 and 94. New section 92 provides that a purported exclusion, limitation, modification or waiver of a right conferred or contractual condition implied by this Act shall be void. New section 93 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. New section 94 provides that a consent or approval of the Tribunal may be granted by the Tribunal at the application of a person seeking the consent or approval and may be revoked if the Tribunal considers proper cause exists.

Clause 70 repeals section 97 of the principal Act. Clause 71 repeals sections 99 and 100 of the principal Act and substitutes new sections 99, 100, and 100a. New section 99 provides that for the purposes of the Act the act or omission of an employee or agent of a person carrying on business will be deemed to be an act or omission of that person unless he proves that the employee or agent was not acting in the course of his employment or agency. New section 100 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. New section 100a provides for continuing offences.

Clause 72 amends section 101 of the principal Act. Proceedings under the Act are to be commenced within 12 months of the date on which the offence is alleged to have been committed. Other provision is made limiting the persons who may commence proceedings for offences against the Act. Clause 73 repeals section 102 of the principal Act. Clause 74 repeals section 105 of the principal Act and substitutes new sections 105, 105a, 105b and 105c. New section 105 provides for the return of a licence that is suspended or cancelled. New section 105a provides for the service of documents. New section 105b creates an offence of providing information for the purposes of the Act that includes any statement that is false or misleading in a material particular. New section 105c provides for the making of an annual report on the administration of the Act.

Clause 75 amends section 107 of the principal Act—the regulation making power. Consequential amendments are made, and new powers are inserted in relation to land valuers, operators of rental accommodation referral businesses. Penalties that may be imposed under the regulations are increased from $200 to $1 000.

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

PLANNING ACT AMENDMENT BILL (No. 5)

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

The Hon. M.B. CAMERON (Leader of the Opposition): The Opposition opposes this Bill. We consider it to reflect an inadequate and misdirected response by the Government towards what we believe to be two quite separate issues. In April this year the Government introduced a Bill to repeal section 56 (1) *(a)* of the Planning Act. That section deals with existing uses. It enables an expansion activity where existing use is involved. Members would recall that a court decision involving the activities of Dorrestijin Ltd found that land clearance was an existing use which therefore could continue to be carried out by Dorrestijin under the provision of section 56 (1) *(a)*. The outcome of that case caused the Government to embark on a very emotive campaign seeking total abolition of section 56 (1) *(a)*.

Using land clearance as the reason, the Government sought to repeal a provision the impact of which was more important than just in the area of land clearance. The Government, following a compromise in this attempt, was able to arrive at a situation where the existing use provision, that is, section 56 (1) *(a)*, could be suspended until 1 November 1984 pending the outcome of a court appeal. In May 1984 the Supreme Court overturned the previous lower court judgment and as a result the suspension provision was not proclaimed. The matter has now gone to the Australian High Court where judgment is pending.

The Government therefore has sought to extend the repeal of the provision of section 56 (1) *(a)* yet again. We do not support that extension. We believe that if the Government wants to control native vegetation it has a Bill available to it to do just that. I point out that the Bill is ready for debate today if the Council is prepared to accept our contention.

The Government, as I have said, has consistently and wrongly argued that the existing use provisions would allow uncontrolled expansion of industrial and shopping centres in residential areas and all extensive land clearance. It has deliberately attempted to whip up a campaign of fear that the existing use provisions, which provide a sensible protection of property rights, would in some way cause disastrous consequences. It is wrong. If the issue is native vegetation clearance, as the Government has constantly maintained, the Opposition has provided the Government with the best approach to this difficult area. I know that you, Mr President, have taken a similar view in this matter. That approach does not require a Bill such as this but involves the Government's supporting the Opposition's native vegetation clearance Bill. If the Government has problems with that Bill, let it move amendments and consider it seriously.

This Bill separates native vegetation clearance from the Planning Act enabling what is a special case to be treated as such. In introducing this Bill, the Opposition made clear it strongly supports the need to protect the remaining native vegetation in this State. It was a positive response to a difficult problem which we face. It was not a negative overkill such as we have seen from the Government. Regrettably, the Government has treated the attempts by the Opposition to achieve a sensible compromise with total disdain and no greater contempt has been shown than that by the Hon. Ms Levy. In fact, I would describe the Hon. Ms Levy's response to our Bill as nothing more than amateurish.

The Hon. Ms Levy has ridiculed the Opposition's Bill, condemned the concept of compensation and displayed her total lack of understanding of the issues involved. We do not support an unfettered clearance of native vegetation, but we believe that, where property owners are denied the right to clear land which they have bought previously for that purpose, they should receive compensation from the community. This attitude is not new and it is based on equity and an attempt to promote good will amongst the quite diverse interests involved in the issue.

Lest the Hon. Ms Levy and the Government get too enthusiastic in their opposition to that concept, I would draw attention to the support for compensation, where land clearance was restricted as a result of Government action, of the Hon. Glen Broomhill as Minister of Environment and Services in the Dunstan Government. On 23 July 1971, the District Clerk of Kingscote wrote to the Hon. Mr Broomhill in the following terms:

> Dear Mr Minister,
>
> My council is concerned that the proposed planning regulations for this Island might impose a restriction on the clearing of land with the consequent restriction of potential income for the land owner. If such is the case, then, in the interests of the ratepayers, my council would like to be assured that adequate compensation for this loss would be paid to the landholder. Your confirmation would set the minds of my members at rest.
>
> (Signed) Ian S. Hall, District Clerk

The concerns of the council were quite legitimate, despite the views of those like the Hon. Ms Levy who would deny these people any rights. The Minister obviously recognised the legitimacy of the council's concern because he replied as follows:

> Dear Mr Hall,
>
> I refer again to your letter of 23 August 1971 regarding the restriction that will be placed on the clearing of land under the proposed planning regulations for Kangaroo Island. I have discussed this matter with the Director of Planning who has informed me that, under section 69 of the Planning and Development Act, any person having an interest in land which suffers damage as a result of a decision under planning regulations to preserve trees shall be entitled to receive compensation from the State Planning Authority.
>
> The environment protection planning regulations now under consideration for Kangaroo Island envisage the amount of compensation as being the difference between:
>
> *(a)* the value of the interest in the land at the date of the claim for compensation with consent granted unconditionally; and
>
> *(b)* the value of the interest in the land at that date with consent refused, or with consent granted subject to conditions whether by way of decision of the authority or of a decision on appeal under the provisions of the Act.
>
> This information should provide the assurances sought by your council which will very shortly be consulted on the draft planning regulations which were foreshadowed during my visit to Kangaroo Island earlier in the year.
>
> (Signed) G.R. Broomhill
> Minister of Environment and Conservation

That letter shows quite clearly that the Government of the day accepted the view that compensation was just and should be available. The Hon. Ms Levy said in her reply to the debate on a Bill that is still before the Council that compensation or assistance for landholders who are affected by clearance controls cuts right across a fundamental system, that is, when owners of lands are affected by changes of land use or zoning there are no provisions for compensation. That concept was justifiable in 1971 and it should be justifiable today. I am sure that the Hon. Mr Gilfillan would

agree with that point of view, because he has made public statements to that effect.

An Honourable Member: He might change his mind.

The Hon. M.B. CAMERON: I do not think so. He is an honest man and would not change his mind on this matter. The Hon. Ms Levy also said that we have in place many schemes that will assist rural primary producers where there are cases of hardship and that we do not need to establish further schemes to help people facing genuine hardship. I would like to know how many people who have been affected by these planning decisions and who have applied for assistance have been helped—I would think either none, or perhaps one or two. Ms Levy said that there is no statement as to whether the controls apply in pastoral or urban areas. That is a matter of clarification and it was a nonense to say that. If that is a problem, then the Hon. Ms Levy should have written to me; that is what I invited her to do and, had she done that, we could have had amendments drawn up to clarify the position.

I sought advice from Parliamentary Counsel in relation to this matter and if there was any clarification needed I would have been only too happy to have amendments drawn up. I did not mean it to involve pastoral areas. The Hon. Ms Levy also said that it could be argued that all land could be suitable for production and that my Bill did not address the problem of whether land was suitable for production or not. That is absolute nonsense, because the Bill specifically mentions a person from the Soils Division. It envisages a situation where no decision can be made without a report first being obtained from the Soils Division of the Department of Agriculture. That has to be considered by the committee.

That idea was quite deliberately included because there is already land being cleared that should not be cleared. That land is being cleared under the present regulations and should not be cleared because there is no expertise available in the Vegetation Unit that understands that there is some land that should not be cleared. I am surprised that the Hon. Ms Levy put that point of view. I do not think that she read the legislation. She also said that people who had 9 per cent of their land able to be cleared would get no compensation but that somebody who had 11 per cent would get the lot—or the the other way around. That is absolute nonsense. She has nor read the Bill, because up to 10 per cent anybody with permission would not get any compensation. Anybody who has to retain land would get no compensation under my Bill for the first 10 per cent. They would have got 1 per cent, so that, again, is a nonsense.

The Hon. Ms Levy said that the Bill had an underlying philosophy that all land with agricultural significance took precedence over land with environmental significance. It does not: it makes all people equal. It puts together a committee whereby everybody's interests can be considered before a decision is made. At the moment, it is the other way around—and almost totally one way. I do not want to go into that matter any further.

The Bill will remain on the Notice Paper. People are putting forward submissions in relation to it. I ask the Council to reject the Bill before it and the Government, as a matter of urgency, to consider this Bill of ours. If the Minister wishes to amend that Bill, let him put those amendments to us and not have a back-bencher, who obviously has not read the Bill, stand up and make a speech about it. The Government should put any such amendments to us so that we can consider them today and expedite this matter. The matter would then be clarified once and for all and it would not matter what happend in the High Court: and reference to native vegetation would than be taken out of the planning area, where it should not be. Present regulations were introduced as an emergency measure and have caused more land to be cleared than would have been cleared in the next 10 years had they not existed—I have said this time and time again. Land is still being cleared because people do not trust the system. Let us introduce a system that everybody trusts, particularly the farming community, so that they do not feel that they have to apply to clear in case one day they are stopped from clearing forever. Let us reach a situation where people feel that they have representation, where they feel justice is done to them and where this matter is right out of the area of section 56 (1) *(a)*. If the Government wants to make changes to section 56 (1) *(a)*, then let that be a separate issue, which it is. One cannot combine the two things. Native vegetation has nothing to do with the extension of businesses in Adelaide—nor should it be considered in the same Bill.

As you would know, Mr President, land held under pastoral lease is not allowed under that Act to be cleared, so what on earth was the Hon. Ms Levy talking about in relation to that issue? I ask the Council to reject this Bill and to then immediately consider seriously the Bill that the Opposition has put together on native vegetation. It is a pity that the Government has not addressed this question in the same way and brought forward a separate Bill, because it has had long enough to do that. It could have clarified this situation once and for all in the time that it has had, but it has done nothing. I hope that if this Bill passes the Government will not do the same and we will find ourselves on 1 May with the same situation before us. I await the decision of the Council.

The Hon. I. GILFILLAN: I indicate that we will support the Bill. I say this recognising that the Leader has identified certain areas of concern that we share with him. I do not want it to be assumed that I am agreeing with all he said because I did not hear it all, for a start. Also, I am not sure that the division of responsibility mentioned is appropriate. However, the reason for the so-called sunset clause was justified in our opinion, and its extension is justified in present circumstances.

The Hon. PETER DUNN: I oppose the Bill for the same resons as those outlined by the Hon. Martin Cameron. The fact that the sunset clause in this legislation has to be extended brings to mind the old adage of Murphy's law—if anything can go wrong it will. I believe that that is what has happened. The fact that the High Court cannot come down with a decision is due to the fact that Mr Justice Murphy is in some trouble; that bears out history tht Murphy's Law can and does go wrong—and has gone wrong in this case. The fact that this sunset clause needs to be extended is partly due to that fact. However, there is a private member's Bill before the Council that could fix all of these problems. This is a Bill that we are inviting the Government to amend, if it wishes. It is a clean and concise Bill and would handle all the problems presently occurring because control of native vegetation comes under the regulations in the Planning Act. The fact that there are 20 different Bills dealing with native vegetation makes it a messy businesss for any person, organisation or institution that wishes to clear up native vegetation.

All this legislation could be put into one Bill, thus making things much simpler. We are always talking in this Council about making things clearer for the public, so I am amazed that the Government does not accept this Bill and endeavour to amend it so that matters will be clearer to the public. I do not believe that the answers to this problem are in the Bill before us—knocking out section 56 (1) *(a)* if the High Court rules against us. This will mean that the legislation will have to come back here again. How often do we have to see Bills in an endeavour to fix something that is obviously

not working very well—in this case, regulations controlling native vegetation clearance under the present Planning Act? One of the worst anomalies in the legislation is that the authorities are still slow in responding to people's applications. It is quite obvious that there are still delays of up to one year in responding to applications made in relation to this matter. How long farmers and developers can put up with that sort of bureacratic slowness I do not know. I do know that by removing section 56 (1) *(a)* we will be affecting not only those people involved in native vegetation clearance but encompassing a great deal of other development in the State.

Perhaps the Government does want to knock that out. I do not think it should be knocked out. The existing use clause is necessary. It gives stability to those people who at present have the ability to develop areas that they own. For those reasons I oppose the Bill and I hope that the Democrats will see reason and oppose it with us.

The Hon. J.R. CORNWALL (Minister of Health): This very simple Bill should not generate much heat although, conversely, at this stage it does not generate a great deal of light either, but that is the nature of the legislation. It simply extends the *status quo* until 1 May. You, Mr President, have had some deep concerns in this area and I also acknowledge that, because of your position, you cannot make a contribution to the debate. However, it is fair for me to indicate to the Council and through the Council to the constituency generally that the Minister for Environment and Planning has discussed the matter with you, that you have been satisfied about the interim nature of the proposed legislation, and that it does not in any way compromise your basic position.

I want to make it clear that following the High Court decision this whole matter will have to be resolved one way or the other, in any case. I want to give the Council the assurance that the Minister for Environment and Planning has given to me that that resolution and the process for that resolution will occur in this Parliament in the autumn session, and that it will occur in good time—well before the 1 May expiry. It is also pertinent to point out and get on the record that the matters raised in the Hon. Mr Cameron's private member's Bill will also be simultaneously addressed at that time. Whether they will be addressed to the satisfaction of the Hon. Mr Cameron and the Opposition is another matter, but certainly that is the appropriate time for them to be addressed. The legislation that the Minister for Environment and Planning will bring in on behalf of the Government is the appropriate vehicle by which they should be addressed.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: He should have come walking with us this morning, Peter. It would have put him in a good humour. I urge honourable members to support the Bill.

The Council divided on the second reading:

Ayes (11)—The Hons Frank Blevins, G.L. Bruce, B.A. Chatterton, J.R. Cornwall (teller), C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner, and Barbara Wiese.

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

Majority of 1 for the Ayes.

Second reading thus carried.

Bill taken through Committee without amendment. Committee's report adopted.

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

That this Bill be now read a third time.

The Hon. M.B. CAMERON (Leader of the Opposition): I have no desire to hold up the Council unnecessarily, but I wish to indicate that, although I will not divide on the third reading, the Opposition maintains its point of view. This matter should have been considered and the Bill that we have on the Notice Paper should have been considered today—it should have been considered in the past two months and the Government should have brought up amendments to it. However, I accept that the vote on the second reading was an indication of the attitude of the Council, and I will not be dividing on the third reading.

Bill read a third time and passed.

ANTI DISCRIMINATION BILL

In Committee.

(Continued from 31 October. Page 1656.)

Clause 31—'Discrimination within partnerships.'

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

Page 13—

Line 38—Leave out 'one' and insert 'six'.

Line 39—Leave out 'one' and insert 'six'.

Subclause (1) relates to partnerships and makes it unlawful for a firm that is a partnership consisting of one or more members, or for one or more members promoting the formation of a firm, to discriminate against a person in determining who should be offered a position as partner in a firm or in the terms on which that person is offered a position as partner in the firm. Subclause (2) deals with an existing partnership and the relationships between the partners in it. I do not desire to make any amendment to subclause (2), because once there is an existing partnership the partners have made their respective decisions about the suitability of each other for the partnership, and the Partnership Act will allow termination of the partnership and the partnership agreement may even deal with that. A partnership agreement or a verbal partnership arrangement will determine the benefits which each takes.

The formation of a partnership is a different matter. I indicated at the second reading stage that I had further considered this matter since 1982. A decision to enter into a partnership or to invite a person to join a partnership is not something which is akin to employment (employer/employee relationship) or akin to a company (a separate legal entity), but is a legal relationship entered into freely by those who wish to carry on business in partnership where the consequences of joining in partnership at law are quite significant.

I suppose that the major consequence of joining in partnership is that, regardless of what the agreement may say about the authority of each partner to negotiate or contract on behalf of another partner, as against third parties with whom the partnership deals or a partner deals, provided it is generally within the scope of the business of the partnership, a partner can bind other partners without reference to those partners and incur liabilities which the other partners are jointly and severally liable for. So, if a partner incurs a liability for $50 000 in what may appear to the third party to be in the course of the business of that partnership, then all the other partners are each liable for that $50 000 as against the person with whom the debt has been incurred.

That is a fairly significant legal obligation and it is for that reason that a partnership is unique and the entering into a partnership has to be regarded very seriously by the persons desiring to enter partnerships. It is for those reasons that, at least in respect of small partnerships, I do not believe that the Equal Opportunity Act, so far as it relates to sex, marital status, pregnancy and sexuality, has a place.

Once there is an existing partnership, I agree that the equal opportunity legislation applies so that there cannot be discrimination between partners on any of the grounds in the Act. In that respect, the decision to join in partnership and to accept all the responsibilities, obligations and liabilities of a partnership has been taken.

Six is the figure that is in the Sex Discrimination Act and six is the figure in the Federal Act. I am moving to increase the limit from one to six partners on the basis that that is around the level at which, because of their smallness, partnerships ought not be affected. Above that, it is another question. Certainly, the Act will apply if my amendment is accepted to bigger partnerships, like some of the accounting partnerships where there may be 100 partners. While in law a partnership, it is more akin to an employer/employee relationship and the opportunities for discrimination, become more extensive. In the arena of small partnerships, I do not think the Act should intrude in those areas of sex, sexuality, marital status and pregnancy, because of the nature of the relationship of the partnership.

The Hon. C.J. SUMNER: I oppose the amendment. The Government took the view that the appropriate proposition here should be the most recent expression of the Parliament, which was in the 1981 Handicapped Persons Equal Opportunity Bill that was introduced and passed by the Parliament, and where it applied to a firm consisting of one or more members. The honourable member pointed out that the Sex Discrimination Act dealt with partnerships of six or more members and the Commonwealth Act deals with partnerships of six or more members. The Government took the view that the most recent expression of this Parliament's view was in 1981 in relation to a similar matter, and therefore accepted that discrimination provisions should apply in relation to partnerships of one or more members.

The Hon. R.J. Ritson: How do you have a partnership with one?

The Hon. C.J. SUMNER: I suppose you do not. It refers to a firm of one or more persons.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: If one registers a firm or a business name it can involve only one person, but, as the Hon. Mr Griffin says, that is utterly irrelevant to the debate. By the passage of the honourable member's amendment we will be detracting from provisions currently in the Handicapped Persons Equal Opportunity Act.

The Hon. C.M. Hill: Did you say earlier in the debate that you were favouring uniformity with the Commonwealth?

The Hon. C.J. SUMNER: I favour such uniformity where the Commonwealth goes further than does our Bill. There are two very good reasons for that: first, we run the risk of inconsistency if we do not have provisions that are at least as beneficial as those of the Commonwealth and run the risk of the Bill being struck down. The second important practical reason for at least going as far as the Commonwealth Government is that it has indicated that it will consider the so-called roll back proposition. This means that the Commonwealth Government, if satisfied that satisfactory State legislation exists in the anti-discrimination field, is prepared to roll back the Commonwealth legislation to enable State legislation to operate as one code in South Australia. That would enable States to administer their own legislative regime in this area, which I would have thought was a very useful exercise in co-operative federalism in giving the States the opportunity to operate within the field and administer their own legislation rather than having it administered directly from Canberra. That does not mean that, if this Parliament wishes to go beyond the Commonwealth legislation, it should not do so. We should at least go as far as the Commonwealth legislation for the two reasons outlined. The simple point is that the Government, in putting in this Bill a firm consisting of one or more members, was reflecting the most recent expression of opinion of this Parliament on this topic.

The Hon. R.J. RITSON: In making a few comments I remind the Hon. Mr Sumner of one of the fundamental freedoms of western democracy, namely, the freedom of association. I will begin by drawing a distinction between large partnerships and small ones. Large partnerships function in a way that small ones do not. In a big partnership one very often finds a subgroup of senior partners who perform a managerial function. The firm may employ a large number of people and, indeed, being admitted to a partnership may merely mean admittance to the profit sharing and liability sharing aspects of the partnership. Apart from that it may be a relatively impersonal arrangement, and this is probably so with some of the larger law and accounting firms. There are small partnerships of two or three people who come together in what is a sensitive, delicate and personal relationship as a matter of free choice.

The question arises whether the law ought to interfere with that freedom. I know of some small medical practices of two or three medical practitioners. They live close to each other, socialise with each other, share each other's joys and sorrows, debts and liabilities, and tend to choose people of like values. Thus, it is not uncommon to see a small practice of fundamental Christians advertising for a Christian partner. It is not unusual to see a small partnership of female doctors advertising for an additional female partner. In so doing they are choosing to enter this very sensitive and personal form of association with people of their choosing rather than people inflicted upon them by the Government. I will not judge values or say that a Jewish practice should be forced to accept a Christian partner, or that a female practice should be forced to accept a male partner, other things being equal. I am not saying what I think of any values.

I could imagine that I would not want to see freedom denied to two homosexual partners who wish to select a third homosexual rather than a heterosexual partner. I am not making those value judgments. Do we really want the law to attack this fundamental freedom of association in this way? Are we going to deny that right to two or three people who wish to preserve a certain socio-economic character of their practice? Australians have had the freedom of choice to associate in this way for a very long time.

The Hon. C.J. Sumner: Always.

The Hon. R.J. RITSON: Yes, and I think the Government should not tread lightly on that freedom. Those freedoms were won with blood and we must not lose them through a careless use of the legislative pen.

The Hon. DIANA LAIDLAW: I simply wish to ask a number of general questions on the roll back concept to which the Attorney has referred. I ask them now because it concerns a number of other provisions that we are to discuss later. In relation to this provision both the Attorney and shadow Attorney have noted that the Commonwealth Act states that if six partners or fewer should be involved, the Government here is opting for one or more partners. The Attorney-General indicated that the roll-back provision will work when it is seen that the State provision is at least as beneficial if not more beneficial than the Federal provisions. I am not sure who defines 'beneficial', as it seems to be a subjective term. He then indicated that the Federal Government would consider this roll-back provision once we have determined what 'beneficial' means. In considering rolling back, does the Federal Attorney-General make that decision by himself, does he refer to all other State Attorneys or refer the whole question back to Parliament to see that one part of that Act does not apply in one State? We will

still have two Acts operating in this State, and people must know how the roll-back provision will work.

The Hon. C.J. SUMNER: If the roll back is put into effect it would mean that the Commonwealth Act would not operate in South Australia. Instead, the South Australian Act would operate and the anti discrimination regime would be administered by a South Australian Minister.

The Hon. K.T. Griffin: It would still apply.

The Hon. C.J. SUMNER: I am not sure about that.

The Hon. Diana Laidlaw: That is why the Commonwealth sex discrimination legislation was brought in.

The Hon. C.J. SUMNER: That is not entirely correct. The Commonwealth Sex Discrimination Act was brought in because some States did not have sex discrimination legislation. That is the proposal. As I have said, it has not been implemented yet. The Commonwealth Attorney has said that he is prepared to look at the so-called roll back of the Commonwealth legislation where the Commonwealth is satisfied that there is an effective anti discrimination regime in a particular State. For example, if Queensland chooses not to enter the field, the Commonwealth Human Rights Commission would establish an office in that State and would administer legislation of the Commonwealth Parliament. However, if the Commonwealth Government (and I suppose ultimately the Commonwealth Parliament, because it would need to legislate in order to roll back the provisions) determined that in a particular State the objects of the Commonwealth legislation were being given effect to by the State legislation it would roll back the Commonwealth legislation and enable the State legislation to be the one regime operating within the State and administered, in this State, by the Commissioner for Equal Opportunity.

I will not pretend that this area has been completely set in final form at this stage. The Commonwealth Attorney has made this statement and has written to us about it. It was with a view to that possibility that we had discussions at officer level to ensure that our Bill is as consistent as possible with the objects of the Commonwealth Bill. That is why I have moved what are fairly minor technical amendments but which nevertheless are designed to bring our State Bill into line with the Commonwealth Bill should the Commonwealth Government decide to roll back at some stage.

The Hon. K.T. Griffin: Do you propose not proclaiming this Bill, if it passes, until the Commonwealth legislates to roll back? Will they, or will they not, operate concurrently?

The Hon. C.J. SUMNER: They could operate concurrently but with one-stop shopping in relation to the consideration of complaints. The Commonwealth and State Governments have agreed that the Commissioner for Equal Opportunity in South Australia will act as the delegate of the Human Rights Commission. Rather than people having to approach two bureaucratic points seeking potential redress for an act of discrimination, they will only have to go to one—the South Australian Commissioner for Equal Opportunity. It is at that level that the Commissioner will determine whether the matter is to be dealt with under State legislation or Commonwealth legislation.

The Hon. Diana Laidlaw: In all cases?

The Hon. C.J. SUMNER: If the act of discrimination was not covered by the Commonwealth legislation, the State legislation would be used as the basis for the complaint.

The Hon. Diana Laidlaw: She will pick and choose as it pleases her.

The Hon. C.J. SUMNER: There is the potential for that, and I suppose that that is the problem which the roll back procedure would be designed to overcome. Funds have been made available by the Commonwealth to enable the Commissioner for Equal Opportunity to act as the delegate for the Human Rights Commission. At least there will be one-stop shopping. Really, it is probably not a matter of great import which Act the Commissioner decides to proceed under. I imagine that in most cases she will proceed under the State legislation, using the State Tribunal. There may be a matter where the Human Rights Commission considers a complaint to be of such paramount importance and in the public interest or in the national interest that it should take over its conduct from the Commissioner. That is the basic proposition. We have in place an agreement for one-stop shopping through the Commissioner for Equal Opportunity. Depending on the Commonwealth, we may have in place a regime in South Australia where the only legislation will be the State legislation, because the Commonwealth decides to roll back its legislation in respect of this State. That is a proposal which has not yet been given effect to. I concede all that, but that is what is being considered by the Commonwealth Attorney.

I should point out that this procedure provides some potential constitutional difficulties. It may be that it is not possible to have a provision in the Commonwealth Act for it to roll back its legislation. It may be that the provision that the Commonwealth has put in its Racial Discrimination Act, following the Viskauskas case in New South Wales—where the New South Wales Racial Discrimination Act was struck down as being inconsistent with the Commonwealth Racial Discrimination Act—purporting to preserve the operation of the New South Wales Racial Discrimination Act may be challenged. In fact, it is under challenge. If the High Court determines that it is not within the constitutional power of the Commonwealth to preserve State law, of course, we will have a complete Commonwealth regime and, I suppose, there would then be the question of whether the Commonwealth could vacate the field altogether.

I suppose, constitutionally, that is less likely to be subject to challenge than a simple clause providing for the two pieces of legislation to stand side by side in one particular State. It may be easier to argue that the Commonwealth can roll back completely its legislation by saying that it does not apply in certain parts of the Commonwealth, rather than the present argument where both State and Commonwealth Acts operate in those States that have State legislation in place. There is that constitutional matter. The case of *Metwally v University of Wollongong* has been heard in the High Court. A decision is awaited in relation to determining whether the clause which has purported to preserve the operation of State racial discrimination legislation is a valid exercise of Commonwealth power. Once that comes through we will know a bit more where we stand. I think it is more arguable that the Commonwealth could completely vacate the field, and that is what the roll back procedure suggested by the Commonwealth is all about.

The Hon. DIANA LAIDLAW: I thank the Attorney for his reassurance. I must admit, however, that I am more uncertain now than I was before about the merits of having two Acts, and in some instances quite varying provisions between the two. The very fact that the Federal Attorney is only considering this approach, with all due respect to him, makes me completely uneasy. We have seen so many instances where he has said that he will consider certain things, for example, four year terms, where one could feel confident of being able to go ahead with something—

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: He made many statements on that other matter and one would have thought that he was proceeding with it, but he decided to change his mind. As I have said, I feel less confident now than I did earlier, but I thank the Attorney for explaining the situation. Will the Attorney answer the last question I put to him: in determining whether it would be rolled back or not, is it simply an Attorney's decision or the Government's decision

or must it be referred back to the Parliament and debated in the Federal Parliament?

The Hon. C.J. SUMNER: A section would have to be inserted in the Commonwealth Sex Discrimination Act and the Race Discrimination Act to say either specifically that a particular State was exempted from the legislation or that the legislation did not apply in the State or, what would be more likely, a general clause saying that the Governor-General could by proclamation or regulation determine that the Commonwealth Act would not apply in a particular State or Territory of the Commonwealth. But, in order to get that power, whether it was done specifically in relation to certain States in the legislation or done by a proclamation or regulation procedure, it would require an amendment to either of those two Acts.

The Hon. Diana Laidlaw: So that really makes the situation even more uncertain, doesn't it?

The Hon. C.J. SUMNER: If the Government sponsored such a proposition in the Federal Parliament—assuming that it is the same Government after 1 December—I would not think that there would be any problems with the Commonwealth Parliament on that issue. With the Government's support in the House of Representatives and in the Senate, I would have thought that it would be a proposition that would appeal to the Opposition Parties in the Senate—to the Liberal Party—as it preserves the operation of State powers, albeit somewhat truncated.

If the decision is taken by the Government to go into this roll back procedure, there is a reasonable chance that it would get through Parliament. The question is really whether the Federal Government decides as a matter of policy at Cabinet level that it will do that. All that I can say to the honourable member is that that has gone a fair way down the track and that we have legislation from the Commonwealth Attorney proposing this. That has led to detailed officer consideration of the terms of our Bill. That is what my amendments are directed towards: so that we can be satisfied as a Council that the Commonwealth Government would be satisfied that this is an effective anti-discrimination regime in South Australia.

The honourable member asked who decides, and I point out that basically it would be a matter for the Commonwealth Government to decide whether or not it was satisfied that the legislation in a particular State was satisfactory. Clearly, if we decide that the application of the discrimination laws should be only to partnerships of six or more people, that would be acceptable to the Commonwealth, because that is what is in its Act. However, if we decided to make our Act applicable to partnerships or firms of one or more people that would be equally acceptable to the Commonwealth Government, because it would be a more stringent anti-discrimination regime.

The Hon. L.H. DAVIS: I go to a woman doctor, who is in partnership with another woman doctor. Is the Attorney really serious in suggesting that if that partnership wishes to expand it would not be able to take in another woman doctor because, as the provision stands, there can be no doubt that, if it advertises and a male doctor applies, discrimination taking the form of treating a person less favourably by reason of their sex could lead to a complaint being made that this pair of women doctors have disadvantaged the male because they have chosen a third woman for their partnership?

The fact is that a vast majority of professional and trade partnerships have fewer than six persons in them. One can look at accounting, medical, legal, architectural and building firms, and so on. We can also look at the trades: plumbers, carpenters, delicatessens, and so on. When we are talking about partnerships we are not talking about employment, paying people's salaries and wages, or working part time or full time: we are talking about people coming in with a capital commitment. We are talking about people coming into a partnership where they have to work together, hopefully towards a common goal, and where they have to be able to get along. It is of particular importance in small partnerships, which dominate the South Australian scene and are common in Australia.

Certainly we get exceptions—the large partnerships in accounting, as the Hon. Mr Milne would well know, and some other professions and trades—but the rule very much is the small partnership; certainly one may argue whether the figure should be six or a smaller or larger number than that. I accept the proposition as it now stands in the Commonwealth legislation. It is an intrusion into this freedom of association and right to choose the person with whom one wants to work. I strenuously resist the proposition as it now stands in clause 31. I support the Hon. Trevor Griffin's amendment.

The Hon. C.J. SUMNER: I can understand the arguments that are being put foward by honourable members opposite. In defence of the Government's stance, I can say we were following the most recent expression of view of this Parliament on this topic in a Bill introduced by—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: I agree that it goes beyond. If it is legitimate in the area of physical handicap, sure it is equally legitimate in the case of sex. I do not know whether the honourable member contributed in 1981. Certainly, the Bill was promoted by the Attorney-General at the time; that is fair enough. Alternative arguments are being put forward; that is fine. We can reconsider the arguments of 1981. The Government accepted the most recent expression of opinion of the Parliament. The honourable member apparently accepted it, too, in 1981.

The Hon. PETER DUNN: I want to demonstrate something that worries me: the practicality of it. This deals with the setting up of a partnership and therefore with something that happens beforehand. I will look down the track a bit further. A lot of partnerships, particularly in the rural areas, run rural properties. For instance, two people decide to set up a partnership, and a third person comes along with all the qualifications, with a handful of money and with everything that is suitable. However, as his hair or clothes are not agreed to by those people who have already decided to form a partnership, they look down the track a bit further and know from that fact that they will lock horns with that person, regardless of whether he has all the suitable qualifications and necessities for a suitable partnership. They know that it will not work in six or 12 months. Because that will happen, they should have the right not to have to take that person purely because he is a transvestite or something of that nature. Partnerships are fragile things (and I say that from experience), particularly when they are small. I dare say that there is a buffer effect in larger partnerships. For those reasons, I support the amendment.

The Hon. I. GILFILLAN: I am persuaded by the argument put by the Hon. Trevor Griffin and other members who have been so eloquent. I support the amendment.

The Hon. R.I. LUCAS: It appears that there are the numbers to pass the amendment. If the amendment is passed, will it be lawful for a group of, say, four people wanting to form a partnership to advertise (and I say this also in relation to clause 98, which relates to discriminatory advertisements) for prospective partners stipulating that no Asians, no women and no homosexuals will be considered?

The Hon. C.J. SUMNER: Yes, that is the effect of the amendment. This amendment relates to the sex discrimination part of the Bill. This clause does not relate to race, but, under the amendment, and if there were only four members it would be permissible for an advertisement to

state that no women may indicate an interest. I am pleased to hear the persuasive argument that the honourable member has put in favour of my case. The Hon. Mr Davis used words such as 'disadvantage'. The legislation is aimed not at disadvantage but at discrimination—at deciding that someone should not come into a particular partnership because he or she is of a particular sex or race. It is not a matter of a male deciding that he was disadvantaged because he could not become a third party in a partnership of, say, two women. It would have to be established that those two women did not want the third person because he was a male.

The Hon. R.J. Ritson: We are arguing that people have a legitimate right to run a female practice, a homosexual practice or a Christian practice.

The Hon. C.J. SUMNER: The Hon. Mr Lucas raises the objection that people may want to get together a partnership but that it could be a partnership of women or a partnership in which no Asians could apply. I can understand the arguments put by the Hon. Mr Davis, the Hon. Mr Griffin and other members, but I still think that the point made by the Hon. Mr Lucas is valid.

The Hon. R.I. Lucas: It was just a question.

The Hon. C.J. SUMNER: Well, I was very encouraged by it. The argument in favour of the Government's proposition is valid, and I emphasise again that the measure deals only with discrimination. I understand the politics of the situation and, in accordance with my co-operative practice of early this morning, I will not divide on the amendment in the light of the Hon. Mr Gilfillan's indication. I take it that I can assume that the Hon. Mr Milne has similar views.

The Hon. K.L. MILNE: I have views that are similar to those of the Hon. Mr Griffin. I take it as a matter of principle. Anyone who has been in or studied partnerships knows that they are very fragile things indeed, and the smaller the partnership the more fragile it tends to be. We are trying to legislate for something that just will not happen. If that situation was likely to occur, people would avoid starting a new partnership.

The Hon. Diana Laidlaw: Or they would lie.

The Hon. K.L. MILNE: Or they would lie. The Hon. Miss Laidlaw and I have said time and time again that either we are trying to help small business or we are not. One of the ways in which to help small businesses is to help them start. We continue to make it more difficult for them to start and to keep going. We cannot ignore that. I am sure that no-one is trying to do that, but that will happen because of the extraordinarily intimate and fragile nature of partnerships and firms, especially in the professions. Anyone who has been involved in medicine or the Stock Exchange, for example, will know that partnerships are very fragile. When there is a row in a small partnership, the partnership is normally dissolved, but, if there are more members (possibly six but I would prefer the number to be 10) the partner who misbehaves can be kicked out and someone else can take his place. The upheaval is not so great.

The principle of maintaining the professions, the concept of partnerships and their fragile nature and helping small businesses to grow from a one-man business to a two-man business and to a partnership and then to keep on growing with capital content is the issue. People are not employed: they are asked to put in capital and to take risks. That is a different thing. If we take all that into account, we will see that there will be no damage to the effect that the Government is trying to achieve if there are six members.

Amendments carried.

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

Page 13, line 41—After 'determining' insert 'or in the course of determining,'.

This amendment is designed to align the Bill to section 17 of the Commonwealth Act dealing with partnerships.

The Hon. K.T. GRIFFIN: I support the amendment.

Amendment carried.

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

Page 14, line 2—
After terms 'insert' or 'conditions'.
After line 5 insert new paragraph as follows:
(aa) in the terms or conditions on which it affords him membership of the firm;.

These amendments are moved for the same reason.

Amendments carried; clause as amended passed.

Clause 32—'Exemptions from this Division.'

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

Page 14, after line 15—Insert new subclause as follows:
(3) This section does not apply to discrimination on the ground of a woman's pregnancy if the woman is not, or would not be, able—
(a) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required for the employment or position in question;
or
(b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.

I notice that the Hon. Anne Levy has an amendment on file in relation to this clause. When she has put it I would like to respond. My amendment is designed to pick up a difficulty that I have already mentioned during my second reading speech; that is, the difficulty of an employer's obligation to comply with safety, health and welfare legislation and the common law to provide a safe system of work and, on the other hand, the equal opportunity legislation that requires an employer not to discriminate against a woman on the ground of her pregnancy. As I indicated at the second reading stage, it is established, say, in relation to the unborn child, that there are work situations that do, in fact, create a risk for an unborn child and there are situations in the work place that provide risks for both the woman and the child as a result of the pregnancy and the inability to perform some of the tasks that may be normally genuinely and reasonably required of a woman who is not pregnant.

I am trying to get a balance between the important objective of eliminating discrimination against women on the ground of pregnancy while, on the other hand, ensuring that an employer is not faced with a dilemma presented by safety, health and welfare legislation and the common law. I believe that my amendment will enable employers to achieve that balance and a woman not to be placed in a situation of disadvantage in the context of her contract of employment. I will make some comments later on the Hon. Anne Levy's amendment. I would like to hear her move that amendment and present it, and then I will respond because I regard this as a serious matter. I am not in any situation of antagonism with the Hon. Anne Levy in relation to this matter, but want to ensure that there is a proper balance achieved.

The Hon. ANNE LEVY: I move to amend the Hon. K.T. Griffin's amendment as follows:

Leave out from subclause (3) 'discrimination on the ground of a woman's' and insert 'the dismissal of a woman from employment on the ground of her'.
Insert in subclause (3) after paragraph *(b)*—
', and there is no other position in the same employment that could be offered to the woman, being a position that is vacant and is reasonably appropriate to her skills, experience and physical condition'.

Likewise, my amendment is moved in good faith in an attempt to cope with what can be a difficult situation. First, I would like to quote some of the existing legislation from other parts of the world dealing with this same matter. I do not have the actual UK legislation, but I do have a booklet

that was produced there called *Maternity Rights for Working Women*. This book is written in lay language and states:

If, after 1 June 1976, your employer sacks you when you are pregnant, and you have been employed there for at least six months, then this is unfair dismissal, unless the reason for sacking you is either:

(a) because your pregnancy has made you incapable of 'adequately doing the work';

or

(b) because it is illegal and usually dangerous for your job to be done by a pregnant woman—

which seems to cover the two situations that the Hon. Mr Griffin is suggesting—

Even if one of the two reasons above applies to you the employer is still obliged to offer you a suitable alternative job, if there is one available, before resorting to giving you the sack. If you are sacked without being offered any alternative and you believe there was an alternative which could have been offered then you would have still the right to claim unfair dismissal. This right applies whether or not you would have accepted the alternative job.

The Act also says that the alternative job offered to you must be on terms and conditions 'not substantially less favourable' than your previous one. You and your employer may not agree on when a less favourable job becomes 'substantially' less favourable. If you cannot settle your differences, you should apply to an industrial tribunal . . .

Refusal of suitable alternative work could be regarded as resignation, which could result in your rights under the Act being forfeited. If no suitable alternative exists in the first place then you can be fairly dismissed if one of the special situations above applies.

The situation in the United Kingdom, from attempts there to cover the points that the Hon. Mr Griffin is raising, is that it is possible for safety and health reasons, to sack a pregnant woman provided that, first, an attempt has been made to find her alternative work with the same employer. If such alternative work is not available then dismissal is possible. But, if alternative work is available then it would not be legitimate to sack her merely because she was not able to continue doing the work that she had been doing. In France, from what I have been able to find out from a document called EIRR—and I am afraid I do not know what that stands for, except that that organisation produces frequent reports—the situation is as follows:

The employment position of women during pregnancy is also protected in France and this protection has been strengthened by the Act of 11.7.75 . . . The main protective provision is to the effect that women may not be dismissed during pregnancy unless for some reason unconnected with the pregnancy—

presumably, tickling the till is always grounds for dismissal—

Article L122.25.2 of the Labour Code defines the reasons which can justify the dismissal of a pregnant woman narrowly; that is, for reasons of serious misconduct on the part of the employee unrelated to pregnancy, or the impossibility of continuing to employ the woman concerned because of some reason other than pregnancy.

The 1975 Act has also introduced a procedure whereby, subject to certain conditions, it is permissible temporarily to vary a woman's contract of employment during pregnancy. If the employer and the woman concerned both agree to change the job to take account of the woman's physical condition due to the pregnancy, this may be done provided this is satisfactory in terms of her medical condition. Where the employer and the woman disagree as to whether the woman's job should be temporarily changed, however, the firm's doctor must certify that a change of job is necessary and that the employee is capable of carrying out the new job.

Another volume of the same publication talks about the situation in Italy, and states:

Another of the important rights accorded to pregnant working women in Italy is protection against dismissal for any reason during pregnancy. Thus, section 2 of the main Act states: 'It is unlawful to dismiss a female employee at any time during the period running from the commencement of her pregnancy until the end of the period of statutory, compulsory maternity leave.'

Likewise, in the Netherlands:

In August 1976 legislation came into effect giving protection against dismissal on the grounds of marriage, pregnancy and confinement. These provisions now incorporated into Articles 1638 and 1639 of the Dutch Civil Code state that any dismissal of a worker on these grounds alone shall be null and void. (This does not, however, preclude dismissal on other grounds during pregnancy.) This legislation also requires women to produce medical certificates declaring that they are pregnant and places a maximum time limit of two months on an appeal a pregnant woman wishes to make against her dismissal in this area.

Lastly, I refer to an Act in West Germany in which Article 9 provides:

Dismissal of a woman during pregnancy and for up to four months after confinement is forbidden if, at the time of giving notice, the employer knows that she is pregnant.

Furthermore, there have been many cases before the courts in Europe about dismissal on the grounds of pregnancy. I refer to an article in the *International Labor Review* by Felice Morgenstern, as follows:

Another question which has given rise to court actions is that of the financial entitlements of women who are unable, because of pregnancy, to continue to do their previous work. A series of recent judgments of the Federal Labour Court of the Federal Republic of Germany has dealt with the application, in practice, of legislation requiring the employer to make good any loss of earnings resulting from a prohibition related to pregnancy. In a case decided in 1970 a woman had been reassigned, as required, from piece-work to time-work, with the maintenance, in principle, of the average earnings achieved while on piece-work; however, the employer withheld part of these earnings on the ground that the decline in her productivity was much greater than was warranted by her condition. The court ordered the payment of the sum withheld; it considered that, while an employer was entitled to compensation for a breach of the worker's contractual obligation, such breach had to be proved. In a case decided in 1971 a barmaid was unable to continue her previous work because of a prohibition of nightwork during pregnancy; the employer argued that she should have sought alternative work and refused to continue to pay her average earnings. The woman was awarded her average earnings for the entire period in question; it was for the employer to offer alternative suitable work to the worker, who could not be expected to face the strain of jobseeking and who was not likely, because of her condition, to be accepted elsewhere.

That deals with what I have been able to determine as to what happens in other countries, but it is quite clear that in some other countries dismissal of a woman even when she is pregnant is totally prohibited. I can imagine that that might cause perturbations in some quarters were that to be brought in here, and I am not sure that it would be desirable legislation because it could result in employers being very reluctant to employ any woman of reproductive age. That would seem a retrograde step.

However, I am certainly concerned with the problem that the Hon. Mr Griffin has addressed in his amendment and I believe that as it stands it is perhaps not sufficient protection for the woman concerned. As the amendment has been moved, it will apply to all discrimination on the ground of pregnancy, yet the situation he is addressing is where a woman is not able to perform the work. It seems to me unnecessary to extend the exemption to permit discrimination where the woman cannot do her work where it is something different, other than dismissal of her. The fact that she could not do that particular job should not be a ground for refusing to consider her for promotion perhaps, or for some other benefit associated with the job where the fact that she was not able to do the current job was really irrelevant—

The Hon. Diana Laidlaw: Or a lesser job on lesser pay?

The Hon. ANNE LEVY: I am trying to explain the first part of my amendment which limits the exemption to the question of dismissal only because it seems to me that that is what the Hon. Mr Griffin is addressing—that she is not able to do that job for health and safety reasons. It would seem that a protection should be afforded her that, if there is another suitable position that is reasonably appropriate to her skills, experience and condition, she should be offered that position as an alternative, rather than just summarily being dismissed.

If there is no other position available in the organisation for which she works, I guess there is not much we can do about it, and that may be the situation in small organisations. It seems to me that in many large organisations it could well be possible to find her reasonably appropriate work which she was able to do and which she should at least be offered and be protected from summary dismissal in this situation.

The Hon. K.T. GRIFFIN: I support the sentiments of the Hon. Anne Levy. Her amendment is too restrictive on the woman, and I will explain why. It deals with equal opportunity and it has to be balanced against the industrial situation. It relates only to the dismissal of a woman on certain grounds, but if there is no other position it allows dismissal. The extra four lines being inserted in subclause (3) suggests that the other job is with the same employer, a job of the same status, and does not allow being placed in another job that might attract a lesser remuneration.

The Hon. Anne Levy: It says 'reasonably appropriate'.

The Hon. K.T. GRIFFIN: I want to make the point that it could be construed as being too precise. If no job is available of the same status or conditions, but there is a job of different status and conditions that might attract lower remuneration, it would not be necessary for the employer to transfer her to that other position. That is the concern I am expressing. Let me amplify in the context of industrial awards. I refer to the Clerks Award which, I am told, includes provisions that are reflected in many awards in respect of maternity leave. The award provides:

Clause 24—Maternity Leave:

(a) Eligibility for Maternity Leave:

An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

Then there is a reference to the employees to whom that extends. There is a reference in paragraph *(c)* to transfer to a safe job, as follows:

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses *(g)*, *(h)*, *(i)* and *(j)* hereof.

Paragraph *(i)*, 'Termination of Employment', states:

(i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(j) Return to Work after Maternity Leave

(i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(ii) An employee, upon the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause *(c)*, to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

That sets out a code which protects the position of the pregnant woman and which enables an employer in certain circumstances to transfer her to a safe job that might attract less remuneration and, if there is no safe job, then to compel maternity leave, but at the end of the maternity leave there is a job to which she is entitled to return, and if that job is not available, to one as near as practicable to the status of the job she left before her pregnancy. That is set down in many industrial awards and I think it is quite a fair and reasonable code of conduct on the part of employers and employees.

The Hon. Anne Levy: They can't start maternity leave early in pregnancy.

The Hon. K.T. GRIFFIN: No; I am not suggesting that they ought to be able to do so.

The Hon. Anne Levy: But the situation to which we are referring may arise before she can take maternity leave.

The Hon. K.T. GRIFFIN: Then under the award there are obligations on the employer on the presentation of a medical certificate, and in those circumstances the employer should transfer her to a safe job if one is available but, if it is not, the employer can require unpaid maternity leave to be taken to the point when paid maternity leave would otherwise have been payable.

The Hon. Anne Levy: There is no paid maternity leave under that award.

The Hon. K.T. GRIFFIN: Well—

The Hon. Anne Levy: No, there isn't.

The Hon. K.T. GRIFFIN: I can clarify that in a moment. However, let me develop the position that I am trying to clarify with the Hon. Anne Levy. Under the Clerks Award there is a code. Under the equal opportunity legislation and the amendment that the Hon. Anne Levy is seeking to amend, the pregnant woman cannot be dismissed if certain circumstances apply.

However, if no other position in the same employment can be offered to the woman, being a position that is vacant and reasonably appropriate to her skills, experience and physical condition, which is a different emphasis from that in the award, then she can be dismissed. The amendment that the Hon. Anne Levy is moving allows dismissal under the equal opportunity legislation whereas the award would not allow such a dismissal. The point I am trying to make is that, from my interpretation of what is before us at the moment, the Hon. Anne Levy's amendment is much stricter on a woman employee than is my amendment because the award allows placement in a safe job of a lower status whereas the Hon. Anne Levy's amendment allows dismissal if there is not a comparable position available.

If there were to be a transfer to a lesser paid position in compliance with the award, because of the honourable member's emphasis on dismissal, that shift to a lesser paid but safe job would be discrimination, which would be contrary to the provision that I am seeking to insert, and thus contrary to the provisions of the Bill. The problem I have with the Hon. Anne Levy's amendment, although as I said earlier I am sympathetic to the objective that she is trying to achieve, is that it is more restrictive on a woman because it is a case either of dismissal or stay on the job. Dismissal in the circumstances to which I have referred is contrary to the award, which provides a code of conduct and certain established rights for a woman employee right through until her maternity leave finishes, when she is entitled to recover her original employment. That is the difficulty that I see that I would like addressed.

The Hon. ANNE LEVY: I certainly do not wish to make things any tougher then they are in any award and it may be that rewording my amendment is desirable. Many people

are not covered by awards in the work force, including many women. It is important that we do not just leave this matter to awards. The other point is that under the award that the honourable member quoted, maternity leave cannot start until a certain stage of pregnancy; a woman cannot start maternity leave when three month's pregnant.

The Hon. K.T. Griffin: I agree with that.

The Hon. ANNE LEVY: It would seem to me that one has to take that situation into account. It is certainly true that most women are able to continue whatever job they are doing well past the third month of pregnancy, although there may be some particular situations when they should not do so.

I refer to the situations of women such as theatre sisters, because anaesthetics are deleterious to the early stages of foetal development. Therefore, it would be most unwise for a theatre sister to continue in such a position in the early stages of her pregnancy, even though it may be perfectly safe for her to do so when she is seven month's pregnant, because the foetus is not susceptible to anaesthetics at that stage. One has to take into account, first, that awards do not cover everyone and, secondly, that maternity leave cannot start until a certain stage of pregnancy is reached. Also, there is the fact that the maternity leave provisions are for unpaid maternity leave and people need money to live.

The Hon. K.T. Griffin: But this award relates to earlier leave on the basis of medical certificates.

The Hon. Diana Laidlaw: Is the Attorney going to do something to change this?

The Hon. C.J. Sumner: I will give an explanation and make a suggestion later.

The Hon. DIANA LAIDLAW: I commend the Hon. Ms Levy for introducing this amendment because she has highlighted a situation that should be looked at. We, on this side of the Council, have looked at it most seriously. We were concerned that, in respect of these award situations, it was more restrictive and that is why these comments have been made. The honourable member is quite right about the situation where women are not covered by awards. However, if the Attorney states that he is prepared to accept this amendment and make some arrangement whereby the honourable member's concerns are dealt with, I would be happy with that.

The Hon. C.J. SUMNER: My reading of the situation is that there is support in principle for the proposition put forward by the Hon. Ms Levy.

The Hon. K.T. Griffin: In conjunction—

The Hon. C.J. SUMNER: Yes, certainly in conjunction with the Hon. Mr Griffin's amendment. There is support of both propositions but there is some difficulty with the implementation of it. There is a further difficulty. There was one drafting error and that is the Hon. Mr Griffin's amendment should refer to this 'division'.

The Hon. K.T. Griffin: I am sorry I should have moved it in that way.

The Hon. C.J. SUMNER: The second problem I see, because the Hon. Anne Levy's amendment refers to a dismissal and not a discrimination, is that if a pregnant woman is shifted from a job by her employer to another job (perhaps paying less) that may be to her detriment, then the woman, under the Hon. Anne Levy's amendment, could challenge that transfer under the legislation. The Hon. Mr Griffin's attempt to give the employer some protection where safety is involved, and the like, would not be applicable because of the way the Hon. Anne Levy's amendment is drafted. I apologise to the honourable member for that, because that drafting difficulty has only just become apparent to me.

There appears to be agreement in principle to the Hon. Mr Griffin's amendment, with which we certainly have no difficulty. The Government also supports the Hon. Anne Levy's amendment in principle. From what the Hon. Miss Laidlaw and the Hon. Mr Griffin have said there is support in principle for that amendment as well. The best course of action is to perhaps postpone consideration of clause 32 and to have Parliamentary Counsel have another attempt at redrafting it, taking into account the Hon. Mr Griffin's comments and the comments that I have made. Perhaps we can then get agreement on the precise wording of the clause, given that it appears that there is agreement on the principles involved.

Leave granted; further consideration of clause 32 postponed.

Clause 33 passed.

Clause 34—'Discrimination by qualifying bodies.'

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

Page 15—

Line 11—Leave out 'of a trade' and insert 'or engaging in of a trade or occupation'.

Line 13—Afer 'confer' insert 'or renew'.

Line 14—

After 'terms' insert 'or conditions'.

After 'confers' insert 'or renew'.

Line 17—After 'terms' insert 'or conditions'.

This is another amendment in pursuit of the objective of getting consistency between the Commonwealth and the State legislation. In this case section 18 of the Commonwealth Sex Discrimination Act deals with qualifying bodies.

Amendments carried; clause as amended passed.

Consideration of clause 35 postponed.

Division V—Discrimination in relation to Goods, Services and Accommodation.

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

Page 15, line 35—after 'in relation to' insert 'Land.'

My amendment simply picks up a reference in the heading to discrimination regarding land. The amendment to the heading is consequential upon the insertion of new clause 35a, which is designed to align the Bill with the Commonwealth Act. Section 24 is concerned with discrimination regarding the disposal of interest in land against part of the exercise I have embarked upon, which to date has not met with any major opposition. I ask that the amendment to the heading be considered as a test case also in relation to clause 35a.

The Hon. K.T. GRIFFIN: I do not think the Attorney-General has to worry about it being a test case because it is in the Commonwealth legislation. I will not oppose the insertion of the word in the heading, or new clause 35a, but I want to pick up one aspect of it in the context of tenancies and strata titles.

The Attorney-General will be aware that some strata title units have some restrictions on their occupation. Of course, the purchaser of a strata title, by the act of purchase under the Real Property Act, agrees to be bound by those terms and conditions. Does the Attorney envisage that this provision is likely to impinge upon those established terms and conditions relating to the occupation of strata units and, if so, to what extent will it impinge on those strata titles?

The Hon. C.J. SUMNER: I think the proposed section would be applicable to the strata title situation and to the terms and conditions under which people entered into strata title arrangements. If those arrangements were discriminatory within the terms of the Bill, they would be caught. If the terms of a strata title corporation were such that the owner of a strata title could not sell to, say, a woman—

The Hon. K.T. Griffin: In relation to marital status.

The Hon. C.J. SUMNER: Yes, if that were the case, but it is more likely to be a problem in the race area rather than the sex area. Nevertheless, this legislation would contradict and render invalid any conditions in a strata title agreement which provided that strata title property could

only be transferred to a person of Caucasian race or to a married woman or whatever. I believe that it covers the future conduct in pursuance of existing arrangements and any new arrangement.

The Hon. K.T. GRIFFIN: I was not really addressing the area of race or physical impairment. In the area of physical impairment there are some exceptions anyway in relation to accessibility. I suppose it is a highly theoretical position, but I refer to strata titles with, say, two bedrooms, a lounge and a kitchen area where there is a condition that no more than four persons including children may occupy the premises. It may be that that is not covered by this provision, although I think the question of children relates directly or indirectly to the question of marital status, either *de facto* or married relationships. The Attorney has indicated that he thinks that this will apply to those situations. I presume in the context of what I have just said that there is nothing more that he can add.

The Hon. C.J. SUMNER: I do not believe so. I think the Act would apply. I am not sure whether the honourable member is suggesting that the strata title—

The Hon. K.T. Griffin: I suggested that there might be a limit to the number of people who might occupy, including children.

The Hon. C.J. SUMNER: If the strata title agreement talks about the number of people occupying a strata title, I do not think that that would be rendered invalid by this clause.

Amendment carried.

New clause 35a—'Discrimination by person disposing of an interest in land.'

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

Page 15—After line 36 insert new clause as follows:

35a. (1) It is unlawful for a person to discriminate against another—

(a) by refusing or failing to dispose of an interest in land to the other person; or

(b) in the terms or conditions on which an interest in land is offered to the other person.

(2) This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift.

New clause inserted.

Clause 36—'Discrimination of provisions of goods and services.'

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

Page 16, line 3—After 'terms' insert 'or conditions'.

Again, this is to bring the Bill into line with the Commonwealth Act (section 22), dealing with goods and services.

Amendment carried; clause as amended passed.

Clause 37—'Discrimination in relation to accommodation.'

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

Page 16—

Line 10—After 'terms' insert 'or conditions'.

After line 16 insert new paragraph as follows:

'*(aa)* in the terms or conditions on which he provides the accomodation for that person;.'

Again, this brings the Bill into line with section 23 of the Commonwealth Act, dealing with accommodation.

Amendments carried.

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

Page 16, line 29—Leave out 'two' and insert 'six'.

This amendment relates to the provision of accommodation, essentially on private premises. Under subclauses (1) and (2), it is unlawful to discriminate in respect of the offering of accommodation and in a variety of other ways in respect of accommodation. Subclause (3) provides that it:

does not apply to discrimination in relation to the provision of accommodation if—

(a) the person who provides, or proposes to provide, the accommodation, or a near relative of his, resides, and intends to continue to reside, on the premises; and

(b) the accommodation is provided on the premises for no more than two persons apart from that person and his family.

The present Sex Discrimination Act has the number 'six'. I would have thought that in this area of discrimination on the grounds of sex, marital status, pregnancy and sexuality 'six' is more appropriate. I can envisage the situation where accommodation may be provided in a private home for students attending school in Adelaide, and there may be more than two students. In that context, somebody taking those two students into their home, if they had another place available, would be bound by the Equal Opportunity Act. They are not bound by the Sex Discrimination Act, and it may be quite inconvenient for the person who owns that private home to provide the appropriate facilities for four or five persons of different sex or sexuality, marital status or pregnancy. It seems to be unreasonable in that context, and I believe that the number should be increased to six.

The Hon. C.J. SUMNER: There is a real problem with this amendment: the Commonwealth Act picks up discrimination in the case of three persons other than the family or the people who are running the boarding house or accommodation.

The Hon. K.T. Griffin: It might not even be a boarding house: it might be a private home.

The Hon. C.J. SUMNER: Whatever it is, the problem is that there is a direct inconsistency. The honourable member's amendment, providing for six persons, would not stand in the face of the Commonwealth Act, which provides for three persons. I can only ask honourable members not to accept the amendment. The Hon. Mr Griffin has argued that it is desirable and that that is provided in our Sex Discrimination Act, but the Commonwealth has legislated for three people, and I think we are stuck with that unless we want to run the risk of having our legislation struck down.

The Hon. K.T. GRIFFIN: The amendment is inconsistent to the extent to which the Attorney-General has referred, but that does not make the provision invalid. The Attorney has already indicated that the Commonwealth is inclined to roll back its legislation if it is satisfied that there is an appropriate scheme relating to sex discrimination in a State. I would like to think that we could still provide for six people on the basis that, when the Bill is in its final form, the Commonwealth can see that it is reasonable and will roll back its own legislation.

I do not believe that our providing a different number will be the basis upon which the Commonwealth can say, 'We are sorry, but we will not roll back our legislation.' I persist with the amendment and to the extent that the Commonwealth rolls back its legislation I would like to think that this provision is contained in our legislation. The worst that can happen is that, if the Commonwealth does not roll back its legislation, its own provision for three people will prevail, and that is better than two. I would like to provide for six people to ensure that there is a comprehensive scheme that has the approval of Parliament.

The Hon. C.J. SUMNER: The problem is that I understand that the Commonwealth will not roll back its legislation where there is that sort of difference between the suggested State provisions and the Commonwealth legislation. Further, if the Commonwealth legislation stays in place and if there is a challenge to the State legislation, this provision will be struck down to the extent that it is inconsistent with Commonwealth legislation. The argument becomes a bit academic. Commonwealth legislation refers to three people and our Bill refers to two people, so there is some ground for

movement or consideration, but I cannot accept the honourable member's proposition, because the provision would be invalid if there was a challenge. It is as simple as that.

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. C.J. SUMNER: I move:

Page 16, after line 29—Insert new subclause as follows:

(4) This section does not apply to discrimination on the ground of sex or marital status in relation to the provision of accommodation by an organisation that does not seek to secure a pecuniary profit for its members, where the accommodation is provided only for persons of the one sex, or of a particular marital status, as the case may be.

This picks up the type of exemption that is available pursuant to section 39 of the Commonwealth Act for voluntary, that is non-profit making, organisations, and will enable charitable and like bodies to provide or continue to provide such things as women's shelters.

The Hon. K.T. GRIFFIN: I am prepared to support the amendment. This concerns one of the issues about which I was concerned, namely, that women's shelters, for example, would otherwise be compelled to take men, which is directly contrary to the object of those shelters. I support the amendment.

Amendment carried; clause as amended passed.

Clause passed.

Clause 39—'Employer-subsidised superannuation schemes.'

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

Page 17, lines 18 to 20—Leave out 'that has been disclosed by the person acting in the discriminatory manner to the person the subject of the discrimination, being data'.

If honourable members recall, this matter is to be the subject of separate proclamation which is not to come into effect for at least two years. Subclause (3) provides:

This section does not render unlawful discrimination on the ground of sex in the rates upon which a pension payable to a member under an employer-subsidised superannuation scheme may, at his option, be converted to a lump sum or a lump sum payable to him under the scheme may, at his option, be converted to a pension, where the discrimination—

(a) is based upon actuarial or statistical data that has been disclosed by the person acting in the discriminatory manner to the person the subject of the discrimination, being data from a source upon which it is reasonable to rely;

The concern which I expressed at the second reading stage, and which I express again, is that this will mean that all the actuarial or statistical data on which the manager of the superannuation scheme (the trustee; the employer) will have to rely in the determination of benefits and contributions will have to be disclosed where the person claiming the discrimination becomes a member or contributor to the superannuation scheme. That may well mean a vast amount of paper work for those who manage these schemes, for no good purpose, in the sense that there will be many people who are not worried about the basis upon which the figures have been arrived at. It would seem to me to be quite superfluous that, on each of the occasions that a person is invited to join and makes application to join or to become a contributor, this actuarial and statistical data should be made available as a matter of obligation.

My position is that the data should be available upon request. If honourable members look further down the list of my amendments, they will see a new clause 83a, which provides:

It is unlawful for a person who, in providing insurance or a superannuation scheme or provident fund, proposes to discriminate against another person on the basis of actuarial or statistical data to fail to make the data available to that other person upon that other person's request.

I am informed that there are, in the operation of schemes, what might be regarded as discriminatory aspects in terms of contribution and benefit but that it is the men who are discriminated against because of their shorter life expectancy.

That is to be distinguished from the admission to superannuation schemes, where there may well be discrimination as to who is to be admitted to a scheme. I am not addressing that issue. I am addressing the discrimination in contributions and benefits on actuarial and statistical data. My amendment, if supported, in conjunction with new clause 83a that I intend to move will mean that the material is available upon request. I think that that is what is important for those who have a specific interest in determining the basis upon which it is calculated, rather than making the paper work available to everyone who seeks to join, of whatever sex.

The Hon. C.J. SUMNER: This is not acceptable to the Government. I think the flaw in the honourable member's argument is that people do not know whether, in setting the premium rates and the like, there has in fact been discrimination. The provision of information where there has in fact been discrimination would enable the person who has on the face of it been discriminated against to consider the basis of that discrimination and determine whether or not it comes within the exemptions provided for in the legislation, that is, discrimination based on actuarial data. On the face of it there is some plausibility in what the honourable member has said, but I think the flaw in his argument is that if the information has to be given only on request there is no way for the person who has taken out the insurance to know whether or not discrimination has applied with respect to the offering of insurance. For that reason, I oppose the amendment.

The Hon. K.L. MILNE: I cannot understand this. One has to read the first six lines about 10 times to know what is meant. The Committee does not know how much data is involved.

The Hon. K.T. Griffin: You're an old insurance man.

The Hon. K.L. MILNE: You would need a truck to bring it in.

The Hon. Anne Levy: The differences between the sexes could be shown on one sheet of paper.

The Hon. K.L. MILNE: No. An explanatory paper is a different matter, but with data there are all sorts of books, statistics, schedules, calculations and other nonsense that I am sure is not intended. Does it apply to every person joining?

The Hon. K.T. Griffin: Yes.

The Hon. K.L. MILNE: What indicates that it must be shown to every new person joining a fund?

The Hon. Anne Levy: It applies only if they are being discriminated against.

The Hon. K.L. MILNE: Who is going to know?

The Hon. Anne Levy: Exactly. Unless they are told they will not know they are being discriminated against.

The Hon. K.L. MILNE: What is the position thus far? People are not going to be discriminated against under this legislation.

The Hon. Anne Levy: Yes, this is an exemption that allows discrimination .

The Hon. K.T. Griffin: That is an interesting question in itself.

The Hon. K.L. MILNE: It is getting worse. I will give up in a minute.

The Hon. Anne Levy: It says that it does not render unlawful discrimination.

The Hon. K.T. Griffin interjecting:

The Hon. K.L. MILNE: I still do not understand it, but I do not know what to ask. Because a person is joining a fund (and thousands of people do it every day), that person has to ask, first, 'Am I being discriminated against?'

The Hon. Anne Levy interjecting:

The Hon. K.L. MILNE: But someone has to say, 'You are going to be discriminated against,' do they?

The Hon. Anne Levy: If they are.

The Hon. K.L. MILNE: You are saying that they are, because—

The Hon. Anne Levy: If they are.

The Hon. K.L. MILNE: If the management of a scheme differentiates between the benefits for women and men, for example, of the same age, they are obliged to tell the people that difference.

The Hon. Anne Levy: Under this, yes.

The Hon. K.L. MILNE: Why do we not simply say that? Why do they have to produce a whole lot of information? I would think that the time to produce that would be when the person says, 'To what extent am I being discriminated against?' If that happens, then they could look at what they like, but I think that it is an imposition and rather overplaying one's hand, surely, to have to do that every time.

The Hon. ANNE LEVY: I appreciate some of the points that the Hon. Mr Milne has made. We are dealing with a permission to discriminate. We are saying that superannuation funds should not discriminate, but in some circumstances we will allow them to discriminate. The aim—

The Hon. K.T. Griffin: That really depends on what is meant by discrimination, doesn't it?

The Hon. ANNE LEVY: It is on the grounds of sex.

The Hon. K.T. Griffin: There is an allegation that because there are different rates of contribution betweeen males and females that is discrimination.

The CHAIRMAN: Order! The Hon. Ms Levy has the floor.

The Hon. ANNE LEVY: It is on the grounds of sex: if differences are made between the contribution rates or benefit rates purely on the basis of sex, and not on the basis of the particular individual's state of health, and if a superannuation fund takes the view that for men they will have one level of contribution and benefits and for women they will have a different level of contribution and benefits, that is obviously discrimination. We are saying that that discrimination is permitted, but my point is that if such discrimination is to be permitted the people who are being discriminated against should know that they are being discriminated against. It may well be that the full actuarial or statistical data may be voluminous. I would have thought that the relevant actuarial data was a life table covering half a page, showing that women live longer than men on average. However, it may be that instead of saying what is here we should say that it is based on actuarial or statistical data of which a brief summary has been disclosed by the person acting in the discriminatory manner. I certainly do not mind if it is only a half page summary.

The Hon. K.L. Milne: That makes more sense.

The Hon. ANNE LEVY: That, to me, and I presume the Attorney, would be adequate, but the—

The Hon. K.L. Milne: But you're not talking about discrimination: you are talking about differentiation.

The Hon. ANNE LEVY: That is discrimination—treating women and men differently because of their sex.

The Hon. K.L. Milne: It may not be.

The Hon. ANNE LEVY: I know that it may not be and I am told that many superannuation funds do not discriminate between men and women.

The Hon. K.L. Milne: Having a choice of a lesser contribution and lesser benefits might not be discrimination.

The Hon. ANNE LEVY: If it is a choice that is not discrimination, but if women must have one table and men must have another, that is discrimination. It is not giving a choice to the individual as to the table on which they go. What we are saying here is that, even though most superannuation funds do not discriminate between the sexes, if they wish to discriminate between the sexes on an actuarial basis they will be allowed to do so.

People who are being discriminated against should know that and should not have to divine it somehow and ask. They should be told something so that they know that they are being discriminated against, even though the law allows the discrimination to occur. That is the point that it is trying to make. If the objection is that the actuarial or statistical data will not be a half page life table but truckloads, it would seem reasonable to change this to make it a brief summary that has to be disclosed.

The Hon. K.L. Milne: You are intending that there be something on a table saying, 'If you are gong to join, here's what the men get and here's what you get'.

The Hon. ANNE LEVY: What the Hon. Mr Griffin is suggesting is not what the Hon. Mr Milne and I have been discussing. The Hon. Mr Griffin is suggesting that they are allowed to discriminate without telling people that they are discriminating.

The Hon. K.L. Milne: I can see what you mean now.

The Hon. ANNE LEVY: The important thing, while we are allowing discrimination, is that people who are being discriminated against should know that and why. One piece of paper would do that quite easily; just a life table showing that men do not live as long as women, on average.

The CHAIRMAN: That is discrimination for a start.

The Hon. ANNE LEVY: That is a biological fact: I am afraid that we cannot do much about it.

The Hon. K.T. GRIFFIN: It is all getting out of hand. What the Hon. Lance Milne was suggesting was correct. Insurance companies like AMP, National Mutual or whatever, do not just look at a one page table and say that on the basis of this we will give that benefit. There are baskets, boxes and volumes of data that they assess. Their actuaries weigh up a variety of factors and then reach a calculated conclusion as to what, actuarily, is the appropriate contribution or benefit. Actuaries are not just statisticians, they are trained to take into account a whole range of facts. Let us take life insurance, which is covered by a later provision in the Bill. It is usual to charge males higher premium rates for life insurance than for females of the same age. That is an actuarial basis, that males have a lower life expectancy. If we accept that, as males, we are being discriminated against, then the relevant actuarial or statistical data will have to be disclosed in future to the thousands of males—not the females—applying for life insurance in South Australia. That is crazy.

The Hon. Anne Levy: Why?

The Hon. K.T. GRIFFIN: To have truckloads of data sent to each applicant for life insurance is crazy. Out of 1 000 males 999 who apply for life insurance will shop around from assurance society to assurance society and will get what they reckon is the best deal. They will not say, 'You are discriminating against me as against a woman of the same age.' They are interested in getting the best deal and are not interested in the actuarial data.

The Hon. K.L. Milne: With the utmost respect, you are talking about something different. In life insurance they can shop around, but the new employee—

The Hon. K.T. GRIFFIN: The context is the same.

The Hon. K.L. Milne: They are coming in to be employed and will not ask anything. I know what she's aiming at.

Members interjecting:

The CHAIRMAN: Order! We must not have too many conversations going at once.

The Hon. K.T. GRIFFIN: The question of whether an offer is made or not is another area of discrimination that we are talking about; it is irrelevant as to whether or not all this data ought to be made available. That is the argument I have; whether it is life assurance or superannuation, it is not as simple as one sheet of paper.

The Hon. K.L. Milne: What we are meaning between the three of us is that sufficient data be handed to them at the time of signing up to show them whether there is discrimination or not and, if so, to what extent—two schedules probably.

The Hon. Anne Levy: A brief summary of the data.

The Hon. K.L. Milne: It could easily say so—not a summary—

The Hon. K.T. GRIFFIN: If it is to be a summary that changes the complexion of it. I still say there will be 999 out of 1 000 who will throw it into the waste paper basket. It is much easier to have the information available upon request—make it available to the Commissioner for Equal Opportunity. I am not fussed about that at all.

The Hon. Anne Levy: The people won't know; they won't know. They won't go to the Commissioner; they won't ask because they won't know.

The Hon. K.T. GRIFFIN: They will know males *vis-a-vis* females are getting a different deal and that will be discriminatory.

The Hon. Anne Levy: They may not know that.

The Hon. K.T. GRIFFIN: If they do not know that—

The Hon. K.L. Milne: I do not think this clause solves it.

The Hon. Anne Levy: When I got super no-one told me whether I was being discriminated against or not.

The Hon. K.T. GRIFFIN: They have not told me. I am in the Parliamentary superannuation fund and probably I am being discriminated against; I do not know.

The Hon. Diana Laidlaw: They assume the average man is married with kids.

The Hon. K.T. GRIFFIN: I am not sure about that. It is a ridiculous proposition to bring in cartloads of data and make it available and hand it to each person who is an applicant.

The Hon. DIANA LAIDLAW: I am going to speak against the amendment. I am particularly disappointed with the contribution made by the Hon. Trevor Griffin in this case. It is an absolute exaggeration and it is of no benefit to be talking about cartloads of material. I fully sympathise with the point of view put by the Hon. Ms Levy. In speaking to this I suggested in the second reading speech that I was quite disappointed that the Government had not been more courageous in looking at this whole question of superannuation. I am disappointed in particular that it has left this class test which the Hon. Mr Griffin keeps referring to and which is discriminatory in itself because it is based on actuarial calculations which have a discriminatory impact between men and women in superannuation, retirement pensions and the like. I would have preferred, as I indicated at that time, to have seen an individual test of equal status. That is widely accepted as a system for the provision of superannuation in the United Kingdom, United States, New Zealand, Canadian Provinces and the like.

With this extensive period before these superannuation provisions would be proclaimed, is it possible for the State Government to have discussions with Federal Government to see whether we could move to a different basis for calculation of superannuation provisions, more in line with this individual test of equal status which seems to be comfortably accommodated in the United States, the Canadian Provinces, the United Kingdom and the like?

The Hon. C.J. SUMNER: I appreciate the honourable member's support. If I can divine the numbers, there seems to be support for a proposition along the lines outlined by the Hon. Anne Levy, if not precise acceptance of the amendment that the Hon. Trevor Griffin has moved. However, I do not know. The Hon. Mr Milne nods, shakes his head and then points to Ms Levy, by which I divine that, should the Hon. Ms Levy make a brief statement in relation to reasons for discrimination, that would be acceptable to the Hon. Mr Milne.

The Hon. K.L. Milne: Yes.

The Hon. C.J. SUMNER: The honourable member interjects 'Yes'. The Hon. Mr Gilfillan has generally been much more progressive on this Bill than has the Hon. Mr Milne; so I assume that, once we have Mr Milne in the bag, Mr Gilfillan will almost inevitably follow, at least in respect of this Bill. I say that with no disrespect to the Hon. Mr Gilfillan, but because the Hon. Mr Milne has been so recalcitrant about these important reforms up to date. That being the case, I believe that the majority view is in favour of supporting some declaration where there has been discrimination. We need to find precisely what that is, so I suggest that this clause be postponed to enable an amendment to be drafted, that amendment to be moved by the Hon. Ms Levy. She can discuss the matter with the Hon. Mr Milne and the Hon. Miss Laidlaw so that when we come back we may have an agreed position.

In response to Miss Laidlaw; the Commonwealth Government has indicated in relation to the Human Rights Commission that it will be drawing heavily on what has already been done by South Australia in this area and that it recognises that more work has been done on this topic in South Australia than elsewhere in Australia. Also, in response to the honourable member's argument about individual assessment, I point out that that does apply now with respect to employee funded superannuation, but not in respect to general insurance where there is a class determination of premiums and the like. The Hon. Mr Davis wishes to make a brief contribution, after which I will move that the clause be postponed and further move that we suspend.

The Hon. L.H. DAVIS: If the Attorney is suggesting to the Hons Messrs Milne and Griffin and Ms Levy that they look at the drafting of subclause (3), perhaps account could be taken of the present ambiguity which I perceive exists there. I am not all clear as to whether that statement relates to people taking an option to convert from a pension to a lump sum or from a lump sum to a pension at the point of exit from a scheme. Does it apply to the entry point into a superannuation scheme, or apply during the course of a scheme? I would have thought that, if one is drafting a provision to exempt discrimination in superannuation schemes, it should cover all points including entry into the scheme, the time one is a member of the scheme and exit from it. We appreciate the point made that actuarial differences exist; for instance, on average a man aged 60 will live to 77 years and a woman aged 60 will live to 82 years. There will be variations in the bases on which superannuation scheme benefits will pay out. That is the basis of subclause (3). I hope that we can work out a sensible arrangement to achieve what I believe is a generally accepted agreement.

The Hon. I. GILFILLAN: As a suggestion, I refer to line 15 where it says 'employer subsidised superannuation scheme may', to which the words 'having been properly informed by the managers of the scheme' could be added—'at his option'. I believe that if that quote is put in it will cover

the possibility of a brief informative document and the Hon. Trevor Griffin's amendment can be carried.

The Hon. ANNE LEVY: I suggest that perhaps we could debate this matter after discussions with Parliamentary Counsel, who has heard the debate and probably has an indication of what we are after. I think that one of the big differences between what I am suggesting and what the Hon. Mr Griffin is suggesting is that he is suggesting that the information that a person is being discriminated against should only be given if the person requests it. My argument is that, if discrimination is going to occur and we are permitting a certain type of discrimination, the person should be informed that they are being discriminated against and why, and that it not be just on request.

The Hon. I. Gilfillan: That is exactly what my suggestion covers.

The Hon. ANNE LEVY: Perhaps we can leave this until after the dinner adjournment, during which time we can work on it with Parliamentary Counsel.

The Hon. C.J. SUMNER: I am very grateful that the Hon. Anne Levy has undertaken to consult with interested parties, including the Hon. Mr Gilfillan, on this topic.

[Sitting suspended from 6.8 to 7.45 p.m.]

Consideration of clauses 39 and 40 postponed.

Clause 41—'Exemption from this Division.'

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

Page 18—

After line 16, insert new subclause as follows:

'(2) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this Division has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.'

This new subclause (2) is inserted out of an abundance of caution to ensure that unlawfulness as a result of discrimination will not of its own force and without more put at risk the legal status of any superannuation scheme or provident fund.

Amendment carried; clause as amended passed.

Clause 42—'Charities.'

The Hon. K.T. GRIFFIN: It is not appropriate to move my amendment now. It would delete the reference to sexuality, and that issue was settled by division at an earlier stage.

The Hon. K.L. MILNE: The same applies to my amendment.

Clause passed.

Clause 43 passed.

Clause 44—'Measures intended to achieve equality.'

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

Page 18, line 32—

After 'one sex' insert ', or of a particular marital status,'.

After 'the other sex' insert ', or of another marital status,'.

This amendment ensures that programmes for affirmative action can be extended to people on the basis of marital status and aligns our legislation with section 33 of the Commonwealth Act, dealing with measures intended to achieve equality.

Amendments carried; clause as amended passed.

Clause 45 passed.

Consideration of clause 46 postponed.

Clause 47—'Religious bodies.'

The Hon. K.T. GRIFFIN: I have had a new set of amendments to this clause circulated *in toto* as a substitute for the amendments I originally proposed. I move:

Page 19, line 13—Leave out 'to propagate religion' and insert 'for religious purposes'.

This is really a drafting matter to provide consistency with the Commonwealth provision. I understand that 'for religious purposes' is not exactly the same as 'to propagate religion'. The cases on this point indicate that 'for religious purposes' is a bit wider. This does not relate directly to the subsequent amendments: it is a slightly different issue.

Amendment carried.

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

Page 19, line 14—After 'doctrines' insert ', tenets, beliefs or teachings'.

The Federal legislation refers to 'doctrines, tenets or beliefs'. Again, I think that is a bit wider. I do not profess to be a theologian, but I have been told that there are quite distinct differences between doctrines, tenets and beliefs, and I can understand that superficially; but if members wish me to debate theologically, I am afraid that we will have to take some time off to enable me to do some research. But doctrines, tenets and beliefs are in fact the basic doctrine and the interpretation of it, and the whole basis of a particular religion. Because this terminology is contained in Federal legislation, I would prefer to have it in State legislation as well.

Amendment carried.

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

Page 19, line 18—

After 'order or body,' insert 'or is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion,'.

Leave out 'on the ground of sexuality'.

At the moment subclause (2) refers only to 'the ground of sexuality', and for that reason the provision is very limited relating to educational or other institutions administered by a religious order or body. The first point I make is that a number of educational institutions are in fact not administered by a religious order or body, but nevertheless are administered according to the doctrines, tenets, beliefs and teachings of a certain religious order or body. I instance, for example, Scotch College, which is incorporated by a private Act of Parliament. The majority of the members of the council are appointed by the Synod of the Uniting Church, but there are other members who are appointed by such organisations as the Old Scholars Association, the Parents Association, and so on. Legally, therefore, Scotch College is not a body which is conducted by a religious order or body, yet, nevertheless, it is a body which is conducted in accordance with the doctrines, teachings, etc. of he Christian church. I think the same situation applies with, say, St Peters College, and I know that Seymour College is incorporated under the Associations Incorporation Act, although in that instance all of its council is appointed by the Synod of the Uniting Church. There are other variations of that, where there are separately incorporated bodies that are not technically conducted by a particular religious body or order.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: They are not necessarily administered; they have a separate council which administers them. They are administered by a council established under the incorporated body. In the Catholic school system, as I understand, they are directly conducted by a religious order or body—

The Hon. J.C. Burdett: Or by a parish.

The Hon. K.T. GRIFFIN: Or by a parish, so there is no difficulty with that. That is the first point that I want to make. My amendment picks up that other group which is administered in accordance with the relevant doctrines, tenets, beliefs and teachings. The relevant Federal legislation deals with educational institutions that are conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed. I have extended subclause (2) to include 'creed'.

The Federal legislation provides that discrimination is not unlawful if the discrimination is in good faith in order

to avoid injury to the religious susceptibilities of adherents of that religion or creed. I have not sought to translate that directly into the amendment which I am moving, because I think that is too wide.

It seeks to give exemptions where the act is to avoid injury to the religious susceptibilities of adherents of that religion or creed, whereas mine is an exemption where the act is based on a religious doctrine, tenet, belief or teaching or a doctrine, tenet, belief or teaching of a creed, and here is the important qualification—and is reasonable in all the circumstances.

So, I suggest to the Committee that the exemption which I have included in my amendment picks up the theme of the Federal exemptions, but does not go as far as the Federal exemptions because I think that they are too wide. Even subclause (1) does not pick up all of the Federal legislation, because one of the important paragraphs in the Federal legislation (a group which is exempted) refers to the selection or appointment of persons to perform duties or functions for the purposes of or in connection with or otherwise to participate in any religious observance or practice.

I have not picked that up in my amendment: I do not think it is necessary. Of course, it may raise the argument of altar boys or altar girls, but I do not think that that is really appropriate for debate in this context. I have satisfied myself with bringing subclause (1) largely into line with the Commonwealth provision and providing an adequate exemption under subclause (2), which picks up the essential ingredients of the Commonwealth exemptions. In all the correspondence that has been relayed to me through the churches and through educational institutions, they have preferred the Commonwealth position because of the broader nature of the exemptions, rather than the very limited position with the State legislation.

The Hon. Anne Levy: They have lived with our State legislation for nine years and never complained.

The Hon. K.T. GRIFFIN: As the Attorney-General said to me on another matter, they have now got the most recent expression of Parliamentary opinion!

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: I think that the amendment which I am moving is much more appropriate.

The Hon. C.J. SUMNER: This is quite unacceptable to the Government. I point out that clause 47 (1) was, until the honourable member amended it, a direct take from the existing Sex Discrimination Act. Subclause (2) of clause 47 was inserted for the sorts of reasons that have already been debated in relation to the debate about sexuality generally and it was a concession to schools or other institutions administered by religious orders or bodies to take into account their potential susceptibility on the question of sexuality.

However, it certainly was not designed to be used as a lever by a committee and by the Opposition to reduce, in fact, the rights that employees of a private school now have, because if the honourable member's amendment to this clause is passed it will mean that pregnant women will be able to be discriminated against by private schools.

It will mean that single women living in a *de facto* relationship will be able to be discriminated against by private schools. The problem with the amendment is that it restricts what is already the existing law and what has been accepted as the existing law in the sex discrimination area since 1975. Therefore, if one takes section 47 (1) with the honourable member's amendments it is equivalent to section 36 of the present Sex Discrimination Act. Subclause (2) was added to take into account sensibilities about sexuality in these sorts of schools; but, to broaden that concern and exemption relating to that sensibility, to take into account every other aspect of discrimination that is already covered by the Sex Discrimination Act, is a dramatic restriction of the already existing rights that people have under the current Sex Discrimination Act and, therefore, it should be resisted by the Committee.

The Hon. I. GILFILLAN: The original amendments moved by the Hon. Mr Griffin apart from deleting the ground of sexuality were an improvement. I had some discussions with the Archbishop of Adelaide (Dr Rayner) about these amendments. Would the Hon. Mr Griffin be willing to revert to the inclusion of the words after 'body' in line 2 and the alteration of 'religious doctrine or practice' in line 42 of the subclause?

The Hon. K.T. GRIFFIN: Not really. It is a difficult matter. I have examined closely the Federal legislation and it is clear that my amendments are better than the amendments in the Federal legislation, which does not deal with sexuality, and this Bill does. That factor alone must be taken into consideration in drafting and, after a lot of discussion and consideration, I have taken the view that my amendment best reflects the representations that were made to me in the context of the Federal legislation.

The Hon. R.I. LUCAS: I support the Hon. Mr Griffin's amendment and add a further piece of back-up evidence. Some members would have received a submission about the Bill from John McDonald, Director, Catholic Education, and I would like to quote part of that letter in support of the amendment, as follows:

> Perhaps the most serious omissions in the State legislation are those pertinent to 'Educational institutions established for religious purposes' as specified by the provisions under the Commonwealth Act by clause 38 (1), (2) and (3). Under State legislation 1984, while clause 47 (2) exempts discrimination on the grounds of sexuality where an educational or other institution is administered by a religious order or body, no provision is made for pregnancy and or marital status. Clearly, religious schools exist to foster the religious 'doctrines, tenets, beliefs or teachings' (Commonwealth Act 1984 clause 38 (1)) and clearly combinations of 'sex, marital status or pregnancy' (Commonwealth Act clause 38 (1)) could be quite antithetical to the very purposes for which religious schools exist.

Mr McDonald, on behalf of Catholic Education in South Australia, then goes on to make some further comments about that and other provisions in the Bill. I bring the comments of the representative of the Catholic schools sector to the Committee's attention.

The Hon. C.J. SUMNER: I think that the unfairness of what the honourable member is proposing is best illustrated by this example. A young woman teacher is employed by one of these schools. She has a very successful teaching career, but a certain peccadillo one evening results in her becoming pregnant as a single woman. Under the honourable member's amendment, that woman could then be sacked from her employment with that school.

The Hon. K.T. Griffin: 'Would', not 'could'.

The Hon. C.J. SUMNER: She could be sacked because that school held the view that this young teacher—

An honourable member interjecting:

The Hon. C.J. SUMNER: This is the situation that you are now condoning: that situation is currently prohibited. Discrimination on those grounds is currently prohibited under the State Sex Discrimination Act. Accepting the Hon. Mr Griffin's amendment will, as I said before, restrict the scope of the legislation—

An honourable member interjecting:

The Hon. C.J. SUMNER: The honourable member says that it should be restricted. For nine years it has not been restricted, and I would put this situation to any honourable member of this Committee. Is it fair for that young teacher, who has taught successfully and well in that school for five or 10 years, to be sacked for one night's indiscretion? That is the situation.

An honourable member interjecting:

The Hon. C.J. SUMNER: Well, that is the situation. If the religious tenet teaches that there should not be extra marital sex and if the religious tenet is such that having a child by a single person outside of wedlock is contrary to the tenets of that religious doctrine that school would have the right to sack that woman without any redress under this legislation. Under the present law it cannot do so.

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. Lucas: What happens to the conciliation legislation?

The Hon. C.J. SUMNER: I am not worried about the Federal legislation. I have said previously—

Members interjecting:

The CHAIRMAN: Order! I want to make sure that the interjections stay on a reasonable keel.

The Hon. C.J. SUMNER: I have never said that we should, where we have a situation in which people are advantaged by our discrimination laws, which are better and which are stronger than the Commonwealth laws, come back to a less stringent anti discrimination regime that is laid down by the Commonwealth. I have not said that. The argument has been the other way: we have to bring our legislation at least up to the standard of the Commonwealth legislation if for no other reason than that if we do not our legislation would be inconsistent and therefore struck down under the Federal Constitution. However, surely where we have a situation that has been covered by our law for nine years we should not go back on—

The Hon. J.C. Burdett: It might be wrong.

The Hon. C.J. SUMNER: I am afriad that the Hon. Mr Burdett does not understand. I am putting to the Council that surely that practice, which has existed for nine years, and the factual situation which I have outlined and which would have been contrary—

The Hon. R.I. Lucas: She can take a case for harsh, unjust and unreasonable dismissal.

The Hon. C.J. SUMNER: She may be able to do that, but she certainly cannot claim under this legislation that she has been—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: One cay say that in relation to any matter. I am merely saying that the Hon. Mr Lucas, if he votes for the Hon. Mr Griffin's amendment, is taking away a benefit in terms of a discrimination regime that exists under existing legislation, namely, simply that the churches have lived with that provision for nine years, as have the private schools.

Members interjecting:

The CHAIRMAN: Order! You will each get your turn to speak if we keep going.

The Hon. C.J. SUMNER: While I can see some merit in the amendments that have been moved, even though I have not agreed completely with them during the debate, I find this an utterly retrograde step in terms of the rights that women already have under the existing legislation. I really cannot impress on members more strongly that to vote with the Hon. Mr Griffin on this amendment is a desperately retrograde step.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. C.M. Hill. No—The Hon. G.L. Bruce.

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Division II—Discrimination by Employers.

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

Page 20, line 1—Leave out 'by employers' and insert 'in employment'.

This amendment has been debated previously.

Amendment carried.

Clause 48 passed.

Clause 49—'Discrimination against applicants and employees.'

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

Page 20, line 4—After 'determining' insert ', or in the course of determining,'.

This amendment is consequential upon consistency with Commonwealth legislation.

Amendment carried.

The Hon. C.J SUMNER: I move:

Page 20, line 6—
After 'terms' insert 'or conditions'.
After line 8 insert new paragraph as follows:
(aa) in the terms or conditions on which he employs the employee;.

This amendment involves a similar situation.

The Hon. K.T. GRIFFIN: Concerning subclause (2) *(c)*, I raised the point during the second reading speech about some representations which had been made to me from employers as to the situation where there are occasions when a group of employees of a particular racial group is antagonistic towards another group of employees of a different racial group and there are considerable tensions. There is separation in the work place of those two racial groups, with the agreement of the groups. They are much happier and work much better. I raise the question of whether subclause (2) *(c)* would prevent an employer from doing that? I certainly did not want to encourage segregation, but I wanted to ensure that those who did work in the work place did so in a fairly happy frame of mind without the sort of racial tensions that sometimes occur. Can the Attorney-General make any comment on the way in which he would view clause 49 applying to that situation and what is the remedy if in fact it does so apply.

The Hon. C.J. SUMNER: If it is done as a result of discussions between the groups I do not see that they would be caught by the discrimination legislation. If it is imposed by the employer then the employer would be guilty of discrimination.

Amendments carried; clause as amended passed.

Clause 50—'Discrimination against agents.'

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

Page 20—
Line 20—After 'determining' insert ', or in the course of determining,'.
Line 22—Leave out 'on which he engages' and insert 'or conditions on which he offers to engage'.
After line 24 insert new paragraph as follows:
(aa) in the terms or conditions on which the agent is engaged;.

The amendment is again picking up the Commonwealth wording in relation to race and discrimination by commission agents.

Amendments carried; clause as amended passed.

Clause 51—'Discrimination against contract workers.'

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

Page 20, after line 38—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;.

I move this for similar reasons in relation to race and contract workers.

Amendment carried; clause as amended passed.

Clause 52—'Discrimination within partnerships.'

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

Page 21—
Line 4, After 'determining' insert ', or in the course of determining,'.
Line 7—
After 'terms' insert 'or conditions'.
After line 10 insert new paragraph as follows:
(aa) in the terms or conditions on which it affords him membership of the firm;.

These amendments are moved for similar reasons, dealing with race and partnerships.

The Hon. ANNE LEVY: I wish to ask the Hon. Mr Griffin why he is not moving the same amendment as he moved in regard to sex. It would seem that every argument put up in regard to women would apply equally well in regard to race. The example that the Hon. Mr Davis kept moving was in relation to women doctors. If it is good enough to apply that argument in relation to sex it is just as good to use it for race, and I wonder why the Opposition are being so inconsistent in allowing discrimination on the ground of sex but not on the ground of race—because they are sexist.

The Hon. L.H. Davis: You didn't respond to my argument.

The CHAIRMAN: Order! This is not the time for the Hon. Mr Davis to test me.

The Hon. Anne Levy: Throw him out.

The CHAIRMAN: Nor the Hon. Ms Levy.

The Hon. R.I. LUCAS: Without the vitriolic terms that we have witnessed from the Hon Ms Levy, I refer to clause 52 which ought to be viewed in terms of what happened to clause 31. The argument we heard in respect of clause 31 was based on freedom of association. If people did not want to have a partnership with homosexuals, women, those in *de facto* relationships and so on, they ought to be able to make that choice because the sanctity of partnership provisions or the special nature of it, means that people ought to be free to choose who is going to be their partner if the number involved is fewer than six. That would be the cut off point. The question I put on that provision was, in effect, with the passage of that amendment, that it would be lawful to advertise for partners if the number involved was fewer than six and say that you did not want men, women, homosexuals, bisexuals or transexuals to apply. You could advertise along those lines. It would be lawful to do that yet, under the provisions of this clause unamended, it would not be lawful to say 'No Asians'. One can have an advertisement saying 'No homosexuals, no women', but if one went one step further and said 'No Asians need apply' one would have the full weight of the Commissioner brought down upon one. I do see an inconsistency between the attitude to clauses 52 and 31 as amended and passed by the Committee. I am not arguing that it ought to be increased to six, but say that there is an inconsistency in the majority attitude of the Committee.

The Hon. L.H. DAVIS: I rise to echo the sentiments of the Hon. Robert Lucas. The Hon Ms Levy made the point that the Hon. Mr Griffin had not amended this clause in line with an earlier clause debated tonight. I felt that the fact the she had not made a contribution on the earlier clause, and in particular relating to my argument about women doctors, was significant. I could only take it that her silence implied consent to the argument that I put forward. The fact is that the Hon. Mr Griffin along with the Hon. Mr Lucas and other honourable members on this side have put this Bill through the shredder. There have been over 70 amendments to this Bill, as well as additional amendments from the Government. I am quite happy to see an amendment along these lines to ensure that small businesses are protected. I would be quite amenable to any amendment moved along those lines.

The Hon. I. GILFILLAN: There is cause to look at the two clauses differently, which have caused me some disquiet. I think it is realistic to look at the current attitude in society among those to whom the legislation will apply.

There is wider acceptance and complete rejection of discrimination based on race. Society has been conditioned to accept that there are no religious or philosophical bases for discrimination based on race or colour. However, we recognise that there is much more sensitivity and apprehension about the breaking-down of barriers of discrimination based on sexuality, homosexuality, transsexuality, and so on. I think that although it may appear incongruous it is a reasonable reflection of the current state of society to recognise that there may be people involved in a very intimate partnership who may have real difficulties working in close quarters.

It is not too long ago that we had racial discrimination in South Australia. If my religious background and my environment was such that to work with a transsexual or homosexual was abhorrent to me and to be forced to have a homosexual as a partner would be difficult, I would regard it as a cruel law to have to do that. I feel that society has reached the stage where we will not tolerate racial discrimination in any form. I am vehemently opposed to it, and therefore I will oppose any amendment to increase the number from one to six. I think it reflects the difference between this clause and clause 31, which I will accept for the time being.

Clause as amended passed.

Clause 53 passed.

Clause 54—'Discrimination by associations on ground of race.'

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

Page 21, lines 22 and 23—Leave out 'After the expiration of one year from the commencement of this Act, it shall be' and insert 'It is'.

My amendment seeks to postpone the operation of this clause. It is different from the area of sex, marital status, pregnancy and sexuality, and deliberately so because in various golf, bowling and other such clubs there are rules that discriminate, and it is fair that these clubs be given an opportunity to adjust their rules and practices to conform with the legislation. There are no presently existing discriminatory rules relating to race, as far as I am aware, and it does not seem to be appropriate to postpone the operation of clause 54 for a year. Therefore, I am moving to delete the words 'one year' from this clause. I am doing this also in relation to physical impairment because, again, I do not know of any associations that contain discriminatory rules against physically impaired persons.

The Hon. ANNE LEVY: The Hon. Mr Griffin is indicating yet again that he is not racist but is sexist. There certainly are clubs that do not accept Jews.

The Hon. K.T. Griffin: Then vote against my amendment.

The Hon. ANNE LEVY: I am not sure whether they still refuse Jews.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: I have never tried to enter them, but it would seem that the Hon. Mr Griffin's attitude is portraying that he is not racist but is sexist.

The Hon. K.T. GRIFFIN: If the Hon. Anne Levy wants to go on like this we will start throwing a bit of mud across the Chamber. I am not sexist and I am not racist. The Hon. Ms Levy missed three-quarters of what I had to say because she was outside and has just come through the door.

The Hon. Anne Levy: I heard every word; I was behind the President's Chair.

The Hon. K.T. GRIFFIN: The honourable member was not in the Chamber. I have made it clear that there are sporting associations which have discriminatory rules, and which the Government has agreed it will give time to get their rules and practices in order—and quite rightly so. I

am saying that race is a new concept in anti-discrimination or equal opportunity legislation in the form in which it appears in this Bill and that there are, so far as I am aware, no discriminatory rules against persons on the ground of race. For that reason I do not believe that it is necessary to give a one year extension for the purposes of getting rules in order. The Government has not had submissions from anybody, as I understand it, asking that it postpone the introduction of the race discrimination provisions of this Bill. It has received requests for extensions from sporting bodies on the grounds of sex. This amendment is recognising the facts involved here. I do not see that that is sexist, racist or anything else; it is just reasonable.

The Hon. BARBARA WIESE: I support the Bill as it stands. The Hon. Mr Griffin has demonstrated inconsistency in relation to this clause, as he has demonstrated in relation to other clauses. It may very well be that representations have not been made on this issue, but it may also be the case that that is just by default and that there may be—

The Hon. K.T. Griffin: Inadequate consultation by the Government?

The Hon. BARBARA WIESE: It may be that people have been notified but have not bothered to respond—I do not know. However, this Bill as it stands is consistent throughout. If, as the Hon. Mr Griffin claims, no clubs will be affected by this provision, there will be no harm at all in having it included in the Bill, because it will not affect any of the clubs about which he is talking. Some clubs may need time to rearrange their affairs, and this provision gives them the opportunity to do that. It is consistent with other provisions of the Bill, and it should stay.

The Hon. R.I. LUCAS: It is unfortunate that the Hon. Ms Levy provoked an atmosphere in this Committee regarding this clause. She has alleged that there are clubs in Adelaide or South Australia that discriminate against Jews as a particular group with respect of membership.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: That is what the Hon. Ms Levy said and it will be recorded in *Hansard.* If the honourable member makes that sort of allegation to justify her position she owes it to the Committee to name the clubs and the instances where clubs have discriminated against Jews. I invite her to provide that evidence or information to the Committee.

The Hon. ANNE LEVY: I have no intention of naming names in this Council, any more than other members have named names when debating these clauses.

The Hon. R.I. Lucas: You can't.

The Hon. ANNE LEVY: There are certainly clubs in this State that discriminated against Jews: I do not know whether or not they still discriminate. I use the past tense.

The Hon. R.I. Lucas: You do now; you didn't when you first started.

The Hon. ANNE LEVY: I made clear then that I did not know whether they still discriminate, as an examination of *Hansard* tomorrow will show. I am not in the business of naming names any more than the Hon. Mr Griffin named names when he talked about the clubs that contacted him regarding their concern about discrimination on the basis of a person's sex.

The Hon. K.L. MILNE: It is bad luck that we have gone all over the place on one of the least important matters. It does not really matter one way or another. At first I thought that it would be a good idea to leave out the provision if it was clear cut, but it is not clear cut, so I propose that we should leave it as it is.

Amendment carried; clause as amended passed.

Clause 55—'Discrimination by qualifying bodies.'

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

Page 22, line 1—Leave out 'of a trade' and insert 'or engaging in of a trade or occupation'.

This is part of the exercise regarding the Commonwealth Act dealing with race and qualifying bodies.

Amendment carried.

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

Page 22—
Line 3—After 'confer' insert 'or renew'.
Line 4—After 'terms' insert 'or conditions'.
Line 7—After 'terms' insert 'or conditions'.

The same argument applies to these amendments.

Amendments carried; clause as amended passed.

Clause 56—'Discrimination by educational authorities.'

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

Page 22—
Line 14—Leave out 'on which it admits' and insert 'or conditions on which it offers to admit'.
After line 16 insert new paragraph as follows:
(aa) in the terms or conditions on which it provides the student with education or training;

The amendments relate to the Commonwealth exercise in respect of race and education authorities.

The Hon. K.T. GRIFFIN: I previously raised the question of the Aboriginal Community College and the position of the small ethnic schools which are conducted outside the normal State and independent school programmes. There was some response from other members during the course of my speaking about that matter in the second reading debate, indicating that perhaps all the small ethnic schools ought to be available to other members of the community, regardless of race. I am not sure whether they are so available, and I am not sure whether they should be if they are not. However, quite obviously the Aboriginal Community College has been established for members of the Aboriginal community, and it seems to me that, unless some special provision allows that, the Aboriginal Community College would be subject to this legislation and any other non-Aboriginal students could seek admittance to the college.

The Hon. C.J. SUMNER: I believe that ethnic schools should be open to people of other ethnic groups; therefore, I would not support any exemption for them.

The Hon. R.I. Lucas: Is that departmental and Government colleges?

The Hon. C.J. SUMNER: I do not think any particular policy has been developed. I do not believe that anti discrimination legislation should provide an exemption for ethnic schools. For a Polish ethnic school to stipulate that it teaches only Polish and that it will teach it only to Poles I think would strike at the heart of the legislation we are considering. I think that, if a person of non-Polish extraction wishes to go to such a school and learn Polish, that is highly desirable and should be encouraged, and, indeed, is what the concept of a multicultural society is all about.

The Hon. R.I. Lucas: What is the distinction between ethnic schools and ethnic clubs?

The Hon. C.J. SUMNER: That is a good question. I think the problem with ethnic clubs is that, if they are taken over entirely, they are no longer the ethnic club of an ethnic minority group, whereas in regard to a school teaching Polish it is unlikely that that will be taken over by English speaking people, because then the very *raison d'etre* of the school disappears, and presumably another school would be established. These schools are of course fairly small organisations and, in any event, usually attached to a club. I think with respect to ethnic clubs that is a reasonable question, although I think the amendment picks up that situation and provides that an ethnic club cannot refuse membership to people who are not members of that particular ethnic group in all circumstances. In other words, legislation is designed for that ethnic group to be able to maintain the ethnic nature of that club, but still admit other people to

it. I agree that it is a difficult area, but clearly it would be unsatisfactory for an ethnic minority group to establish a club with considerable assets and then to find that that club has been taken over, and destroying the very reason for club.

The Hon. K.T. Griffin: What about the Aboriginal Community College?

The Hon. C.J. SUMNER: The Aboriginal Community College is, I suppose, a problem in the sense that that may be seen as an exercise in affirmative action. I think the Bill does contain (it certainly did in respect to the sex area) some provision relating to affirmative action, or alternatively there is capacity to apply for an exemption.

I am not sure whether, in fact, the Aboriginal Community College applied for exemption under the Federal legislation. I suppose that the honourable member's argument could equally be challenged under the Federal legislation. It has not been; I do not imagine it will be. If it were, I suppose that the situation could be addressed then. However, I would think that if there was any concern on the part of the Aboriginal Community College it could seek an exemption.

Clause as amended passed.

Division V—Discrimination in relation to goods, services and accommodation.

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

After 'in relation to' insert 'land,'.

The amendment deals with discrimination on the grounds of race by a person disposing of an interest in land.

Amendment carried.

New clause 56a—'Discrimination by person disposing of an interest in land.'

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

Page 22, after line 23—Insert new clause as follows:

56a (1) It is unlawful for a person to discriminate against another on the ground of his race—

(a) by refusing or failing to dispose of an interest in land to the other person;

or

(b) in the terms or conditons on which an interest in land is offered to the other person.

(2) This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift.

This amendment deals with the queston of discrimination on the grounds of race by a person disposing of an interest in land.

New clause inserted.

Clause 57—'Discrimination of provision of goods and services.'

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

Page 22, line 32—After 'terms' insert 'or conditions'.

This again involves the Commonwealth consistency exercise in relation to discrimination on the grounds of race in the provision of goods and services.

Amendment carried; clause as amended passed.

Clause 58—'Discrimination in relation to accommodation.'

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

Page 22, line 36—After 'terms' insert 'or conditions'.

Page 23, after line 2—insert new paragraph as follows:

(aa) in the terms or conditions on which he provides the accommodation for that person;.

The amendments relate to the Commonwealth consistency exercise and deals with accommodation, involving discrimination on the grounds of race.

Amendments carried.

Clause as amended passed.

Clause 59—'Superannuation schemes and provident funds.'

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

Page 23—After line 18 insert new subclause as follows:

(2) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this secton has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

This amendment is similar to the one I moved in relation to the sexual area.

Amendment carried; clause as amended passed.

Clauses 60 to 62 passed.

Division II—Discrimination by employees.

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

Leave out 'by employers' and insert 'in employment'.

This amendment is constitent with previous amendments to place into more mutual language the concept of discrimination in employment as opposed to discrimination by employers.

The CHAIRMAN: The Hon. Mr Griffin has an identical amendment to the heading.

Amendment carried.

Clause 63—'Discrimination againt applicants and employees'.

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

Page 24, line 22—After 'determining' insert ', or in the course of determining,'.

Although it cannot strictly be said to be part of the Commonwealth legislation, because there is no Commonwealth legislation dealing with physical handicap, it makes the provision in the Bill consistent with other provisions in the Bill dealing with race and sex where we follow the Commonwealth model.

Amendment carried; clause as amended passed.

Clause 64—'Discrimination against agents.'

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

Page 24—

Line 37—After 'determining' insert ', or in the course of determining,'.

Line 39—

Leave out 'on which he engages' and insert 'or conditions on which he offers to engage'.

After line 41 insert new paragraph as follows:

(aa) in the terms or conditions on which the agent is engaged;.

I have moved the amendments in order to be consistent in regard to physical impairment involving commission agents.

Amendments carried; clause as amended passed.

Clause 65—'Discrimination against contract workers.'

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

Page 25—After line 11 insert new paragraphs as follow:

(aa) in the terms or conditions on which he allows the contract worker to work;

(aab) by not allowing him to work;.

This amendment covers the question of discrimination on the grounds of physical impairment involving contract workers under the same terms as the provisions in other parts of the Bill.

Amendment carried; clause as amended passed.

Clause 66—'Discrimination within partnerships.'

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

Page 25—

Line 19—After 'determining' insert ', or in the course of determining,'.

Line 22—

After 'terms' insert 'or conditions'.

After line 25 insert new paragraph as follows:

(aa) in the terms or conditions on which it affords him membership of the firm;.

It is on the same grounds of consistency with respect to discrimination involving physical impairment in partnerships.

Amendments carried; clause as amended passed.

Clause 67 passed.

Clause 68—'Discrimination by associations on ground of physical impairment.'

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

Page 26, lines 3 and 4—Leave out 'After the expiration of one year from the commencement of this Act, it shall be' and insert 'It is'.

At the risk of copping more flak, I have moved my amendment to delete the provision for this clause to come into force one year from commencement of the Act. The Handicapped Persons Equal Opportunity Act already provides for discrimination by an association to be unlawful, and to suspend the operation of this for a year is inconsistent. I can firmly say that there are no associations in the area of physical impairment that need to have their rules adjusted to accommodate this provision.

Amendment carried; clause as amended passed.

Clause 69—'Discrimination by qualifying bodies.'

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

Page 26—
Line 21—Leave out 'of a trade' and insert 'or engaging in a trade or occupation'.
Line 23—After 'confer' insert 'or renew'.
Line 24—After 'terms' insert 'or conditions'.
Line 27—After 'terms' insert 'or conditions'.
Line 31—Leave out 'the trade' and insert 'or engage in the trade or occupation'.

This amendment deals with discrimination on the grounds of physical impairment by qualifying bodies in order to be consistent with other provisions of the Bill.

Amendments carried; clause as amended passed.

Clause 70—'Discrimination by educational authorities'.

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

Page 26—line 38—Leave out 'on which it admits' and insert 'or conditions on which it offers to admit'.
After line 40 insert new paragraph as follows:
(aa) in the terms or conditions on which it provides the students with education or training;.

This clause deals with discrimination on the grounds of physical impairment in regard to educational authorities and I move this amendment for the purposes of consistency with other parts of the legislation.

Amendments carried; clause as amended passed.

Division V—Discrimination in Relation to Goods, Services and Accommodation.

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

Page 27, line 8—After 'In relation to' insert 'Land,'.

Again, this is to make the legislation consistent with other parts relating to discrimination on the grounds of physical impairment and land.

Amendment carried.

New clause 70a—'Discrimination by person disposing of an interest in land.'

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

Page 27—After line 9 insert new clause as follows:
70a. (1) It is unlawful for a person to discriminate against another on the ground of his physical impairment—
(a) by refusing or failing to dispose of an interest in land to the other person; or
(b) in the terms or conditions on which an interest in land is offered to the other person.
(2) This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift.

The insertion of the new clause is for the same reasons.

New clause inserted.

Clause 71—'Discrimination of provision of goods and services.'

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

Page 27, line 18—After 'terms' insert 'or conditions'.

I move this amendment for the same reason, namely, for consistency with respect to the provisions dealing with discrimination on the grounds of physical impairment and goods and services.

Amendment carried; clause as amended passed.

Clause 72—'Discrimination in relation to accommodation.'

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

Page 27—
Line 37—After 'terms' insert 'or conditions'.
After line 44 insert new paragraph as follows:
(aa) in the terms or conditions on which it provides the students with education or training;.

I move this amendment for similar reasons but in relation to accommodation.

Amendments carried; clause as amended passed.

Clause 73—'Superannuation schemes and provident funds.'

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

Page 28—After line 35 insert new subclause as follows:
(3) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this section has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

Again, I move this amendment for consistency with other parts of the Bill.

Amendment carried; clause as amended passed.

Clauses 74 to 79 passed.

Clause 80—'Insurance, etc.'

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

Page 29, line 31—After 'data' insert 'and any other relevant factors'.

This replaces the *status quo* with respect to discrimination in the area of provision of insurance and superannuation to people with physical disabilities. Discrimination can occur on the basis of actuarial data and in the present legislation there is also a provision that includes any other relevant factors. That has been left out of the Bill before us and I move my amendment to place this clause in the same situation as the existing clause under the Handicapped Persons Equal Opportunity Act. It is to restore the *status quo.* This has arisen out of representations to me by life assurance federations.

Amendment carried; clause as amended passed.

Clause 81 passed.

Clause 82—'Sexual harassment is unlawful in certain circumstances.'

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

Page 30, line 25—After 'student' insert ', or a person applying to become a student,'.

I have a number of amendments to this clause. The first few amendments are really to bring it in line with the Federal legislation down to line 35 of page 30 of the Bill. I suggest that we might get these out the way so that we can get to the substantive questions, if that is acceptable.

Amendment carried.

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

Page 30—
Line 27—After 'contract worker' insert ', or a person seeking to become his commission agent or contract worker,'.
After line 27 insert new subclause as follows:
(4a) It is unlawful for a commission agent or a contract worker to subject a fellow commision agent or contact worker to sexual harassment.

These two amendments bring the Bill in line with the Commonwealth legislation.

Amendments carried.

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

Page 30, line 35—Leave out 'It is unlawful for an employer to fail to' and insert 'An employer shall'.

In dealing with this amendment to subclause (6) it will be necessary to range over other amendments that follow in relation to subclauses (7), (8) and (9). The amendment that I will move to subclause (9) will bring it into exact uniformity with the Commonwealth provision. Concern has been expressed to me that the Commissioner will have the responsibility for administering both the Federal and State

Acts. In the area of sexual harassment, which is a matter of considerable community concern, it would be important for the Commissioner but more importantly for the community at large to appreciate that the Commissioner is administering and the community is bound by a piece of legislation that is identical at both State and Federal levels. This issue is important and the difference in terminology, while in its ultimate result may not be any different, at least in its drafting, is quite diverse.

The other point is that the Federal legislation introduces the concept of 'disadvantage', not 'discrimination'. On my discussions with others, 'disadvantage' is wider than 'discrimination' and can extend to the sorts of consequences that I raised in my second reading speech. Particularly I raised the situation of a woman who is employed and a male superior subjects that woman to sexual harassment. Although there may be no promotion involved or the denial of other material benefits which would depend on her response to that sexual harassment, the fact is that there is still a disadvantage if she fears reprisals or other action, even to the extent of dismissal, if she objects to the sexual harassment, protests and endeavours to take some action that would protect her in future from that sexual harassment.

'Disadvantage' in the Commonwealth legislation would extend to that fear on the part of that woman, and that is what we are endeavouring to deal with in legislation relating to sexual harassment. I made the point in the course of my second reading speech that in 1982 the Liberal Government introduced a Bill which would make sexual harassment unlawful where it resulted in discrimination. I acknowledged in my second reading speech that that might well be narrow in the broader context of the present day understanding of sexual harassment and that for women the difficulty that sexual harassment presents, particularly in the work place, is something which, if they object to it, may bring some form of reprisal which creates a feeling of concern on the part of that woman.

It is that area to which I addressed some remarks in the second reading debate, putting the point of view that I would certainly want to ensure that that fear and that harassment was dealt with by the Bill and that it was not necessary to establish that there was any material detriment. Some would argue quite strongly that any form of sexual harassment is discrimination, and I am not in a position to deny that. However, in terms of the administration and application of legislation against sexual harassment, I think it is important to have some consistency as to what is the definition of sexual harassment and how it is to be dealt with by both the complainant and the Commissioner. That is the central aspect to the amendments that I am moving in relation to sexual harassment.

Subclauses (6), (7) and (8) deal with the liability of an employer, or educational authority or a person who provides goods or services. I made the point that I believe it is not correct to seek to put upon an employer what could be a substantial liability for the acts of an employee where the employer did not know of the act of harassment or series of acts of harassment.

However, notwithstanding that, I believe that there ought to be at least an expression of principle that the employer or educational authority should be prepared to take some action to identify to members of his or her staff the nature of sexual harassment and the actions that can be taken by a person subjected to sexual harassment in the workplace. It has been suggested that the present subclauses (6), (7) and (8) are limited to the employer, educational authority or provider of goods and services, merely putting out a brochure identifying the nature of sexual harassment, and actions that can be taken to deal with harassment if it occurs in the workplace.

I do not accept that limited interpretation of the obligation and liability of an employer, educational authority or provider of goods and services. It is for that reason that I seek to place upon them an obligation to take reasonable and practical steps to prevent sexual harassment, but not attach a direct liability for failure to do so, but rather place the liability of the employer in clause 85 and place the liability on the employer only to the extent that the employer knew of sexual harassment and did not take steps to prevent the continuance or recurrence of that harassment.

I know that the Hon. Ian Gilfillan is proposing to move the deletion of subclauses (6), (7) and (8). I do not think that that is appropriate because at least there ought to be an expression of the principle that there is a responsiblity to take some action to draw attention to sexual harassment in the workplace or education institution, for the employees to be aware of the nature and consequences of that action, and for employees to be informed of what recourse they have either through the employer or the Equal Opportunity Tribunal to obtain redress without either reprisals or victimisation. That is the context in which I move my series of amendments on this clause.

The Hon. I. GILFILLAN: I move:

Pages 30 and 31—Leave out subclauses (6), (7) and (8).

To discuss the amendments moved by the Hon. Mr Griffin and myself, one needs to look at clause 85. As I understand it, the Hon. Trevor Griffin intends to move to delete clause 85 (1), which would be a substantial deletion of responsiblity of employer for employees. I do not intend to support that, but I believe that clause 85 as currently drafted is acceptable. I would be amenable to the suggestion that the two extra clauses which the Hon. Trevor Griffin is recommending in clause 85 (2)—

The CHAIRMAN: We are currently on clause 82.

The Hon. I. GILFILLAN: Yes, but I am prepared to support in clause 85 the two amendments that the Hon. Trevor Griffin would move to subclause (2), which would then create in clause 85 all that is required to be achieved through the Hon. Trevor Griffin's amendments to clause 82 (6), (7) and (8). If they are amended as he wishes them to be , they virtually become platitudinous. They are signals of good will, but there is no penalty and I believe no point in having them, but on the other hand I certainly would not support the deletion of the impact of clause 85 where I believe the real pressure on employers to inform and advise would come.

One could say as often as one would like that an employer shall do all sorts of lovely things but, unless there is some penalty or inducement to do it, it is rather meaningless. Personally, clause 82 (6) (7) and (8) should be completely deleted and we should maintain clause 85 intact, possibly with two minor additions to subclause (2). That is where the pressure would be on the employer to take the proper sensible steps to prepare employees and prevent harassment. I believe that that is from where the incentive will come.

The Hon. C.J. SUMNER: Neither amendment is acceptable to the Government. The Government believes that the Commissioner should have jurisdiction where an employer fails to take steps that may be necessary to ensure that none of his employees or voluntary workers subjects a fellow employee or voluntary worker or persons who seek employment or voluntary work to sexual harassment. As it is drafted there is a clear authority in the Commissioner to take up complaints, to conciliate on complaints and take complaints to the Tribunal should that be necessary. I believe that the deletion of the clauses all together is not justifiable. Certainly, I agree with the Hon. Mr Gilfillan's comments that the Hon. Mr Griffin's amendments nullify the clauses

having any practical effect. For that reason, I oppose both amendments.

The Hon. K.L. MILNE: I feel that clause 82 would be much better without subclauses (6), (7) and (8) because they amount to using a sledgehammer to drive in a tack. In fact, in my view that is the case with much of this Bill, and I believe this clause is a particularly bad case of that. I agree with my colleague, as I frequently do, that the guts of the matter is in clause 85. To me, the ideal would be to delete subclauses (6), (7) and (8), pursuant to the Hon. Mr Gilfillan's amendment, and leave the whole matter to clause 85. I think that will make clear what clause 82 is all about and will clarify clause 85. With the two new suggestions from the Hon. Mr Griffin, that is all that needs to be done.

The Hon. ANNE LEVY: I agree with the Hon. Mr Gilfillan that it is difficult to consider this part of clause 82 without also considering clause 85. However, I have a great fear that what the Hon. Mr Gilfillan is doing will lead to reduced protection for the victims of sexual harassment. If the first part of clause 85 is retained, where an employer is vicariously liable for the actions of his employees, as far as I know that is the general situation with regard to everything. Therefore, I do not see that sexual harassment should be any different from any other action of an employee. However, if clause 85 (2) is amended in the way that the Hon. Mr Griffin suggests and subclauses (6), (7) and (8) are deleted from clause 82, if someone is sexually harassed and complains about it, an employer would be able to say, 'Oh, but I did not know anything about it.' It would be very difficult for the person who had been sexually harassed to prove that the employer did know something about it but had not done anything.

It is very difficult to prove that somebody does not know something. However, if clause 82 (6) is there it is an obligation on the employer to make clear to all his employees that he will not tolerate sexual harassment in his workplace. If he has not done that there is a ground for complaint and something can be done to redress the damage done to the individual who has been harassed.

If clause 82 (6) is not there and there is only clause 85, and if clause 85 allows the employer to say, 'I did not know that sexual harassment was going on', and he has done absolutely nothing to tell his employees that he does not approve of sexual harassment, the poor individual who has been sexually harassed has no comeback. She will not be able to prove that the employer knew that she was being sexually harassed, and the employer just says, 'I didn't know.' He has taken no steps whatsoever to make clear his attitude. So, the other employees get away with sexually harassing someone who has no redress from anyone.

The Hon. DIANA LAIDLAW: Sexual harassment, as provided for by the Government in this Bill, includes the following acts: where a person subjects another person to an unsolicited act of physical intimacy, where a person demands or requests sexual favours from another person—

The Hon. Anne Levy interjecting:

The Hon. K.T. Griffin: I spoke on all of it in the context of trying to explain reasons. You can speak again.

The Hon. Anne Levy: We are not going to vote on them all together?

The Hon. K.T. Griffin: No.

The Hon. Anne Levy: We will have another vote?

The Hon. K.T. Griffin: Yes.

The CHAIRMAN: Because the Hon. Mr Griffin's and the Hon. Mr Gilfillan's amendments overlap, in subclause (6), line 35, as a test case it is proposed to take out the words, 'it is unlawful for an employer to'. If they are taken out it allows the Hon. Mr Griffin the opportunity to insert those other words if he wishes. If that part fails then the Hon. Mr Gilfillan will have an opportunity to delete subclauses (6), (7) and (8).

The Hon. DIANA LAIDLAW: I am happy to just address my remarks there. I was taking a lead from the Hon. Mr Griffin's earlier remarks and canvassing the area a little more widely. I am also unable to support the amendment moved by the Hon. Ian Gilfillan to remove subclauses (6), (7) and (8)—I will not elaborate at length—essentially for the same reasons that have been given by the Hon. Mr Griffin and the Hon. Ms Levy. I see this whole area of sexual harassment as one that has to be addressed essentially at the workplace first before recourse is sought elsewhere, simply because it must be tackled as a preventive and educative programme. Therefore, I cannot support that amendment.

The Hon. I. GILFILLAN: Perhaps we could consider reversing it. My reaction is likely to be influenced by support for my amendment, that is, complete deletion.

The Committee divided on the Hon. K.T. Griffin's amendment:

Ayes (11)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, I. Gilfillan, K.T. Griffin (teller), Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

Noes (8)—The Hons Frank Blevins, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. G.L. Bruce.

Majority of 3 for the Ayes.

Amendment thus carried.

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

Page 30, line 35—To insert 'An employer shall'.

The Hon. ANNE LEVY: If subclause (6) were in the form that the Hon. Mr Griffin is suggesting without stipulating that it is unlawful to not take steps, does the honourable member think that, if an employer took no steps at all, the Commissioner could act or that any penalty could be applied to such an employer?

The Hon. K.T. GRIFFIN: I doubt whether there could be any penalty imposed, but what I want to do is to express positively that employers shall do it without placing upon them the unlimited liability that flows from something being unlawful. I made the point that it has been put to me that all that an employer has to do to satisfy his obligations under subclause (6) is to circulate a brochure.

The Hon. R.C. DeGaris: Are you sure that that is right?

The Hon. K.T. GRIFFIN: It was put to me that that was all an employer has to do. I do not accept that the clause as drafted limits the obligations of an employer to that. It is vague and indefinite and, of course, will vary from work place to work place. I am concerned that in a large organisation it may be that an employee harasses another employee and that, notwithstanding publication of a brochure, it may be held that the employer still has a liability. The employee still has a liability, but the employer ought to have a liability only if that employer knew of the breach and did nothing about it. That is the context in which I was putting it.

The Hon. ANNE LEVY: If clause 82(6) were rewritten as the Hon. Mr Griffin has suggested so that it stipulates that 'an employer shall take such steps as may be reasonably necessary', and an employer does absolutely nothing, does not even put out a brochure, and never mentions the words, can someone complain? Can the Commissioner or the Tribunal take any action when the employer has done absolutely nothing?

The Hon. K.T. GRIFFIN: There is a civil liability, and I will need to look at the question of whether the Tribunal can compel an employer to take action, but certainly the

Supreme Court can do so, because a statutory responsibility is placed upon the employer.

The Hon. Anne Levy: Could the Commissioner act?

The Hon. K.T. GRIFFIN: The Commissioner has only investigative powers. In clause 10, which was passed yesterday, the Commissioner has been given responsibility for relevant education, and I believe that the emphasis ought to be on education and prevention. The Commissioner can entertain a complaint, can call upon an employer, and can give advice as to how an employer should operate at least with respect to some action to draw the attention of the work force to the whole problem of sexual harassment.

The Hon. ANNE LEVY: Let us take the situation of a large employer who has done absolutely nothing regarding educating his employees on sexual harassment. What happens if employee A is severely harassed sexually by employee B and complains to the Commissioner, and the employer says that he knew nothing about it so he is not liable?

The Hon. K.T. Griffin: He's not liable.

The Hon. ANNE LEVY: However, he has done absolutely nothing whatsoever to stop it. He has taken no steps at all to ensure that none of his employees subjects a fellow employee to sexual harassment. Can the Commissioner investigate that matter? He or she has to have jurisdiction before they can investigate the matter. If they do not have jurisdiction, the employer can tell them to go away. Having investigated the matter and decided that there was a case of severe sexual harassment, can a Commissioner then take the employer to the Tribunal? The employer will say that he knew nothing about the matter, so he is not liable under clause 85. It has done absolutely nothing to stop sexual harassment occurring. Can he, under the Hon. Mr Griffin's reconsistuted clause 82 (6), be made to do anything by the Tribunal or the Commissioner?

The Hon. K.T. GRIFFIN: I think that there are two issues here. If there is a case of sexual harassment then the Commissioner can investigate it because that is clearly within the Commissioner's jurisdiction. The obligation under clause 82 (6) is not directly related to that particular act of sexual harassment.

The Hon. Anne Levy: So, the Commissioner cannot do anything.

The Hon. K.T. GRIFFIN: Clause 82 (6) is directed towards an educational programme. The instance that the Hon. Anne Levy gave was an actual case of sexual harassment. The two are different. If the employer knew—

The Hon. Anne Levy: If he knew, yes, but if he did not know and had done nothing to prevent harassment—

The Hon. K.T. GRIFFIN: They are two different issues.

The Hon. Anne Levy: I would have thought they were fairly related.

The Hon. K.T. GRIFFIN: On the one hand there is a case of sexual harassment. If the employer knew about it there is no problem at all. However, if he did not know, the honourable member is seeking to establish a secondary case on the basis that the employer did not take any action.

The Hon. Anne Levy: Yes, did not take any action to stop it occurring; it is like safety.

The Hon. K.T. GRIFFIN: That is where the problem comes in. What is the liability on an employer under subclause (6) to take such steps as may be reasonably necessary 'to ensure', the emphasis being on the words 'necessary' and 'to ensure'? That is what I have been talking about. The difficulties that have been highlighted to me are in the area of establishing what is the obligation that will attract a $100 000 or $50 000, or whatever, liability down the track? That is the problem.

If it were an offence that attracted a penalty of $1 000 or $2 000, then I would not have the same difficulty with it as I do in the context of what could be a massive liability for not taking some action that a body such as the Tribunal, in its judgment, regarded as reasonably necessary. The honourable member has given an extreme example, but let us take an example where an employer does put up some posters and puts out a brochure.

He may put out a brochure and devise mechanisms. In those circumstances the difficulty is that, if there is sexual harassment and the employer has done that, it may well be that the Tribunal at the end of the track will say, 'Those steps are not adequate, because you did not take such steps as may be reasonably necessary to ensure—there is a positive obligation to ensure—that as far as practicable none of the employees subject a fellow employee to sexual harassment.' The problem is establishing the criterion for liability. That is my concern.

The Hon. ANNE LEVY: An employer has an obligation to have a safe work place and to take such steps as are necessary to have a safe work place. If an employee by negligence causes an accident to another one, the employer is liable. If he has that obligation to provide a safe work place, I do not see why he should not also have an obligation to provide a work place free of sexual harassment.

The Hon. K.T. GRIFFIN: Health and safety can be judged by objective standards. with safety procedures you have to put a gurd on a saw or press and have a certain width of walkway. All can be judged by reference to some objective and defined standard. That is different from sexual harassment, where it is not possible to so clearly define the criteria. In regard to the steps that may be reasonably necessary to ensure as far as practicable that none of the employees subjects another employee to sexual harassment, the difficulty is that every work place will be different and there is no set standard that can be judged objectively in the same manner as the safety legislation.

The Hon. BARBARA WIESE: There are some important words in the clause that are not being addressed at all. The Hon. Mr Griffin is dwelling on the word 'ensure' but after 'ensure' are the words 'as far as practicable'. Surely that must be a reasonable safeguard against the problems that the Hon. Mr Griffin has raised.

The Hon. C.J. SUMNER: I do not accept what the Hon. Mr Griffin says about the definiteness of the safety standards. The fact is that in the work place the obligation, apart from statutory obligations, is to take reasonable care. As anyone who has had anything to do with the law would know, it is and can be open to a variety of interpretations, depending on the particular fact situations concerned. All I wish to say about this is what I said before: quite clearly, the Hon. Mr Griffin's amendment truncated subclauses (6), (7) and (8) to the extent that one almost might as well not have them. I still support their retention in the Bill. What I was saying is that they are truncated to the extent that I do not believe they have any effect in terms of placing an obligation on employers.

They may give the Commissioner for Equal Opportunity a case for conducting an education role with respect to the activities referred therein—sexual harassment—but I believe that, because throughout the rest of the Bill the word 'unlawful' is referred to, the fact that those words have been removed from subclauses (6), (7) and (8) probably means that the Commissioner will have no jurisdiction to investigate, conciliate and refer the fact that an employer has not taken reasonable steps or such steps as practicable to ensure that workers do not subject other workers to sexual harassment. It can be conciliated and taken to the Tribunal. I believe that to be the position.

There may be a case that could be put to the courts that the Commissioner does have the power, despite the truncated language in the section if the honourable member's amendment is accepted, but I doubt whether that is the case. I

believe that the position is as I put it when I opposed both the Hon. Mr Griffin's and the Hon. Mr Gilfillan's amendments to delete the clauses. So, I will vote at least to retain the clause, having already lost the vote in regard to the deletion of the first set of words.

The Hon. K.L. MILNE: The simple fact is that by leaving them there, even if they are truncated (and I do not think that they are truncated: they have just changed their meaning), they remain as a warning, and if an employer gets caught under section 85 someone (the Commissioner or whoever it may be) will be able to say, 'You were warned under section 82 that you were supposed to do something.' There is no penalty: it was not a crime at that time, because nothing had gone wrong. However, if one gets caught under section 85 and has done nothing, I think that it would make it worse; so, it is a warning and it is of some value to leave them there as they have been altered.

The CHAIRMAN: I am sure that the Hon. Mr Griffin is paying attention because it is his amendment, and I warn the Hon. Mr Gilfillan that if the words that are proposed to be inserted are inserted he cannot further move to delete the subclauses that he indicated. I make that clear. If the words are not inserted, the Hon. Mr Gilfillan could move to delete the rest of the words that he wished to delete.

The Hon. R.C. DeGaris: He can still recommit it if he wants to.

The CHAIRMAN: Yes, certainly, but we are not dealing with the recommitting; so I put the question that the words 'an employer shall' proposed to be inserted by the Hon. Mr Griffin be so inserted.

Amendment carried.

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

Page 30—
Line 39—Leave out 'It is unlawful for an educational authority to fail to' and insert 'An educational authority shall'.
Line 42—Leave out 'It is unlawful for'.
Line 43—Leave out 'to fail to' and insert 'shall'.

These amendments are similar to ones that have just been carried.

Amendments carried.

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

Page 31, lines 3 to 14—Leave out subclause (9) and insert new subclauses as follows:

(9) For the purposes of this section (other than subsection (3)), a person subjects another to sexual harassment if he makes an unwelcome advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and—

(a) the other person has reasonable grounds for believing that a rejecton of the advance, a refusal of the request or taking of objection to the conduct would disadvantage him in any way in connection with his employment or work, or possible employment or work; or

(b) as a result of his rejection of the advance, refusal of the request or taking of objecton to the conduct, he is disadvantaged in any way in connection with his employment or work or possible employment or work.

(10) An employee of an educational authority subjects a student, or a person applying to become a student, to sexual harassment if he makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to that student or person, or engages in other unwelcome conduct of a sexual nature in relation to that student or person, and—

(a) the student or person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage him in any way in connection with his studies or his applicaton for admission as a student; or

(b) as a result of his rejection of the advance, refusal of the request or taking of objection to the conduct, he is disadvantaged in any way in connection with his studies or his application for admission as a student.

(11) For the purposes of this section—

'conduct of a sexual nature' includes making to, or in the presence of a person a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

I have already spoken to this amendment which is to delete subclause (9) and insert new subclauses (9), (10) and (11) which, if carried, would reflect the Commonwealth provisions in respect to sexual harassment. I have already explained it at length and I do not think that I need to repeat it in view of the hour.

The Hon. C.J. SUMNER: I oppose the amendment moved by the honourable member. The debate has covered this matter in the second reading speeches. The Government takes the view that sexual harassment as we have defined it should be an unlawful act of discrimination as such without there necessarily having to flow any disadvantage in the employment prospects of the employee. That is a fundamental difference of opinion about how to go about dealing with the question of sexual harassment in the work place. I do not think there is much point in pursuing the principle: it is a difference of opinion. Nevertheless, I make it quite clear, as I did in the second reading explanation, that our view is that sexual harassment should be an unlawful act of discrimination and thereby bring into play the role of the Commissioner and the Tribunal, and that there should not need to be some detriment or disadvantage in employment flowing from the act of sexual harassment.

The Hon. K.T. Griffin: It is not 'detriment'; it is 'disadvantage'.

The Hon. C.J. SUMNER: Disadvantage flowing from it, which is the Hon. Mr Griffin's point of view.

The Hon. R.J. RITSON: If sexual harassment in the workplace completely unconnected with the peculiar disadvantages that may be associated with the workplace is the object of the Attorney-General's legislation, why does he not also legislate specifically against sexual harassment in Rundle Mall or in the grandstand at the football oval?

The Hon. C.J. SUMNER: That is a good point. Complaints received by the Commissioner for Equal Opportunity are primarily in the areas of employment and educational institutions. What the honourable member says, I suppose, has some attraction in pure logic. But as I understand it—

The Hon. R.J. Ritson: What is wrong with a bit of pure logic?

The Hon. C.J. SUMNER: It is not something that is used with any great consistency in Parliament and it seemed to me to be an odd situation to start using it now. If one wants to be a purist, perhaps the honourable member is correct: one could make sexual harassment an offence everywhere, although I point out that in some areas it depends on the kind of sexual harassment. It may be covered by a criminal offence in any event—

The Hon. R.C. DeGaris interjecting:

The Hon. C.J. SUMNER: No. Persistent suggestions from an employer that his secretary should accompany him to some boudoir which she consistently rejects is not covered by an offence. However, it would clearly be sexual harassment under the terms of this definition.

I do not mean just one approach. Obviously, that is part of the natural day to day relationships that exist between people in the community. However, the problem with the employment situation is that the employer is in a position of authority over the employee. In the educational institution, the teacher is in a position of authority over the student. It is in that context that the harassment can be particularly difficult to deal with and it is for that reason that the Bill is directed to those particular issues. One needs to be in close contact to come within the definition of sexual harassment in circumstances where the law needs to intervene.

If one is in the street and a male pinches a woman's bottom I would think that is probably already covered by the law.

The Hon. R.J. Ritson: Simple assault or something like that.

The Hon. C.J. SUMNER: Yes, it is almost certainly an assault of some kind. Presumably one suggestion in the street that a lady should accompany a man home for the purposes of sexual intercourse or whatever would not be sexual harassment because it would only occur on one occasion. If the person did it every day at the same spot over a period of time, one might consider that to be—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: No, I have got beyond that, thankfully, I think.

The Hon. R.I. Lucas: Been to Regines recently?

The Hon. C.J. SUMNER: I used to go to the British in my youth; I have given that up, too. I guess there could be a case there to say that that ought to be proscribed in the general law, as the honourable member has suggested; it may already be proscribed by an offence of offensive behaviour but I doubt that. However, the important distinction is—if I can be logical, apart from my flippant remarks earlier—that the pernicious aspects of sexual harassment occur where people are in close contact with each other on a day to day basis and one person is in a position of authority over the other.

The Hon. R.C. DeGaris: The Bill goes further than that.

The Hon. C.J. SUMNER: It does go further than that.

The Hon. R.J. RITSON: I thank the Minister for his reply because he has employed pure logic to demonstrate the strength of the shadow Attorney's argument and that is this: in his answer he explained that, whilst sexual harassment *per se* in the street was a matter for other areas of law, in the work place there were special disadvantages. The disadvantages are that a person may be in a situation where their ordinary right to say 'No' is influenced by fear of the consequences—a row with the boss, the gossip around the office—and that is a disadvantage.

All of the examples that the Attorney-General gave us were where the harassment was a substantial disadvantage in the work place. However, it is possible that a situation would occur within the work place which was not a disadvantage; where a diminutive little office boy made a nuisance of himself and where a good, intelligent, strong woman could just stamp on him with the right words and exercise the right of saying 'No' without there being any disadvantage to her. All of the complaints that come up, I suggest, are complaints in which there is potential disadvantage, but I think a distinction can be made between a situation where a woman's natural, lawful right to say 'No' to someone is inhibited by the work situation and that inhibition of the right to say 'No' is the disadvantage suffered. However, it may not always be so; there may be the diminutive little office boy who can easily be kicked aside without any disadvantage, in which case the woman should not have the benefit of further crucifying the object of her derision by going to the Tribunal.

Just because usually there is disadvantage if this happens in the work place, it does not follow that everything that happens in the work place is of a disadvantage to the victim of harassment, and it does not mean that there are not occasions when the ordinary right to say 'No' is effectively carried out. I ask the Attorney to consider whether in his reply, he has not given a very circuitous answer in which the question of disadvantage has been wrapped up in the definition so that sexual harassment in the work place is that which disadvantages one, and that therefore sexual harassment is *per se* discrimination whether or not it disadvantages one. It seems that that is what the Attorney is saying, and I ask him to think about it again. I do not mind including pure logic in the debate, even though it is rarely employed. I support what the Hon. Mr Griffin has said.

The Hon. I. GILFILLAN: The analysis of sexual harassment in the work place is a consequence of entrapment—it can go both ways. I have seen examples where a male has felt sexually harassed by females in the work place, and I do not see that the legislation discriminates. Is the Hon. Trevor Griffin's amendment identical to what is contained in the Federal Act? It is my intention to support the amendment. I have consulted with my colleagues in Canberra, including Senator Janine Haines, and they have no quarrel with the wording of the Federal Act. It seems to be a reasonable basis on which to work, but I wish to be sure of the wording.

The Hon. C.J. SUMNER: It is substantially the same, and certainly has the same effect, but that does not solve the problem so far as I can see. There is a fundamental difference of opinion. We put forward the proposition that sexual harassment in the work place should be an unlawful act of discrimination *per se* and that disadvantage need not flow from that. I say that because, in the case of the Hon. Dr Ritson's example, one could get a situation where a course of conduct by an employer over a considerable period is clearly offensive harassment to the individual employee concerned but does not get to the point of there being an argument, or the employer saying, 'You have not acceded to my requests for sexual favours; therefore, I am going to demote you to the typing pool from being my personal secretary.' It may not get to that but, nevertheless, there has been a course of conduct over a substantial period of time.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I do not believe it is. The employee may find the behaviour harassment and offensive. Some disadvantage must flow from that harassment under the Hon. Mr Griffin's amendment and, for that matter, under the Commonwealth Act. That was consistent with the position taken by the Hon. Mr Griffin in 1982. We have taken it one step further than that and said that the act of harassment itself ought to be an unlawful act of discrimination. It is not, under the Hon. Mr Griffin's proposal, and I do not believe that the sort of conduct I have outlined would be caught by his amendment, because no disadvantage will flow to the individual who is being harassed, despite the fact that the individual may have been harassed over a long period of time.

The Hon. K.T. GRIFFIN: The position that I am pursuing tonight is not identical to that which I pursued in 1982. I tried to make that clear when speaking earlier. In 1982 the sexual harassment, to be actionable, had to be related to discrimination. That is not the position that I am putting in this amendment. I also indicated earlier, both in the second reading debate and tonight, that the sort of behaviour which I believe would constitute a disadvantage is the behaviour or course of conduct to which the Attorney-General has referred, because in itself it creates a disadvantage for the woman employee in respect of her attitude towards her work, her health and all the consequences which follow from that harassment.

The Hon. R.J. Ritson interjecting:

The Hon. K.T. GRIFFIN: That is certainly a disadvantage, too. As I indicated in my second reading speech, I wanted to ensure that we covered those circumstances. I said that I wanted to be sure that the Commonwealth Act covered it. All the advice that I have received since making my second reading speech indicates that the disadvantage referred to in the Commonwealth legislation is of consequence to the woman subject to the course of conduct, the act of harassment and her reaction to it, whether it be an outward reaction in terms of protesting or, because of the fear of reprisal or some other action against her, she does

not speak up. That is my view of what the Federal legislation seeks to deal with, and that is why I am moving for it to be included in the South Australian legislation and, in addition, because of what I see as an important need in this area above all others to ensure that there is uniformity between State and Federal provisions because of the very nature of the act of sexual harassment.

The Hon. ANNE LEVY: It seems to me that, while what the Hon. Mr Griffin says may sound logical, he is missing the point of how these things may ever be established. The boss who squeezes his secretary's shoulder whenever he walks past her is sexually harassing her. She may not wish to turn around and slap his face because, even if she did not lose her job for doing so, it would make for an extremely unpleasant working environment for all in the office if she slapped him. Instead, she constantly shrinks away from the boss when he approaches and tries to indicate that that form of behaviour is unwelcome. However, if he is a 'good' harasser, he takes no notice whatsoever and thinks he is being jolly and funny and continues to squeeze her shoulder whenever he walks past her, not taking any hints to stop this behaviour. A woman in this situation—and I assure honourable members that it is not uncommon—will reach a point where she is distressed and apprehensive, and every time the harasser walks into the office she becomes nervous and distressed.

The Hon. K.T. Griffin: This is a disadvantage.

The Hon. ANNE LEVY: I realise that this is a disadvantage, but how could she ever prove it? Her work rate may be the same; the work that she turns out is exactly the same. It will be easy enough to prove that she is being sexually harassed because everyone in the office has probably seen the harasser touching her constantly when it is clear that she does not wish to be touched, but how can she prove that this is a disadvantage? A disadvantage in what way? She has not been demoted; she has not been promoted. She is still just as productive a worker as she ever was.

The Hon. Diana Laidlaw: You are making it unlawful.

The Hon. ANNE LEVY: It is being made unlawful if it causes a disadvantage. A court could say: what sort of disadvantage? She still has the same job, pay and conditions; she is just as productive as she ever was; she says that she is suffering from nervous stress as a result of this, but that is just her trying to get a rise or to claim damages. She has suffered no disadvantage at all as a result of this and so nothing can happen. But, if we make sexual harassment *per se* an unlawful act, then she has a comeback against that harasser who will not leave her alone. However, as the honourable member's amendment is worded, the woman has to show that there is disadvantage to her from it, and it could be asked, 'What is the disadvantage?'

The Hon. C.J. Sumner: It is not as absolute as that because she has reasonable grounds for believing that the conduct would disadvantage her. It is not the absolute position that disadvantage has to flow.

The Hon. ANNE LEVY: She has reasonable grounds for believing that there would be a disadvantage.

The Hon. C.J. Sumner: It is a halfway house. It certainly does not go as far as our Bill.

The Hon. ANNE LEVY: It does not go as far as saying that sexual harassment *per se* is illegal. If she takes action in this case the employer could say, 'No disadvantage would ever flow; if she had turned around and slapped me in the face I certainly would not have demoted her or done anything to in any way disadvantage her. How could she possibly think that? She has no grounds for thinking that. I have never sacked an employee—

The Hon. K.T. Griffin: That is far fetched, though, isn't it?

The Hon. ANNE LEVY: It is not in the least bit far fetched. It sounds just the sort of argument that an employer would raise at the Tribunal, if it got as far as the Tribunal, and she is in the situation where nothing can be done.

The Hon. BARBARA WIESE: Following on from the point that the Hon. Anne Levy has made, I will take up the example that was used by the Hon. Dr Ritson when he was talking about the case of an office boy harassing a fellow employee who might be senior to him in the firm. In a situation like that, if the person who is being harassed has to prove some disadvantage it will be even more difficult for her to do so when she is trying to prove some disadvantage in a situation where someone who is junior to her in the firm has been conducting the offensive behaviour.

I do not understand why members opposite cannot accept the notion, if they agree that sexual harassment is undesirable and ought to be unlawful, that the act itself should not be actionable if I, as the individual who has been harassed, feel offended or humiliated. Why should I have to prove over and above that feeling of offence and humiliation that I am suffering some disadvantage?

The Hon. DIANA LAIDLAW: I refer to the point of disadvantage. Several female members of the Senate and the House of Representatives on behalf of the Government commented in this regard when speaking to an amendment similar to this, but I have mislaid the quotes. Certainly, they did not express the doubts that were expressed by the Hon. Ms Levy and the Hon. Miss Wiese. If one is being disadvantaged because of sexual harassment it can affect one's health, but the Hon. Ms Levy said that that would be very difficult to prove. The Office of the Commissioner for Equal Opportunity in the Annual Report for 1982-83 indicates that a woman in a case study who was having particular difficulty with her employer, who was a managing director of a national company, went to her doctor: eventually the pressure became such that the complainant sought medical advice. She was referred to the Commissioner's Office by the doctor. The complainant's allegations were substantiated by a previous secretary and the Commissioner entertained her complaint.

I make the point about medical advice because disadvantage can affect one's health which, of course, affects one's capacity to do the job. I have never seen a person whose health was up to scratch not being able to perform the job as one would expect.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: I think we would find that that was the case. Certainly, the people to whom I have spoken in the work place have said that their work and their health were affected when they were subjected to constant harassment in the work place. I do not think that one could question that disadvantage could be considered in terms of one's health or outlook towards one's job.

The Hon. K.T. GRIFFIN: The *Webster Third International Dictionary* definition of 'disadvantage' is:

> Loss or damage especially to reputation, credit; prejudice; detriment; unfavourable, inferior or prejudicial condition; unfavourable or prejudicial quality or circumstance. Disadvantage: to affect unfavourably. Disadvantageous: unfavourable; prejudicial; tending to diminish esteem; disparaging; derogatory.

Those descriptions are encompassed by the amendment and the areas I am anxious to see covered.

The Hon. BARBARA WIESE: I take up the point raised by the Hon. Miss Laidlaw regarding the effect on individuals who are being sexually harassed. The points she made do not take into account the differences between human beings. Some of us are emotionally and physically stronger than others. Some people can work under incredible pressures without suffering any apparent effect on work output or the way in which they conduct their daily dealings with other

people in the work place, but other people after a short time under pressure will fall to pieces. To make those sorts of generalisations about the way in which sexual harassment will affect people is just not reasonable.

The Committee divided on the amendment:

Ayes (11)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, R.C. DeGaris, Peter Dunn, I. Gilfillan, K.T. Griffin (teller), Diana Laidlaw, R.I. Lucas, K.L. Milne, and R.J. Ritson.

Noes (8)—The Hons Frank Blevins, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pair—Aye—The Hon. C.M. Hill. No—The Hon. G.L. Bruce.

Majority of 3 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 83 passed.

New clause 83a—'Data must be made available on request.'

Page 31—After clause 83 insert new clause as follows:

83a. It is unlawful for a person who, in providing insurance or a superannuation scheme or provident fund, proposes to discriminate against another person on the basis of actuarial or statistical data to fail to make the data available to that other person upon that other person's request.

The Hon. K.T. GRIFFIN: I seek some guidance. As a result of the earlier debate on clause 39 and postponement of the decision on clauses 39, 40 and 41, I am having drafted a new clause 83a which may satisfy the differing points of view on the question of availability of information about superannuation. There is some suggestion in private discussions that it may not be appropriate in new clause 83a as presently drafted. Is it possible to postpone its consideration?

Further consideration postponed.

Clause 84 passed.

Clause 85—'Liability of employers and principals.'

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

Page 31, lines 27 to 29—Leave out subclause (1).

I have canvassed these amendments in my discussion of clause 82. Basically, it is to leave out subclause (1) and to amend subclause (2) to provide that it shall be a defence for the person against whom it is alleged there has been an act of discrimination for that person to prove that he did not know of the act or default or that he had prior knowledge of the act or default and took all reasonable steps to prevent its occurrence. I do not think I need to canvass again the reasons for that. We have debated it in some detail.

The Hon. I. GILFILLAN: I was persuaded by the argument of the Hon. Anne Levy that my earlier indication that there could be additions to subclause (2) of clause 85 may be a help. I have since changed my mind and I believe that the clause is better left unamended and as it is. Therefore, I intend to oppose any amendments to it at this stage.

The Hon. C.J. SUMNER: The Government opposes the amendment for reasons which have already been outlined and which I do not wish to canvass again.

The Hon. K.L. MILNE: I am not quite sure what we are doing now. I was rather attracted to the extra amendments that the Hon. Mr Griffin suggested, but I am not opposed to leaving subclause (1) in there. If the Hon. Mr Griffin would tell me whether they conflict that would help me.

The Hon. K.T. GRIFFIN: They do not really conflict as I interpret it at present. Clause 85 makes an employer liable for all the acts of his or her employees while acting in the course of their employment.

The Hon Anne Levy interjecting:

The Hon K.T.GRIFFIN: It is in some respects and not in others. This is legislation that deals, in effect, with a substantial civil liability; there is no criminal liability except for the limited number of statutory offences that are created. The difficulty is that the employer, even though he or she might not know of the Act of an employee that incurs the liability, will at least face the potential of a fairly substantial penalty being awarded by the tribunal. That is my major concern about subclause (1). It can be treated separately from subclause (2). To some extent my amendment to subclause (2) does limit the vicarious liability in subclause (1).

The Hon. ANNE LEVY: The Hon. Mr Milne might be interested in the Federal Act, which sets a standard below which we cannot fall because it would be ruled inoperative. Section 106 of the Federal Act clearly establishes an employer's vicarious liability for an Act of an employee or agent of the employer that is unlawful or contrary to that Act. It states:

This Act applies in relation to that person—

that is the employer—

as if that person had also done the act.

So, the vicarious liability contained in clause 85 (1) and clause 82 is similar to that in the Federal Act. Subsection (2) of the relevant section in the Federal Act provides:

Subsection (1) does not apply in relation to an act of a kind referred to in paragraph ... done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to.

It talks about reasonable steps. Our subclause 85 (2) talks about exercising reasonable diligence. The whole of clause 85 is virtually identical with what is in the Federal Act.

The Hon. C.J. SUMNER: The Hon. Miss Levy is correct. We have here another situation where there is potential conflict between the Commonwealth Act and the State Act and where our Bill, if it is passed in the form suggested by the Hon. Mr Griffin, may well be struck down as being inconsistent with the Commonwealth Act. We have already come across that problem on a number of occasions and the Committee has ignored the advice that our Bill, if it is amended, will be in conflict with the Commonwealth Act and, therefore, struck down as being inconsistent with the Federal Constitution.

We have ignored that advice on a number of occasions and we may well be ignoring it again, apparently. All I can say is that we are creating a situation of complete futility by inserting in our legislation clauses that will be invalid because of the paramountcy of the Federal Sex Discrimination Act. That being the case, it seems to me to be a futile exercise for us to be the dog in the manger and to say, 'Well, we are going to stick to our guns,' knowing full well that the Commonwealth Act will override us, anyhow. That seems to me to be not a particularly useful way of going about the process of amendment of this Bill; so, I believe that the point the Hon. Anne Levy has raised with respect to section 106 of the Sex Discrimination Act is correct.

We have another potential problem of inconsistency. Therefore, for that reason I ask honourable members to reject the Hon. Mr Griffin's amendment. I am becoming increasingly concerned that with this Bill we are in fact retreating from positions which have been taken in this State in a number of areas and which have been accepted in the anti discrimination legislation in this State in a number of areas. We have already done it with respect to the Sex Discrimination Act relating to religious institutions on the point which I raised and which we debated before. That was a clear retreat from what has been the accepted standard in this State since 1975. We are now about to retreat again. I point out that section 38 of the Handicapped Persons Equal Opportunity Act provides:

Where a person acts on behalf of another either as his agent or employee, the person on behalf of whom the act was committed shall, unless he took reasonable precautions to ensure that the agent or employee would not act in contravention of this Act, be jointly and severally liable with the agent or employee for any criminal or civil liability arising under this Act in respect of that discriminatory act.

The Hon. K.T. Griffin: That is not as wide as clause 85.

The Hon. C.J. SUMNER: Well, I believe that it is much closer to proposed clause 85 (2) than is the Hon. Mr Griffin's amendment.

The Hon. K.T. Griffin: There is nothing about it in the Sex Discrimination Act, is there?

The Hon. C.J. SUMNER: Just a minute—it talks about the employer and places upon him a positive obligation under the Handicapped Persons Equal Opportunity Act to take reasonable precautions to ensure that an agent or employee will not act in contravention of this Act. If he does not do that, the employer is jointly and severally liable with the agent or employee. Under the Bill introduced by the Government, we merely place an obligation on the employee and the employer to be liable for the acts of his agents or employees, that being a vicarious liability and the position that generally applies in an employer-employee situation.

We then provide that it is a defence for a person to prove that he has exercised all reasonable diligence to ensure that his agent or employee has not acted in contravention of this Act. Those words are the same as the words that currently appear as a positive obligation on employers under the Handicapped Persons Equal Opportunity Act, 1981, which was introduced by the Liberal Government of which the Hon. Mr Griffin was Attorney-General, and from which we are about to retreat. The Hon. Mr Griffin's amendments have caused him to retreat in relation to a number of other clauses from a position that is already the accepted law in this State.

He has retreated from positions he took which were accepted by the Parliament in 1981. I am very concerned about two aspects of a number of amendments that have been moved. The first one is the inconsistency between our legislation and the Commonwealth Act and, therefore, the possibility that a number of the clauses that we have now inserted in the Bill will be struck down—

The Hon. K.L. Milne: What do you mean 'struck down'?

The Hon. C.J. SUMNER: Declared invalid.

The Hon. K.L. Milne: Who does that?

The Hon. C.J. SUMNER: The High Court, if there is a challenge.

The Hon. Diana Laidlaw: There are so many ifs about it.

The Hon. C.J. SUMNER: There are not that many ifs about it. I believe, and the Government acted on that belief, that the South Australian Parliament, in considering this anti discrimination legislation, should at least reach the standard reached by the Commonwealth.

The Hon. K.L. Milne: Are you talking about the standard of punishment?

The Hon. C.J. SUMNER: The standard of protection from acts of discrimination in these areas established by the Commonwealth Act. The Government was particular about this area in preparing the legislation. I instructed the Crown Solicitor to go through both Acts of Parliament (the Commonwealth Sex Discrimination Act and the Commonwealth Racial Discrimination Act) and our proposed Anti Discrimination Act to try to remove the inconsistency, because it is pointless our passing a Bill which is inconsistent with the Commonwealth Act and therefore liable to be struck down in some of its aspects by the High Court because of the inconsistency provisions with the Federal Constitution and the paramountcy of Commonwealth law which covers the field in that particular area.

I find that an almost unarguable position. If we are putting in legislation things that are inconsistent with the Commonwealth Acts we are really just cutting off our noses to spite our faces because the sections in our Act which we have put in and which are less favourable in terms of the object of the Commonwealth legislation will be struck down, and we will be left in place with the Commonwealth sections. It seems to me to be a particularly futile exercise—

The Hon. R.C. DeGaris: That's not too bad.

The Hon. C.J. SUMNER: I can say that, if that is the case, there will be no chance of the Commonwealth going through the rollback exercise that I have discussed. The rollback exercise is to provide the States with the authority to administer their own legislation in this area, but that will not happen if the standards set in the State legislation are lower than those already provided in the Commonwealth legislation, which is the paramount law throughout Australia.

The Hon. K.L. Milne: Which standards are you talking about—the standard of protection for the person harassed or the standard of protection for the employer?

The Hon. C.J. SUMNER: I am not talking about the person harassed: I am talking about the whole regime of anti discrimination legislation. If there are sections in the Commonwealth legislation which provide a certain regime of anti discrimination and our standards are lower in terms of the protection against discrimination, then those particular sections in our Act will be struck down as inconsistent with the sections in the Commonwealth Act.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I am merely putting to the House the futility of moving amendments which will bring our Act into conflict.

The Hon. R.C. DeGaris: I don't think you're right there, either.

The Hon. C.J. SUMNER: The honourable member may know more about the Federal Constitution than I do.

The Hon. R.C. DeGaris: I am talking about the amendment that the Hon. Mr Griffin is moving: I don't think it goes—

The Hon. C.J. SUMNER: I do not think there is any doubt that there is the potential and the likelihood of conflict on that one. We have passed some already where I am sure there will be conflict.

The Hon. R.I. Lucas: It's a very wide ranging Bill.

The Hon. C.J. SUMNER: I am not suggesting that it is not a wide ranging Bill.

The Hon. R.I. Lucas: The Commonwealth Government will be licking its lips about it.

The Hon. C.J. SUMNER: I do not think that is the case after many of the amendments that have been passed. All I can do is reaffirm two concerns: first, inconsistency and the futility of moving amendments which bring us into conflict with the Commonwealth legislation. There is absolutely no point in doing it; that is the clear unassailable constitutional reality of this country whether we like it or not. There is no point in our passing a Bill which is in conflict with the Commonwealth Act.

The Hon. R.I. Lucas: If that is the case why didn't you just take the whole Commonwealth Bill?

The Hon. C.J. SUMNER: If the honourable member wants us to vacate the field completely in this area, that is not the position that the Hon. Mr Griffin has consistently put. He wants the State to have authority in these areas and to be able to administer Acts but he knows, and the Hon. Mr Lucas should know, that unless our Act comes up to the standards of the Commonwealth Act, first, in practical terms (the Commonwealth will not roll back) but in any event in legal terms, in constitutional terms, it is a pointless exercise. I am concerned about the potential conflicts that we now have.

Secondly, I am concerned, and equally so, because of what I consider to be retreats from existing standards well established in this State in our anti-discrimination laws. The clause that we are now considering, including the amendment to that clause by the Hon. Mr Griffin, is a very clear retreat from the rights that handicapped persons, persons with disability, have now under section 38 of the Handicapped Persons Equal Opportunity Act, and I really do not think that we should continue to go down the track of withdrawing rights that the people of South Australia now have.

The Hon. K.L. MILNE: We are looking at standards of democratic fairness on all sides. We are trying to keep South Australia a reasonable place to trade, manufacture and work in for the professions, and so on. In fact, we would like to have it a better place to work in than the Commonwealth and the Eastern States. Why not?

The Hon. C.J. Sumner: Because we are bound by the Commonwealth law already passed.

The Hon. K.L. MILNE: Well, I will be disobedient for a minute.

The Hon. C.J. Sumner: This is not being particularly helpful.

The Hon. K.L. MILNE: This is not being unhelpful. Wait until you hear what I am proposing. Subclause (1) should stay, I think. Subclause (2) should stay but be altered in such a way as to be fair on both sides.I will move accordingly in due course.

The Hon. K.T. GRIFFIN: The Hon. Lance Milne's amendment really is no different from what is, in effect, already in place and I would not be prepared to support it. The real problem is that the Bill covers more than does the Commonwealth legislation. We are trying to get a Bill which, in respect to all areas, is fair and reasonable. There may be some conflicts with the Commonwealth legislation on sex discrimination but, in terms of looking ahead to the roll-back of the Federal legislation, it is important for us to have enacted a comprehensive piece of legislation which we believe is fair and reasonable. If the Commonwealth is genuine in its desire to roll back in favour of State legislation, I cannot believe that it will reject South Australia's equal opportunity legislation on the basis that it provides less safeguards in some respects than the Commonwealth legislation.

The Hon. R.I. Lucas: They are minor.

The Hon. K.T. GRIFFIN: Yes, they are minor. The Attorney-General talks about retreating from established positions. There is no provision in the Sex Discrimination Act about the liability of employers, principals or the acts of employees or agents. The Handicapped Persons Equal Opportunity Act contains a provision dealing with that liability. The State Racial Discrimination Act does not include any provision. I have not recently checked the Commonwealth Racial Discrimination—

The Hon. C.J. Sumner: It applies to all acts of discrimination, not just sexual acts.

The Hon. K.T. GRIFFIN: I know, I am saying that.

The Hon. C.J. Sumner: In respect to the physically handicapped, you are providing them with less benefits under your Bill than applied in 1981.

The Hon. K.T. GRIFFIN: I am just saying that there is nothing in the Sex Discrimination Act—

The Hon. C.J. Sumner: I know that.

The Hon. K.T. GRIFFIN: I am making it clear so that we get the proper perspective. There is nothing in the Sex Discrimination Act and presently no law relating to sexuality. We are trying to establish a reasonable standard. The Commonwealth Racial Discrimination Act, from my recollection, is a fairly brief document that does not place this liability on employers, but I am not sure about that.

We focused upon Commonwealth legislation to the extent that any part of it may be held to be inconsistent. It is only written down to the extent of that inconsistency and only to the extent of the Commonwealth jurisdiction. In relation to sexuality, physical impairment and race discrimination, if there is no comparable Commonwealth legislation, the provisions we put in this Bill will stand. It is important to have an across-the-board provision applying to all those areas of discrimination and not just to sex discrimination as the Commonwealth Act applies. The Hon. Lance Milne is going to move an amendment to add to subclause (2). I cannot support it because I do not think it does what he wants it to do.

I think my amendment is better, and for that reason I propose to adhere to it. In relation to subclause (1), it is obvious that I do not have the numbers, so I will not call for a division on it.

Amendment negatived.

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

Page 31, lines 33 and 34—Leave out 'that he exercised all reasonable diligence to ensure that his agent or employee would not act in contravention of this Act' and insert as follows:

(a) that he did not know of the act or default; or

(b) that he had prior knowledge of the act or default but took all reasonable steps to prevent its occurrence.

I think my amendment is the appropriate approach because of the wide ambit of this legislation and the prospect of substantial damages for a breach by an employee of which the principal or employer had no knowledge or prior knowledge.

The Hon. K.L. MILNE: There are two different things. I cannot see any harm in leaving subsection (2) as it stands, if it conforms with the Commonwealth Act and the Commonwealth is happy with it. That does not matter to me. Exercising all reasonable diligence to ensure that employees know what they ought to be doing is one thing, but blaming an employer for something that he did not know was happening is another matter. If the Committee passes subclause (2), I will move an amendment as follows:

It shall also be a defence that he did not know of the act or default or that he had prior knowledge of the act or default but took all reasonable steps to prevent its occurrence.

The Hon. C.J. SUMNER: That is not acceptable. It does not improve the situation at all as far as the Government is concerned.

The CHAIRMAN: Order! If the Hon. Mr Milne wishes to move that amendment, he will have to bring it to the table and then the Attorney will tell him what he thinks of it.

The Hon. K.T. GRIFFIN: I am happy to call for a division on my amendment, if there is no clear indication of where everyone is going.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. C.M. Hill. No—The Hon. G.L. Bruce.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 31, before line 35—Insert new subclause as follows:

(2a) It shall also be a defence:

(a) that he did not know of the act or default;

(b) that he had prior knowledge of the act or default but took all reasonable steps to prevent its recurrence.

I cannot see that that does any harm to the people whom we are trying to protect or to—

The Hon. C.J. SUMNER: I rise on a point of order. I do not want to deprive the honourable member of his day in court, but it is my impression that those words are substantially the same as those contained in the Hon. Mr Griffin's amendment, on which we have just voted.

The CHAIRMAN: The Hon. Mr Milne seeks to insert a new subclause. The Hon. Mr Griffin's amendment provided 'that he did not know of the act or default or that he had prior knowledge of the act or default but took all reasonable steps to prevent its occurrence'.

The Hon. K.T. GRIFFIN: My amendment related to lines 33 and 34. I sought to delete certain words and to insert other words. I understand that the Hon. Lance Milne is seeking to add a new subclause, which leaves in the words that I sought to strike out and adds additional words.

The CHAIRMAN: Technically, the Hon. Mr Milne does not want to delete any words: he seeks to leave the clause intact and add additional words, and under those circumstances he may proceed.

The Hon. K.L. MILNE: I seriously do not think that this will disadvantage anyone that the Bill seeks to protect. It will ensure much better feeling in the factory, plant or commercial or professional office if the employee is not at such enormous risk. We do not have to go to that stage, at least at present. Those two safeguards for the employer are obviously fair, reasonable and quite clear. I cannot understand the Federal Court saying that that is out of order and that it is not the same standard. Of course it is. It is a very high standard of safety and protection for both sides, and it would be very unfair if the provision was challenged.

The Hon. C.J. SUMNER: What was a difficult situation has now become an impossible situation in terms of Commonwealth legislation. All I can say is that the addition of these words weakens even further the protection being given to people who are discriminated against.

All I can say is what I said before, namely, that clearly it will be inconsistent with the Commonwealth Act. The honourable member's amendment would add a further defence, and rather than having just the two defences put up by the Hon. Mr Griffin, which were that the employer did not know of the act or default or that he had prior knowledge of the act or default but took all reasonable steps to prevent its occurrence, there would be a further defence available to the employer, namely, that he had exercised all reasonable diligence to ensure that his agent or employee would not act in contravention of this Act. The Hon. Mr Griffin's amendment posed two defences for the employer, instead of the one defence being proposed in the Government Bill. The Hon. Mr Milne's amendment would provide three defences to the employer. It would further weaken the existing regime, at least with respect to handicapped persons. In my view this would be clearly inconsistent with the Commonwealth Sex Discrimination Act. That being so, it will be struck down.

The Hon. ANNE LEVY: I think the Hon. Mr Milne may not realise that with three possible defences, as he has suggested, what could happen is that an employee could contravene the Act in some way (and we accept that employers are vicariously liable for the faults of their employees, which is the general rule regarding safety, damages and anything else that happens in the work place), and if the employer could prove that he tried to prevent the employee acting in the way that he did, the employer would not be liable. By putting in that extra defence as one of the alternatives, that the employer did not know, it would mean that an employee could contravene the Act and the employer could simply say that he did not know that the Act was being contravened, and in that way avoid the liability which in everything else accrues to an employer in relation to the acts of his employees.

The Hon. C.J. Sumner: It would render section 85 virtually useless.

The Hon. K.L. Milne: No.

The Hon. ANNE LEVY: Yes, it would. The amendment would enable the use of those three possible alternative defences. They would not be additional to each other; they are alternatives, and so an employer could use any one of those three that he wanted to. If he decided to use the defence that he did not know (and I do not know how it could ever be proved that he did know), he would not even plead the other two defences—he just says that he did not know and in that way completely avoids all liability for an act of his employee, and that is a situation that does not apply anywhere else in our industrial law where an employer is liable for an act of his employee unless he has taken care, has warned the employee or has taken some action beforehand to prevent an employee breaking the law.

When one puts in three possible defences, the employer does not plead all three; he picks any one of the three that he wants to. If one of them is that he did not know, he has only got to pick that and say, 'I did not know.' One can never prove that he did know, and so he avoids all liability which, in every other area of industrial matters, he has.

The Hon. K.L. MILNE: It is not fair to say that he picks the one that he wants to. He picks the one that applies in the case or cases in which he finds himself. If he did not know I think that is a defence and also one has to have that as well as his exercising all reasonable diligence to ensure that employees would not contravene the Act. Having done that, and if they still contravene the Act—a senior employee is harassing someone else—in spite of all he or she has done before, it ought to be a defence.

The Hon. Anne Levy: You are not making them additional—you are making them alternatives.

The Hon. K.L. MILNE: Make them additional, then.

The Hon. K.T. GRIFFIN: I much preferred my amendment. I have reservations about the Hon. Lance Milne's amendment, but in anticipation that the matter can be further discussed at a later stage, and notwithstanding those reservations, I indicate, just for the moment and to enable it to be further discussed and to keep it alive, that I am prepared to support the Hon. Lance Milne's amendment, but I would want to have a good look at it. The only way to keep it alive is to support the amendment.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. C.M. Hill. No—The Hon. G.L.Bruce.

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 86 passed.

Division I—Non-discrimination orders.

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

Page 32, line 38—Leave out all the words in this line.

This heading relates to the substance of clause 87, which provides for the Tribunal on the application of the Minister or the Commissioner, to hold an inquiry to determine whether a person has contravened or is contravening any provision of the Act. This is a fairly wide power. There is a much wider power in the Sex Discrimination Act because the present Sex Discrimination Board can institute an inquiry

of its own motion. The Handicapped Persons Equal Opportunity Act provides for an inquiry on the application of the Minister.

In the second reading debate I indicated that I have always been concerned about this sort of provision and that the inclusion in the Handicapped Persons Equal Opportunity Act was to some extent a compromise on what I would regard as a proper position, that is, that a body that is established to act as an arbitrator or a judicial type tribunal should not have the power also to investigate. Because of the wider jurisdiction of this Tribunal it seems to be appropriate once and for all to resolve that position as to whether or not a broad ranging inquiry can be undertaken by the Tribunal. In essence, the difficulty is that the Tribunal has a responsibility to entertain a complaint that alleges discrimination against another person, the person being construed in the broadest sense including a body corporate, an association and so on. The Tribunal has to hear evidence; whether it is strictly evidence that would be receivable in a court of law or otherwise does not matter.

Then it has to make a decision on the evidence that is presented as to whether or not the complaint is established and then make an award of damages, which are unlimited. In that context, the Tribunal is acting judicially. It is hearing all the witnesses presented to it by the complainant and respondent, so it is acting as though it were a court and I have no disagreement with that function. When it acts in the context of undertaking an inquiry it acts as investigator and that is the problem, because it is questioning, inquiring and obtaining evidence.

Then, if it makes a decision that there is discrimination it hears a complaint possibly from one of the persons who has given evidence during the inquiry, and then it has to make a decision on a judicial basis; so, there is a conflict. It is acting in one context as investigator and in another context as arbiter or exercises *quasi* judicial responsibilities, and I think that that is where there is the basic conflict of principle. Because this Act has such a wide scope, I think that it is important to clear that up now once and for all.

I make the point that under the Federal Act the Commissioner has powers of inquiry; so does the Human Rights Commission, but the Commission does not have the power to make any orders. That is left to the Federal Court, because if the Commission finds that there is an act of discrimination it can make some proposals, but they cannot be enforced unless they have been taken to the Federal Court and the Federal Court, acting judicially, has decided that there is substance in the finding and that on the basis of the Sex Discrimination Act it is proper to make orders that have been proposed by the Commission; so, there is a separation of powers. The Federal Court does not act as both inquirer and a body acting as a court. That is the problem and that is why I indicate that I will oppose clause 87, and I now move for the deletion of the heading in line 38.

The Hon. C.J. SUMNER: This is opposed by the Government and I wish to canvass all the reasons. The Sex Discrimination Act gives that Tribunal the broad powers of inquiring into potential acts of discrimination. The Handicapped Persons Equal Opportunity Act which was introduced by the Liberal Government and which was piloted through this House by the Hon. Mr Griffin as Attorney-General contained a clause in almost identical terms to those in the clause we are now considering. However, three years after he was responsible for the introduction of the Handicapped Persons Equal Opportunity Act we are now faced with another retreat from the position taken in 1981. Now we are considering an almost identical clause which has been picked up from the anti discrimination legislation relating to the handicapped and put in this Bill, and yet it is opposed. I cannot support the amendment.

The Hon. K.T. GRIFFIN: May I suggest that this be used as a test, although it is the heading, also in relation to clause 87, which is really the substantive question.

The Hon. C.J. SUMNER: I agree with that.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. C.M. Hill. No—The Hon. G.L. Bruce.

Majority of 1 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 87 negatived.

Clause 88—'The making of complaints.'

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

Page 33, lines 25 and 26—Leave out paragraph *(b)*.

It is probably better to deal with the two paragraphs separately because different issues are raised. Paragraph *(b)* relates to class actions that are dealt with in clause 91, and paragraph *(c)* deals with the right of appearance of a trade union in the tribunal.

I spoke at length during the second reading debate on this matter and indicated that I would be opposing the inclusion of class actions in the legislation for a variety of reasons. I do not believe that it is appropriate that there be an opportunity for class actions in this area of the law. More particularly, the introduction of class actions in this area of the law may be the thin edge of the wedge for class actions of broader scope within South Australia. Although some people may regard this as a desirable initiative, I do not believe that it is appropriate for South Australia to go it alone. It would have the effect of disadvantaging South Australia commercially and in terms of its development, something that we cannot afford to do. The Attorney-General will argue that provisions for taking class actions exist in the Federal legislation, but they are there only in relation to sex, marital status and pregnancy. Although, if we delete it, the Attorney will argue that this makes it more inconsistent with the Commonwealth legislation, I do not believe that that is an adequate reason for including it in the Bill. We do not have to do things just because they are contained in a Commonwealth Bill.

The Hon. C.J. SUMNER: I oppose this amendment. I do not want to rehash the debate about so-called class actions, although I would point out that in this case we are merely talking about people making complaints who are included in a class of persons who are the subject of an alleged contravention. We are not really dealing with class actions as such. It is merely indicating that with respect to complaints to the Commissioner there may be a complaint on behalf of a class.

The Hon. K.T. GRIFFIN: That is related to class actions though.

The Committee divided on the amendment:

Ayes (11)—The Hons 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 (8)—The Hons Frank Blevins, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, Anne Levy, C.J. Sumner (teller), and Barbara Wiese.

Pair—Aye—The Hon. J.C. Burdett. No—The Hon. G.L. Bruce.

Majority of 3 for the Ayes.

Amendment thus carried.

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

Page 33, lines 28 and 29—Leave out paragraph *(c)*.

This paragraph gives a trade union the right to appear before the Tribunal on behalf of a person. I do not believe it is appropriate to give a trade union the right to appear. It is not an industrial proceeding where unions do have a right to appear on behalf of individuals.

The Hon. R.C. DeGaris: Do other bodies have a right to appear?

The Hon. K.T. GRIFFIN: No other organisation appears—just a trade union. A complainant has the right to be represented by the Commissioner at State expense if there is substance in the claim by the complainant. That means that every person who alleges discrimination—and a basis exists for that claim in the view of the Commissioner—has a right to go to the Tribunal and be represented at the cost of the State. That is all we need. The moment we bring in trade unions as bodies representing persons who allege breaches of the Act, we change it into an industrial situation which it is clearly not in the context of industrial relations. I therefore move accordingly.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 33, lines 28 and 29—After 'union' insert 'acting'; and leave out 'paragraph *(a)* or *(b)*' and insert 'paragraph *(a)* at his request'.

I do not have any aversion to a trade union representing an individual who may feel aggrieved in some way. I imagine that there could easily be people who feel timid or hesitant and it is some support for them to have help from someone from a trade union. I see no reason why there should be any objection in having someone else of their choosing. That is why I would specifically insert 'at his request' in the clause. If a trade union looks to act on its own behalf, it presents a danger that an unacceptable aspect will move into the initiation of actions under this Bill. I believe that the proposed wording of the clause will safeguard the victim. Those who have a complaint will necessarily have made a decision that they want the action to go ahead and they have asked the trade union to represent them. I think that is a reasonable step.

The Hon. K.T. GRIFFIN: I am not prepared to support that. Clause 22 (4) provides:

A person appearing in proceedings before the Tribunal—
(a) shall be entitled to appear personally or by counsel; or
(b) may, by leave of the Tribunal, be represented by a person other than a legal practitioner.

That provides the opportunity for someone who does not want the Commissioner to represent him or her to get a friend or—

The Hon. C.J. Sumner: That's before the Tribunal. He's talking about a complaint to the Commissioner.

The Hon. K.T. GRIFFIN: It does not matter where it is—the same situation applies. It is lodged with the Commissioner, but that necessarily follows through because the lodging of the complaint with the Commissioner is the first step in prosecuting it through the Tribunal. I am saying that in appearing before the Tribunal it is possible for a person who does not want the Commissioner to appear before the Tribunal to be represented by some other person, by leave of the Tribunal. That other person may be funded by the union, may be a union official or someone else who can support that person. The same situation applies in relation to the Commissioner. If a person wants to make a complaint to the Commissioner, that person can be accompanied in his or her approach to the Commissioner by a union official. I have a basic objection to introducing trade unions as such into the proceedings envisaged by the Bill, because that will then make it an industrial matter and will change the whole complexion of the equal opportunity legislation.

The Hon. K.L. MILNE: That is exactly right, and it also brings to mind that we are introducing so much into this Bill that it is becoming more and more complicated. I think that what we are trying to do in this Bill is to reconcile a whole lot of different interests, but that is quite impossible. The longer this debate proceeds the more I think it would have been better to leave these subjects in separate Bills so that we could deal with each one separately and carefully. The interests relating to sexual harassment, the interests of the handicapped, the interests of women in the work force, the interests of pregnant women and their rights and the interests in relation to racial matters are all different. They are not always that different, but they are different enough to make it difficult to cover them all in this one Bill. Members can see the troubles we are having—

The Hon. C.J. Sumner: We are not having any troubles.

The Hon. K.L. MILNE: Yes we are.

The Hon. C.J. Sumner: You're the only one who is having trouble on that ground.

The Hon. K.L. MILNE: A lot of people agree with me. I refer to people who work in factories, and I do not know how many members have worked in a factory and an office—

The Hon. C.J. Sumner: What has that got to do with having three different parts in the one Bill?

The Hon. K.L. MILNE: I am referring to an employee who gets into trouble of some sort, whether it is a death in the family, sickness, sexual harassment or whatever else. What happens is that one of their friends—one of the other girls—goes with them to support them. They do not need to call the union representative in to do it; they help each other. The same happens with the men folk. The Hon. Mr Gilfillan's amendment does not really alter the situation at all. It is wrong to try to make this Bill an industrial relations Bill; that can be done in some other Bill. The unions have an interest in this matter, but not to the extent that they should represent people in the case of a complaint.

The Hon. C.J. SUMNER: It looks as though the whole thing is coming out. If we get a chance to reconsider it at some stage I will be happy to accept the Hon. Mr Gilfillan's amendment. It would appear that the Hon. Mr Milne has had a difference of opinion with his colleague again. On that basis it would appear that the numbers are not there; so I will desist from dividing, but it is not an indication of any support for the honourable member's amendment. It is merely in the interests of saving time, as it appears clear that the honourable member's amendment will be carried.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 33, line 28—Insert new paragraph (c) as follows:
'*(c)* by trade union action on behalf of a person referred to in paragraph *(a)* at his request.'

Amendment negatived.

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

Page 33, lines 30 to 33—Leave out subclause (2) and insert subclauses as follows:

(2) A complaint must be lodged—
(a) where the alleged contravention arises out of the dismissal from employment of the person the subject of the contravention—within 21 days of the dismissal;
(b) where the alleged contravention is constituted of a series of acts—within six months of the last of those acts; and
(c) in any other case—within six months of the date on which the contravention is alleged to have been committed.

(3) For the purposes of subsection (2)—
'dismissal from employment' includes the termination of an agent's engagement and the expulsion of a partner from a firm.

(4) Upon a complaint being lodged under this section, the Commissioner shall cause a copy of the complaint to be served, personally or by post, upon the respondent named in the complaint.'

The present subclause (2) states:

A complaint must be lodged within 12 months after the date on which the contravention the subject of the complaint is alleged to have been committed.

I have indicated that that is too long. I am seeking to provide, first, that where the alleged contravention arises out of dismissal from employment, the action should be taken within 21 days, and that makes it consistent with the Industrial Conciliation and Arbitration Act; where the alleged contravention is constituted by a series of acts, within six months of the last of those acts, and in any other case within six months of the date on which the contravention is alleged to have been committed. I propose that a series of acts will be able to be taken into consideration and acted on if action is initiated within six months of the last of those acts.

That overcomes the problem that I understand the Government was seeking to overcome with a series of acts in the context of which six months only was an inadequate time period. That was the major reason why 12 months was the extended time period. My amendment will overcome that difficulty. In fact, it may even allow a series of acts over a longer period than 12 months to be taken into consideration than was originally envisaged by the Government.

The reason why 21 days after dismissal was provided was that the act of dismissal is often a controversial act and it is important for the sake of both parties that action be initiated as soon as possible. That is why in section 31 of the Industrial Concilliation and Arbitration Act 21 days is provided for complaints of wrongful dismissal. I propose that scheme to overcome some of the concerns about the length of time for which action may be taken, and I hope that the Attorney-General will see it as overcoming the difficulty that prompted the provision of 12 months instead of six months.

The Hon. C.J. SUMNER: The Government does not accept the amendment for the reasons that have already been canvassed.

The Hon. I. GILFILLAN: I am not persuaded that the amendment is essential.

The Hon. K.L. MILNE: The amendment improves the situation, especially for the person who is the subject of the complaint. If people think that there might be a complaint about them or if they have heard a complaint, and if they have to wait for a year, it is pretty tough.

The Hon. C.J. SUMNER: There is no point in calling for a division. Once again, I have obtained the services of the Hon. Mr Gilfillan in my quest for a reasonable measure, but I seem to have lost the support of the Hon. Mr Milne. Given the precedent set by previous divisions, I will not call for a division.

Amendment carried; clause as amended passed.

Clause 89—'Investigation of complaints.'

The Hon. I. GILFILLAN: I move:

After line 7 insert new subclause as follows:

(6) Nothing in this section empowers the Commissioner to require that a book, paper or document that is required for the day-to-day operation of a business be produced at any place other than the premises from which the business is operated.

I foreshadowed this amendment in my second reading contribution and it is based on a suggestion from the South Australian Employers Federation. It was anticipated that there could be some problems if the Commissioner was to take documents that were required for the day-to-day operation. The amendment aims to protect people from unnecessary interference. I will not argue further at this stage.

The Hon. K.L. MILNE: I support the Hon. Mr Gilfillan in this matter. I think the amendment is most reasonable. It must be realised that small businesses have got to put up with the Prices Commissioner looking at their books, and this applies also to the Commissioner of Taxation, the Commissioner for Equal Opportunity, and so it goes on. I think that if people are going to be able to just walk in and take out documents it will be impossible to trade. I support the amendment entirely and enthusiastically.

Amendment carried; clause as amended passed.

Clause 90 passed.

Clause 91—'Representative complaints.'

The Hon. K.T. GRIFFIN: I oppose the clause. I would regard this as being consequential on the amendment to clause 88 (1) *(b)* on which the Committee has divided where the reference to class actions was removed. Without speaking further to clause 91, I indicate again that I oppose it.

The Hon. C.J. SUMNER: I do not believe that it is strictly consequential. In the light of the debate previously on matters dealing with a similar topic, I indicate that I support the clause.

Clause negatived.

Clause 92—'Power of Tribunal to make certain orders.'

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

Page 35, lines 44 and 45—Leave out ', except where the complaint was lodged by a trade union or was dealt with as a representative complaint,'.

Page 36, lines 3 to 8—Leave out paragraph *(b)*.

This involves two matters in relation to paragraphs *(a)* and *(b)* of subclause (1), which, again, I would regard as being consequential. These matters have already been the subject of a division, and for that reason I do not need to speak at length on them.

Amendments carried.

The Hon. I. GILFILLAN: I move:

Page 35, line 46—After 'damages' insert ', not exceeding forty thousand dollars,'.

This amendment aims to put a ceiling on the amount of damages that the Tribunal can award. I discussed the question of a limit with the Commissioner (Mrs Jo Tiddy), and it did not seem to upset her unduly. I understand that there are limits in New South Wales. It seems to me to be a reasonable step and some form of assurance to people who may feel nervous about the extent to which damages may rise. In the fullness of time this may need to be revised, but for the time being at least I believe that $40 000 is a reasonable limit.

The Hon. K.T. GRIFFIN: I am not completely satisfied but I think that, for the purpose of keeping proceedings moving, we will support it at this stage.

The Hon. C.J. SUMNER: The Government does not believe that the amendment is necessary. There has been one claim for damages in the nine years of the existence of the Sex Discrimination Act and an award of $1 200 was made.

Amendment carried.

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

Page 36, lines 3 to 8—Leave out paragraph *(b)*.

This is consequential on earlier amendments in respect of trade unions.

Amendment carried; clause as amended passed.

Clause 93—'Reasons for decision or order.'

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

Page 36, line 28—After 'order' insert 'together with any findings of fact'.

It is a requirement that when the Tribunal gives its reasons for its decision or order it should also be required to give its finding of fact. The Law Society submission referred to this, indicating that it was of the view that it would be incomplete if findings of fact were not made. For that

reason, and because it may well put the Supreme Court and Court of Appeal in a difficult position if it is not in there, I have moved accordingly.

Amendment carried; clause as amended passed.

Clause 94—'Appeal.'

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

Page 36, line 36—After 'an appeal' insert 'under this section may be made by any party to proceedings'.

I do not think there is much doubt that it is only the parties to proceedings who can appeal. Again, this matter was raised in the Law Society submission and for the sake of clarity I seek to have it inserted.

Amendment carried.

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

Page 36, lines 43 and 44—Leave out 'not be conducted as a rehearing of the matter that was before' and insert 'be conducted as a review of the decision or order of'.

This amendment seeks to change the nature of the appeal before the Supreme Court. The present subclause provides that an appeal is not to be conducted as a rehearing of the matter that was before the Tribunal. That is a very strict limitation on the powers of the Supreme Court when a matter is taken on appeal from the Tribunal. I am seeking to provide that the Supreme Court, when hearing an appeal, may conduct it as a review of the decision or order of the Tribunal.

That does not necessarily mean that there is a rehearing because the Supreme Court may then take into consideration all the evidence and may assess the evidence rather than relying upon the findings of fact of the Tribunal. I think it is fairer. It provides a wider jurisdiction for the Supreme Court and it will do better justice to the litigants who take matters on appeal, whether the original complainant or the respondent.

The Hon. C.J. SUMNER: The formulation in the Bill presented by the Government was in the Handicapped Persons Equal Opportunity Act. I am not unduly concerned, it may I suppose, on the one hand, lead to the Supreme Court's being involved in a complete rehearing of the matter. I do not know that it would necessarily go down that track, but I guess it expands the rights of parties to appeal and, therefore, I will not argue about it.

Amendment carried; clause as amended passed.

Clause 95 passed.

Clause 96—'Relationship between proceedings under this Act and proceedings under s. 31 of Industrial Conciliation and Arbitration Act.'

The Hon. K.T. GRIFFIN: I do not wish to proceed with the amendment in my name to line 22, because I have already lost the debate on sexuality. I move:

Page 37, line 28—After 'proceedings' insert 'under this Act are dismissed and the proceedings'.

The form of words in the Bill is the same as in the Handicapped Persons Equal Opportunity Act but, if one looks carefully at them, there is an inconsistency that I had not picked up previously. Subclause (1) provides:

Nothing in this Act prevents a person who has been dismissed from his employment from bringing proceedings in respect of dismissal under section 31 of the Industrial Conciliation and Arbitration Act, 1972.

Under subclause (2), where a person brings those proceedings and those proceedings are determined, that person is not to institute or prosecute proceedings under the Equal Opportunity Act in respect of the dismissal, but that subclause does not apply where the proceedings under the Industrial Conciliation and Arbitration Act are dismissed on a ground that does not relate to the sex, sexuality, marital status, pregnancy, race or physical impairment of the person. Where proceedings in the industrial jurisdiction are dismissed, but they were not dismissed on the ground of sex, sexuality, marital status, pregnancy, race, or physical impairment, there is a right to pursue proceedings in the Equal Opportunity Tribunal.

Subclause (4) provides that, where a person brings proceedings under the Equal Opportunity Act in respect of dismissal, that person is not to institute or prosecute proceedings under section 31 of the Industrial Conciliation and Arbitration Act. But that does not apply where the proceedings under the Industrial Conciliation and Arbitration Act do not relate to sex, sexuality, or marital status. It does not make any reference to the dismissal of those proceedings.

So, if there is to be consistency between, on the one hand, subclauses (1), (2) and (3) and on the other hand clauses 4 and 5, the words that I propose have to be inserted to give a right to proceed under the Equal Opportunity Act where they are dismissed in the industrial conciliation and arbitration jurisdiction but do not relate to sexuality, etc.

Amendment carried; clause as amended passed.

New clause 96a—'General defence where Commissioner gives written advice.'

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

Page 37, after clause 96—Insert new clause as follows:

96a. (1) Subject to this section, it shall be a defence in any proceedings under this Act (whether of a civil or criminal nature) for the defendant to prove—

(a) that the act or omission forming the subject matter of the charge, complaint, claim or inquiry was done, or made, in accordance with written advice furnished to the defendant by the Commissioner; and

(b) that the Commissioner had not, by notice in writing served personally or by post on the

I move this because, although it is discretionary in the hands of the Commissioner, it does allow the Commissioner to give written advice and where a person relies on that written advice that is a defence to any action that may be taken against that person for a breach of the Act. It may be that the Commissioner will not generally use this, but there may be occasion to develop a system of what in the court's jurisdiction might be regarded as practice directions, and I think that the Commissioner ought to have the power to do it.

It is actually lifted from the Handicapped Persons Equal Opportunity Act because there was some suggestion that we needed to have greater clarity in this sort of legislation and that this was one way of getting that clarification; so, unless the Attorney wants some more explanation I hope that the amendment will be accepted.

The Hon. C.J. SUMNER: As I understand it, what the honourable member is doing is inserting in this Bill a clause that was in the Handicapped Persons Equal Opportunity Act. Again, the only problem I have is whether or not it raises questions of inconsistency with the Commonwealth legislation and the opinion I have is that it is best left out because it does raise a potential for inconsistency. However, as we seem to have done that on previous occasions—and no doubt at some stage we will have to sort through these things again and perhaps get further opinions on them—I cannot agree to it, but I will not divide.

New clause inserted.

Clause 97 passed.

Clause 98—'Discriminatory advertisements.'

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

Page 37, lines 41 to 44—Leave out subclause (2).

This amendment seeks to align the substantive offence in relation to those responsible for publishing certain unlawful advertisements with the provisions of section 86 of the Commonwealth Act. As presently worded, the Bill provides a defence that would not exist for an alleged offender under

the Commonwealth provisions and, therefore, there is the problem that we are talking about, namely, inconsistency.

The Hon. K.T. GRIFFIN: I am concerned about that. It seems to me to be quite fair and reasonable to leave that provision in the legislation. We are really talking about newspaper advertisements and, of course, they have to process a whole range of advertisements.

There may be instances where they commit an inadvertent breach or commit a breach where they publish an advertisement which is actually in contravention of the Act but, in fact, the newspaper honestly believed that it was not in breach. If we delete that it seems to me that we are then creating a situation of absolute liability on the newspaper, for example, for causing to be published an advertisement that indicates an intention to do an act that is unlawful by virtue of this Act. That is unreasonable, notwithstanding the position the Attorney-General puts about the Commonwealth legislation. Therefore, I would like to see subclause (2) left in.

The Hon. I. GILFILLAN: I agree with the Hon. Trevor Griffin. I think that advertising will be a little uncertain because as the Bill is currently worked there will be some indecision as to whether one is advertising for a six or seven member partnership, and the advertising for one lot would be lawful and the other unlawful in the same advertisement. The protection needs to be spelt out.

The Hon. C.J. SUMNER: I cannot accept it, and I persist with my amendment. My advice is that there is the potential again for inconsistency and it is something we should avoid. Since we have seemed to ignore that advice on previous occasions I will not divide in light of the numbers. I merely indicate that the Parliament as a whole at some stage in this process will have to give serious thought to the problem of inconsistency if this Act is going to stand up.

Amendment negatived; clause passed.

Clause 99 passed.

New clause 99a—'Power of Senior Judge to make rules.'

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

Page 38—After clause 99 insert new clause as follows:

99a. The Senior Judge may make rules regulating the practice and procedure of the Tribunal.

I think that we have dealt with this earlier by way of decision on other issues affecting the Senior Judge, so I doubt whether I need to really explain it at great length. Suffice to say that I think that there need to be rules made for the conduct of the proceedings and it is appropriate, in the light of the general supervision which we have now moved towards with the Senior Judge, that he has the authority to make the rules as he does under the Local and District Criminal Courts Act.

New clause inserted.

Clause 100—'Regulations.'

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

Page 38, line 8—Leave out paragraph *(b)*.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 32—'Exemptions from this Division'—reconsidered.'

The Hon. K.T. GRIFFIN: I ask leave to withdraw my amendment.

Leave granted.

The Hon. ANNE LEVY: I move:

Page 14—After line 15 insert new subclause as follows:

(3) This Division does not apply to discrimination on the ground of a woman's pregnancy if the discrimination is based on the fact that the woman is not, or would not be able—

(a) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required for the employment or position in question; or

(b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question,

and, where the discrimination arises out of dismissal from employment, there is no other position in the same employment that could be offered to the woman, being a position that is vacant, is reasonably appropriate to her skills and experience, and could be undertaken by her without encountering the problems referred to in paragraphs *(a)* and *(b)*.

This amendment arises from the discussions that we had earlier in the day. It picks up the points that the Hon. Mr Griffin wished to include in amendments. However, to cover the situation where there may not be an award which protects a pregnant woman from dismissal, the addendum is to cover that particular situation. I understand that there will be no opposition to this amendment and I will not discuss it any further at this stage.

The Hon. K.T. GRIFFIN: Yes, I am happy to support it. It reflects the debate that we had across the Chamber in the interests of trying to get some reasonable proposition to pick up my points and those raised by the Hon. Anne Levy.

Amendment carried; clause as amended passed.

Clause 35 further postponed.

Clause 39—'Employer-subsidised superannuation schemes'—reconsidered.

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

Page 17, lines 18 to 20—Leave out 'that has been disclosed by the person acting in the discriminatory manner to the person the subject of the discrimination, being data'.

There was some debate on this clause about the extent of information that should be given to a person in relation to what was described as discrimination. We have had informal discussions about new clause 83a, consideration of which was postponed, and, as a consequence, that new clause, which we will talk about later, provides for data to be available to a person who applies for superannuation or insurance and for the person providing or offering that insurance, superannuation, etc. to make it known that there is discrimination and that the data is available. If a request for the data is made and is refused it is an offence. That will necessarily require the deletion of the words in lines 18 to 20.

The Hon. C.J. SUMNER: That is a satisfactory resolution of the problem.

Amendment carried; clause as amended passed.

Clause 40—'Other superannuation schemes and provident funds'—reconsidered.

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

Page 18 lines 1 to 3—Leave out 'that has been disclosed by the person acting in the discriminatory manner to the person the subject of the discrimination, being data'.

The same situation applies as to the previous amendment to clause 39 (3) (a) to delete words in light of the proposed new clause 83a.

Amendment carried; clause as amended passed.

Clause 46—'Insurance, etc.'—reconsidered.

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

Pages 18 and 19—Leave out 'that has been disclosed by the person acting in the discriminatory manner to the person the subject of the discrimination, being data'.

The amendment is in the same terms as my two previous amendments which have just been carried.

Amendment carried; clause as amended passed.

New clause 83a—'Data must be made available on request'—reconsidered.

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

Page 31—After clause 83 insert new clause as follows:

83a. It is unlawful for a person who, in providing insurance or a superannuation scheme or provident fund proposes to discriminate against another person on the basis of actuarial or statistical data to fail to make the data available to that other person upon that other person's request.

New clause inserted.

Clause 35—'Discrimination by educational authorities'—reconsidered.

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

Page 15—

Line 24—Leave out 'on which it admits' and insert 'or conditions on which it offers to admit'.

After line 26—Insert new paragraph as follows:

(aa) in the terms or conditions on which it provides the student with training or education;.

My amendment picks up what is in the Commonwealth legislation and deals with the situation in vocational institutions in respect to providing accommodation for students. It brings this Bill into line with the Commonwealth legislation in respect to education and sex discrimination. I have moved both amendments, to lines 24 and 26, together. I understand that the amendment is not disputed.

Amendments carried.

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

Page 15, Lines 32 to 35—Leave out subclause (3) and insert subclause as follows:

(3) This section does not apply to discrimination on the ground of sex in respect of—

(a) admission to a school, college, university or institution established wholly or mainly for students of the one sex;

(b) the admission of a person to a school, college or institution (not being a tertiary level school, college or institution) where the level of education or training sought by the person is provided only for students of the one sex; or

(c) the provision at a school, college, university or institution of boarding facilities for students of the one sex.

This picks up the Commonwealth legislation which allows for discrimination in the case of schools, colleges, universities and institutions, established wholly or mainly for students of the one sex, and boarding facilities for students of the one sex.

The Hon. K.T. GRIFFIN: I am pleased to support the amendment, because it broadens the exemption. Some parts of it already reflect amendments that I intended to move, but the Attorney's amendment is more comprehensive.

Amendment carried.

The Hon. K.T. GRIFFIN: I want to move my amendment in a slightly different form because proposed subclause (4) has already been picked up by the Attorney-General's amendment. I want to delete proposed subclause (4) and move what is now numbered subclause (5) as an additional subclause (4). I move:

Page 15, after line 34—Insert new subclause as follows:

(4) This section does not—

'*(a)* affect a provision in a code of conduct established by a secondary level school, college or institution for the purpose of regulating the behaviour of its students; or

(b) render unlawful discrimination against a student if it is based on such a code and is reasonable in all the circumstances.'

This may be out of an excess of caution, but circumstances have been put to me by several school principals.Having looked at the Bill, they were concerned that it would put them in an invidious position where, for example, there were sexually promiscuous students: for example, a boy was responsible for the pregnancy of a student, or a female student became pregnant. This would apply only to secondary level students, and the normal way of dealing with this, because of the effect on student discipline and example, may be to remove the student from the school environment but to provide facilities and support outside the school environment in terms of education.

The Hon. Anne Levy: That's just what they don't get.

The Hon. K.T. GRIFFIN: The honourable member can argue about that in a minute. If that were to occur, the removal from the school environment and the provision of other educational services may be construed as an act of discrimination because of the different treatment of the student. In that context it was proposed that something like this was needed to ensure that the schools were able to continue what they would regard as normal discipline.

The Hon. ANNE LEVY: This is a most extraordinary situation. We are by this means surely permitting these institutions to discriminate in virtually anything they wish to. They can say that it is a code of conduct of the school, with particular regard to the question of—

The Hon. K.T. Griffin: It has to be 'reasonable in all the circumstances'.

The Hon. ANNE LEVY: The provision does not have to be reasonable.

The Hon. K.T. Griffin: It is dealing with discrimination.

The Hon. ANNE LEVY: But 'this section does not affect a provision in a code of conduct ... for the purpose of regulating the behaviour of its students'. There is nothing about 'reasonable'. The 'or' is an alternative not an addition. This clause does not affect a provision in a code of conduct. It says nothing at all about the code of conduct being reasonable: it can be as unreasonable as anything. This will permit virtually anything. What is judged to be reasonable in a code of conduct depends very much on the eye of the beholder. I recall that some time ago males at a certain school were prohibited from having hair below the ears. Some students were denied access to the school until they went to a barber. However, there was no such provision in regard to girls: they could grow their hair down to their waist if they wanted to or if they were able to. That is quite unreasonable.

Certainly, it was discrimination between males and females, which was totally unjustified, but the principal regarded it as most reasonable behaviour on his part and stated that that was the code of conduct for the school. It seems to me that that was grossly discriminatory, but many schools have such provisions, which are also grossly discriminatory. We should not condone such discrimination in schools. I am certainly not saying that schools cannot have a code of conduct: obviously, they can, but I do not think it is reasonable to suggest that they have a discriminatory code of conduct. No-one suggests that schools should not have codes of conduct and rules for the school community, but I see no reason why they should be discriminatory. The same code of conduct should apply to all members of the school community.

The Hon. Mr Griffin cited an example that obviously cannot apply to both sexes in a school—a female student who becomes pregnant. Work is being done at present on the plight of schoolgirls who become pregnant, the complete lack of education which results, and the disastrous effect on their future not because they became pregnant but because of the treatment that was meted out to them. I suggest that a little more care and concern for the girls involved and a little more of what many would call Christian charity would be very beneficial to both the girls and their future children. One of the most disadvantaged groups in our community is young single mothers, particularly those who were still at school when they became pregnant.

Invariably, their education is interrupted or halted; they receive no further education or help, virtually having been discarded by the educational authorities, with disastrous effects on their future lives. I fail to see how taking a little care of these people would be against the principles of any school, and I certainly do not consider that a code of conduct should be discriminatory. By all means let there be codes of conduct in schools, but they should not be discriminatory.

The Hon. C.J. SUMNER: This amendment is quite unacceptable. It drives a coach and horses right through the provisions of the Bill as far as secondary schools are con-

cerned as it would enable the establishment of a code of conduct in a school that would override the basic provisions of the Bill. I really cannot see any merit in the amendment. I think it would be a serious derogation from the basic principles that we are trying to give effect to.

The Hon. K.T. GRIFFIN: The Hon. Anne Levy made one good point. I have consulted with the appropriate personnel, and I consider that it would be more appropriate to add the words to paragraph *(a)*, 'being a provision that is reasonable'. I accept that point. Therefore, the provision would read:

(a) Affect a provision in a code of conduct established by a secondary level school, college or institution for the purposes of regulating the behaviour of its students, being a provision that is reasonable, or

(b) render unlawful discrimination against a student if it is based on such a code and is reasonable in all the circumstances.

The provision does not drive a coach and horses through the Bill at all. I think it provides a quite reasonable provision in relation to secondary level education—and it is secondary level colleges, schools or institutions, and not tertiary level.

The Hon. C.J. SUMNER: I do not believe that the adjusted amendment improves the situation one bit. I think it can be attacked on two grounds: first, for its vagueness, and secondly, for its breadth. Those two factors mean that interpretation of it would be incredibly difficult. However, if those difficulties of interpretation were overcome I think it would lead to a situation where a code of conduct established in a school (and only a secondary school) could override the provisions of the Bill, and I really do not think there is any justification for that. To my way of thinking there certainly has not been a case made out for it, and we will certainly oppose the amendment.

The Hon. I. GILFILLAN: In the spirit of helpfulness and revelation, I believe that there is reason for certain areas of behaviour in schools to be different between different classes of students. However, if a complaint is lodged my trust in the Commission and the Tribunal to see reason in that is adequate protection. I have been wary of any extra exemptions going into the Bill than are absolutely necessary. I feel that this is unnecessary.

The Hon. K.T. GRIFFIN: In the light of those comments and the intimation of the Hon. Lance Milne, I will not divide on the clause.

Amendment negatived; clause as amended passed.

Title—reconsidered.

The Hon. K.T. GRIFFIN: It is a long time since we did the title of the Bill! I am delighted that we are almost there in the Council, although we still have a long way to go in the Assembly.

The Hon. Frank Blevins: Why didn't you knock it out at the second reading stage. There has been a great sabotage.

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

Page 1, lines 6 to 9—Leave out long title and insert long title as follows:

An Act to promote equality of opportunity between the citizens of this State; to prevent certain kinds of discrimination based on sex, marital status, pregnancy, race or physical impairment; to facilitate the participation of citizens in the economic and social life of the community; and to deal with the other related matters.

This amendment to the long title places a different emphasis on the Bill. I do not think I need to explain it in detail. It is set out there, the hour is late and it should speak for itself.

The Hon. I. GILFILLAN: I move:

Page 1, lines 6 to 9—Leave out long title and insert long title 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.

I consider this to be better and more adequate wording.

The Hon. K.L. MILNE: I support the Hon. Mr Gilfillan's amendment.

The Hon. K.T. GRIFFIN: I will not divide on that.

The Hon. C.J. SUMNER: I will support the Hon. Mr Griffin's amendment, subject to seeking to include sexuality.

The Hon. K.T. GRIFFIN: Now that the Bill does include sexuality, it is appropriate to move it in that form. As much as I do not support that concept in the Bill, the fact is that it is there and I will accept it. I will seek leave to insert it at the appropriate place.

The CHAIRMAN: Is leave granted for that alteration to be made to the amendment?

Leave granted.

The Hon. Mr Griffin's amendment carried; title passed.

Bill reported with amendment. Committee's report adopted.

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

That the Bill be recommitted to the Committee of the whole Council on the Bill for further consideration of clause 10.

The Hon. C.J. SUMNER (Attorney-General): The honourable member should indicate why he wants to recommit the clause. We do not decide to recommit just for the fun of it. Is it the honourable member's intention to move the same amendment as was debated and decided when we considered the clause previously.

The Hon. R.C. DeGaris: You can do it.

The Hon. C.J. SUMNER: I know—it is a question of whether we should.

The Hon. K.L. MILNE: The Bill should be recommitted because, as the clause is worded, it has been interpreted to mean that one of the Commissioner's jobs is to promote sexuality and all things connected with it. I suppose that would involve the Education Department and other schools. In order to remove the fears that have arisen, I hope to put it in the negative so that it will be the Commissioner's job to discourage uninformed and prejudiced attitudes rather than to foster and encourage informed and unprejudiced attitudes. I have merely put it in the negative form instead of the positive form.

Motion carried.

Bill recommitted.

Clause 10—'Functions of the Commissioner'—reconsidered.

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

Page 4, lines 22 and 23—Leave out 'foster and encourage amongst members of the public informed and unprejudiced' and insert 'discourage amongst members of the public uninformed and prejudiced'.

The Hon. R.I. LUCAS: I oppose the amendment. We debated the question many hours ago. We agreed to an amendment to delete 'positive'. The amendment does not add anything.

The Hon. C.J. SUMNER: We did vote on this precise proposition earlier. The Hon. Mr Milne suggested it, but it did not find favour previously and nothing has happened in the past 24 hours to convince me that the situation has changed.

Amendment negatived; clause passed.

Bill read a third time and passed.

TOBACCO SALES TO CHILDREN (PROHIBITION) BILL

Returned from the House of Assembly without amendment.

PRISONS ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 1.13 a.m. the Council adjourned until Tuesday 13 November at 2.15 p.m.