LEGISLATIVE COUNCIL

Tuesday 19 February 1985

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

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

South Australian Museum—Report, 1983-84.

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

Pursuant to Statute—

Local Government Finance Authority Act, 1983—Regulations—Prescribed Local Government Bodies.

Planning Act, 1982—Crown Development Reports by S.A. Planning Commission on proposed—

Single transportable classroom, Upper Sturt Primary School.

Administration building at Port Bonython.

Construction of Child Care Centre, Seaton North Primary School.

Radio communications tower and equipment buildings at—Minecrow, Jip Jip, Cave Range, Mount Benson, Elgin and Naracoorte.

Replacement of existing radio communications tower at Penola Police Station.

Regulations—Land Division.

Public Parks Act, 1943—Disposal of parklands forming part of Tanunda Recreation Park.

Real Property Act, 1886—Regulations—Land Division.

QUESTIONS

MEDICARE

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister of Health a question about Medicare.

Leave granted.

The Hon. M.B. CAMERON: There have been a number of suggestions culminating in a front page article in today's *Financial Review* indicating that the Federal Government is considering reducing the Medicare rebate so as to attempt to restrict Government outlays for 1985-86. At present, the Medicare rebate is 85 per cent of the scheduled medical fee and the patient contributes the remaining 15 per cent where doctors do not bulk bill. Where a doctor bulk bills, he is paid 85 per cent of the scheduled fee and there is considerable concern about that in country areas. By reducing the rebate from 85 per cent to 80 per cent the Government will cut costs for itself but impose additional burdens upon patients and on doctors who choose to bulk bill (whose incomes will be slashed). My questions are:

1. Does the Minister support a reduction in the Medicare rebate from 85 per cent to 80 per cent of the scheduled fee?

2. Will he make immediate representations to the Federal Minister for Health to ensure that such a move, which would reduce the cost of Medicare to the Government by imposing an additional burden on families, is not introduced?

3. If the Minister does support a reduction in the rebate or fails in his effort to stop it being reduced, will he lobby the Federal Government to allow for insurance of the gap?

The Hon. J.R. CORNWALL: Apparently, the matter was considered by Federal Cabinet yesterday and was rejected, so the Hon. Mr Cameron is hanging his hat on yesterday's story, as he often does. He also confuses the 85 per cent that is payable under Medicare with the arrangement in country hospitals. The two matters are not directly related in any way. Everyone who goes to a doctor in private practice is covered for 85 per cent of the scheduled fee with a maximum gap of $10. That applies around the nation. The situation in country hospitals is that since 1975 (almost 10 years ago) country doctors have been reimbursed for their public hospital patients, that is, those patients who are classified as public at the recognised country hospitals. Doctors are remunerated and have been remunerated for almost 10 years for treating them at 85 per cent of the scheduled fee.

Of course, doctors have always had the right (and that right remains unfettered) to charge their private patients in their surgeries or consulting rooms down the street the scheduled fee or, indeed, in some cases, I regret to say, substantially above the scheduled fee. Those patients still receive only 85 per cent of the rebate: they have to pay the gap. So do not let us confuse the country hospital story with the Medicare story over all. The country hospital story is a very sad one: in fact, as I will probably have to reveal to this Council later in the week, some chronic, frail aged, long term patients have possibly been given a death sentence by being referred to Adelaide from one or two country hospitals.

The Hon. R.I. Lucas: That's nonsense.

The Hon. J.R. CORNWALL: We will see whether or not it is nonsense.

The Hon. R.I. Lucas: They were not given death sentences.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: All my advice (and I get my advice from gerontologists, not from mugs from the bush like Mr Lucas) is that—

The Hon. L.H. Davis: Stop trading gossip across the Council and answer the question.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: All my advice from gerontologists is that to transfer frail aged, long term patients from country hospitals via the Royal Adelaide Hospital to nursing homes in Adelaide is tantamount to a death sentence.

The Hon. R.I. Lucas: That is nonsense.

The Hon. J.R. CORNWALL: We will see about that. It just happens to be medical fact.

The Hon. R.I. Lucas: That happens to be nonsense, and you know it. It is outrageous.

The Hon. J.R. CORNWALL: It is indeed outrageous—

The PRESIDENT: Order! Before the Minister goes any further with his reply, I point out that we had a couple of fairly ugly scenes last week, and, although interjections are not permitted under Standing Orders, we have always allowed a certain amount of laxity in this Council, probably to its benefit in many cases. However, since that does not seem to be what the Council wants, I intend to restrict the number of interjections and I give due warning that that will be the case.

The Hon. J.R. CORNWALL: Thank you, Mr President. As to whether I support a reduction in the Medicare rebate, the answer is certainly 'No'. I was an opponent of any 'front end' deductible arrangement. It has been my basic view for many years (a view which I formed when I undertook a three month overseas study tour in 1978) that 'front end' deductibles should not be used, so I certainly would not support any extension of the gap. Quite the reverse. There is no need for me to make immediate representations one way or the other. The Federal Minister knows my views well—that there should be a reduction in the gap, not a widening of it. As I said at the outset, yesterday Cabinet rejected the submission that was prepared by the Commonwealth Department of Health in any case. I do not believe that gap insurance is the ultimate answer. I would prefer to see the gap steadily decreased under the Medicare arrangements.

ENFIELD RECEIVING HOME

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about the old Enfield Receiving Home.

Leave granted.

The Hon. J.C. BURDETT: I understand that the old Enfield Receiving Home at Markham Avenue, Enfield, has been set aside for mental health purposes. Its buildings are quite extensive but are being put to no apparent use. I have driven past them on several occasions and they have certainly been left derelict for quite some time—it has been suggested to me from 18 months to two years. It has been reported to me by local residents (and I do not know how this estimate was arrived at) that about $1 million worth of damage has been done to the buildings by vandals. I am not able to substantiate that statement, but it is apparent from my driving past that a great deal of damage has been done to these buildings. Local residents are most concerned about this matter because, one way or another, there is obviously a valuable capital asset there. Is it a fact that the old Enfield Receiving Home has been set aside for mental health purposes and, if not, what is to be done with it, and what has it been set aside for? Just what are the Government's plans regarding this substantial piece of real estate?

The Hon. J.R. CORNWALL: First, I am pleased that the Hon. Mr Burdett acknowledges that the figure of $1 million was, at best, scuttlebutt. There is nothing like $1 million worth of property on the entire campus, even if it was restored to a reasonable condition. The buildings are in what the honourable member correctly describes as the Enfield Receiving Home, which was part of the mental health institutions for many years. They are not really very good for anything in the sense that they have very wide corridors and small cells. They are about the last of the mental asylum type accommodation built in this State. They have been badly vandalised in a relatively superficial way—there have been windows broken and so forth.

I am sure that the Hon. Mr Burdett would remember that the Smith inquiry into mental health services recommended that most of the buildings be bulldozed, anyway. They have no great residual value. I am trying to sell the property at the moment and, if the honourable member knows anybody who would make me an offer, I would be pleased to listen. It is a valuable and large piece of land about which I am being chased by two of my colleagues, the Minister of Education and the Minister of Correctional Services, among others.

The Hon. K.T. Griffin: For prison land?

The Hon. J.R. CORNWALL: No, we do not believe in overfilling our prisons, Mr Griffin. I am anxious to realise on this asset because I have a vigorous capital works programme to implement, and would have no difficulty in using about $100 000 000 in that programme over the next triennium, if the money were available. The Enfield property is part of my very constructive mansions programme. There will be some property rationalisations, including that property. At the moment the matter is with Treasury, which is acting as an independent arbitrator as to which of my anxious colleagues should get this property.

PAROLE

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Minister of Correctional Services a question about parole.

Leave granted.

The Hon. K.T. GRIFFIN: In December 1984 the Minister of Correctional Services gave information to the Legislative Council that from 20 December 1983, when the Government's automatic release legislation came into effect, until 30 June 1984, 49 parolees out of 422 prisoners released had committed offences, that is, nearly 12 per cent recidivism. Now suggestions have been made that the rate of recidivism is nearer 20 per cent, or one fifth of prisoners released.

Since 20 December 1983, the Opposition has drawn attention to particular instances of recidivism. One recently publicised case concerned a criminal who had been gaoled for various crimes including escaping from lawful custody, robbery with violence, illegal use of a motor vehicle, shop/hotel/roadhouse breaking, larceny and assault. That person was released in June 1984, some 2½ years early. He is alleged to have bashed a police officer, was arrested, finally released on bail, and has now allegedly committed other major crimes.

We see in today's newspaper a report of the commendable decision of the Court of Criminal Appeal to increase the non-parole period for Creed on two convictions of rape. The Chief Justice is reported to have said:

> The non-parole period had to reflect the community's sense of justice and the concept that punishment should fit the crime.

The Crown Prosecutor is also reported to have said, in reference to the 21 year sentence and the 12 year non-parole period originally fixed, and automatic release after eight years, that the 12 year non-parole period certainly shocked the public conscience and was grossly inadequate. There is no doubt that there is continuing concern about the Government's automatic release scheme and the extent of recidivism. In the light of that concern, will the Government now undertake a major review of its scheme?

The Hon. FRANK BLEVINS: In his explanation, the Hon. Mr Griffin managed to drag in four or five separate items, none of which appears to me to relate to the question. However, the question of reviewing the parole legislation is one I have answered in this Council before: there is a review going on at the moment in the Attorney-General's Department working on the figures we have to date. As the honourable member would know, the new parole system has been operating for a relatively short time. Therefore, how much credence one can put on any figures that one is working with is arguable.

However, the information that I have given to the Council from the Parole Board is that the rate of recidivism is comparatively low. Recidivism is unfortunate. It has always been with us and will always be with us. Any time that the Hon. Mr Griffin wants some quite stark examples of recidivism of prisoners who were released during the time of the previous Government, I can do as he does and trot out some quite horrific examples; and I deplore them. I also deplore the Hon. Mr Griffin constantly stating the examples he trots out—actually the same example, I think for about the sixth time now.

The Hon. K.T. Griffin: I haven't.

The Hon. FRANK BLEVINS: Well, you have. The Hon. Mr Cameron has done the same. I do not think that it advances the argument any further, because we can both play the same game. I can toss up names now of prisoners who were released on parole during the previous Government's time and have committed quite horrific offences. That demonstrates not that the previous Government's parole system or this Government's parole system is good or bad; all it demonstrates is that recidivism is a regrettable fact of life. I am certainly happy to let the Hon. Mr Griffin, the Council and the community have any useful figures that we get on the parole system. I am sure that the Hon. Mr Griffin will find that the rate of recidivism is about the same as it always has been. That is to be regretted.

In relation to the case commented on by the Hon. Mr Griffin, the Government thought that the sentence given to

Colin Creed was manifestly inadequate, and the court agreed. I think the important thing about that is that that is part of the normal process of government: that, if the Government feels that any sentence is inadequate or deficient in some way, it has the right to go back to the court and argue its case, and the court can quite properly take notice of that argument and come to a conclusion. On this occasion the court agreed that, particularly the non-parole period, was inadequate and increased it, from my memory, by five years.

I also point out that as soon as the system has been running long enough to give us meaningful figures I will bring back those figures to Parliament and to the community in South Australia that I think will clearly demonstrate that the courts are using the new parole system very wisely indeed. I think we will find that the actual length of the sentences is increasing, that people are remaining in prison longer than would have been the case under the old system. I have had discussions with prisoners who do not have a non-parole period. They were sentenced under the old system and had no non-parole period imposed. They are extremely reluctant, and in some cases flatly refuse, to go back to court and apply for a non-parole period. That means that they will remain in prison for life. The reason they will not go back to court and apply for a non-parole period—and that is their prerogative—is because they are scared of the length of the non-parole periods being handed down by the courts.

I can give the Council examples—and the Colin Creed case was a very good example, the Van Beelen case is another, and there are others—of extremely long non-parole periods. In fact, they can exceed the average life sentences being served by prisoners convicted of murder in gaols in South Australia. From memory, I think prisoners charged with murder remain in gaol for about eight years. That is increasing considerably, and not just for the offence of murder. For example, Colin Creed was not convicted of murder, and he was given a very extensive non-parole period. In fact, he will actually serve longer in gaol than the average prisoner sentenced to life for murder in the past. I think we will find, when we have sufficient figures to draw out some meaningful conclusions, that gaol periods are extending quite considerably.

PEDESTRIAN RAIL CROSSINGS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Transport, a question about pedestrian rail crossings.

Leave granted.

The Hon. I. GILFILLAN: I am sure everyone shares with me and others the deep sense of grief and loss at the death the other day of a 12 year old school boy at a pedestrian railway crossing at Millswood. It was highlighted very poignantly by the letter in the *Advertiser* yesterday (18 February) by Mike Booker of Keswick. I will read the first few paragraphs of that as a preamble to the question:

> A child was run over by a suburban train on Valentine's Day, on the pedestrian crossing near Millswood Bowling Club. The time was about 8.40 a.m. and the boy, aged about 12, was hurrying to get to school. He crossed the line from behind a freight train and, presumably, did not see or hear the approaching suburban train because of the noise of the freight train.
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> I was a passenger on the Belair train that ran over the boy. It was an accident, like most accidents, that should not have happened. My first reaction, when I realised what had happened, was shock and then, because I felt helpless, anger. I was angry that such an archaic practice, pedestrian crossings across railway lines, is allowed to continue in this city.
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> One reads of these kinds of accidents happening quite regularly on pedestrian and level crossings and I felt that we should realise that Adelaide is, unfortunately, no longer a big country town. Something should be done about these crossings. They are dangerous, and I feel that Adelaide is behind the rest of the developed world in continuing to use them.
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> One wonders why the Millswood pedestrian crossing has not been made into a pedestrian overpass. I think that this should be done wherever a school, especially a primary school, is close to a crossing. Children do not always behave with adult rationality, nor do adults, and I think children have a right to be protected.
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> If the State cannot find the funds to build pedestrian overpasses to save young children's lives, it should at least have some sort of electrical warning system at each side of the tracks to advise pedestrians from which direction trains are coming. It would be extremely easy for the State Transport Authority to do this, with flashing lights and loud bells ringing. After all, when men have been put on the moon, the STA should be able to provide this very simple technology that would be quite inexpensive.

I am very grateful to Mr Booker for putting so dramatically and clearly the need for protection for pedestrians crossing railway lines. I visited the locality last night and saw for myself the hazard. It is obviously a crossing that would be heavily used. It is adjacent to a bowling green and not only children, but elderly people, have cause to go across it frequently, I am advised: I saw that occurring. It is also very close to the junction with the Noarlunga line: so there is a lot of rail traffic, which is unpredictable.

For all those reasons, it emphasises that this, in particular, is an extremely dangerous pedestrian crossing. With that in mind, I ask the Minister of Transport, through the Minister of Agriculture: will he consider placing immediately on the crossing at Millswood near the Bowling Club some electrical warning device of the nature outlined in the letter to the editor, showing some direction from which to anticipate trains? Are there any long term plans for altering the structure of pedestrian rail crossings? Are there any plans for overpasses to be built on particular pedestrian rail crossings? I conclude by urging the Minister and the Government to give attention to this crossing as a matter of extreme urgency.

The Hon. FRANK BLEVINS: I will refer the honourable member's question to my colleague in another place and bring back a reply.

POLICE COMPLAINTS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking the Attorney-General, representing the Deputy Premier, a question about complaints.

Leave granted.

The Hon. ANNE LEVY: As all members know, a Bill before the Lower House deals with a new method of dealing with complaints against police by members of the public. Currently, complaints about the police are made to the police. I know that statistics are available on the number of complaints that are made in any one year, but we do not know the rate of clearing up these complaints.

Can the Deputy Premier, through the Attorney-General, give figures for the last complete two year period on the number of complaints in which the complaint was found to be justified? Can he also give the number found not to be justified in the same period and the number not resolved, thus being still on the books?

The Hon. C.J. SUMNER: I will attempt to obtain that information for the honourable member.

DENTAL PHOTOGRAPHY

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Minister of Health a question about dentifraud.

Leave granted.

The Hon. R.J. RITSON: A constituent has approached me with a particular complaint about a practice that caused her some concern. She visited a dentist for some endodontic treatment. The first thing that happened at the beginning of the consultation was that her photograph was taken. She asked the dentist the reason for taking the photograph and he explained to her that he did this for patient identification as part of his case records and showed her some other patient case records with similar photographs on them. My understanding of the information is that he routinely photographs all his patients as part of his case records.

The Hon. J.R. Cornwall interjecting:

The Hon. R.J. RITSON: Yes, very significant—with lips closed. When the account was received there was an item with a fee detailed for extra oral photography.

The Hon. J.R. Cornwall: Extra—as in outside?

The Hon. R.J. RITSON: Yes, extra oral photography. My constituent felt puzzled about having to pay for her photograph being taken and went back to the dentist's surgery to seek some explanation, whereupon the receptionist pointed out that there was an item number for extra oral photography and advised my constituent that she need not worry because that charge would be paid by the health fund. I can understand that there is a role for photographing dentitian, perhaps in cases of serial treatment such as a series of oral surgical or orthodontic treatments, although I would have imagined that where it was done it would be the teeth that were photographed and not the smiling or unsmiling face of the patient.

It did occur to me that to take an ordinary facial snapshot routinely for patient identification and then itemise it as a refundable account is a practice that might not be regarded as normal or regular. Therefore, will the Minister seek advice from professional officers or perhaps hold discussions with the Dental Board to discover the clinically indicated (I emphasise this aspect) role of extra oral photography and, in particular, will he discover whether it is ever justified in routinely photographing one's patients in this manner and charging for it? I point out to the Minister that I have not revealed the name of the dentist or of my constituent. I do not want to wreck anyone's practice if everything is above board but, if the Minister believes that there is need for further investigation, I will provide him with further details in confidence as well as with a copy of the account.

The Hon. J.R. CORNWALL: First, let me say that this is yet another example where private practitioners in any profession can be very inventive in certain circumstances. I would not restrict that comment to the dental profession: there are a number of professions in which there is ample evidence that a small but significant number of people are able to be inventive.

The Hon. M.B. Cameron: Even vets?

The Hon. J.R. CORNWALL: A small but significant number of my profession, yes. I am pleased to say that I was not one of them.

Members interjecting:

The Hon. J.R. CORNWALL: However, overservicing comes in many forms and, on the face of it, on what has been explained to the Council by the Hon. Dr Ritson, there would seem to be prima facie evidence that needs to be checked out. I will not make further comment. I would point out that the services that were described and any other private dental services are not covered by Medicare: they are covered under the extras tables of private health funds. It would become a direct responsibility of mine as State Minister of Health if something untoward were occurring in the community or public health areas or the School Dental Service.

However, the Dentists Act is committed to me as Minister of Health. Of course, the Dental Board has its statutory powers under that Act and it would be entirely wrong for me to interfere in the conduct of the Board itself. The Act is mine and, therefore, I have a responsibility for the general good conduct of the dental profession. Certainly, I will seek the advice of the Dental Board as to under what circumstances extra oral photography is indicated. I will relay that answer in some detail to the Hon. Dr Ritson as soon as it is available. If at that time he believes there are any additional matters that should be brought to the attention of the Board, he should do so.

I might also add that the Hon. Dr Ritson could have short circuited things substantially in this matter by referring it directly to the Dental Board. However, I do take his point: at this moment he does not want to reveal specifically the name of the dentist and thereby cause embarrassment and distress that may rely on the word—not necessarily the accurate word—of the person who has brought him the story. We will check it out and I will bring the honourable member back a reply from the Board on the specific question that he has asked as soon as I reasonably can.

SELECT COMMITTEES

The PRESIDENT: On Thursday last the Hon. Ms Levy asked me a question about the disclosure of confidential information given to the Select Committee on Bushfires. I have had the matter investigated and am unable to ascertain how this confidential document became public. I want to say that the disclosure of such information is to be deplored. It is most definitely a breach of Standing Orders to disclose evidence and documents presented to a Select Committee before they have been reported to the Council. Confidential information given to a Select Committee should never be disclosed.

The Hon. Ms Levy has already stated that the release of such information will destroy the Select Committee system that the Legislative Council has used so effectively and efficiently for many years. I sincerely trust that such an incident will not happen again.

WEATHER FORECASTING

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Agriculture a question about floating weather gathering buoys.

Leave granted.

The Hon. PETER DUNN: It is important to all people that forecasting the weather is done as accurately as possible. Certain sections of the community rely heavily on accurate data provided by the Weather Bureau. For example, in recent years the forecasting of the weather on Ash Wednesday—12 months ago tomorrow—involved the relative humidity, and the trough that travelled through the State on that day was much more intense than the Bureau first forecast, which indicates that we need more accurate forecasting. The rural community uses weather forecasting information more and more, and this is why I ask the Minister my question.

Farming operations such as irrigation timing require more accurate temperature and rain forecasting; the building and construction industry requires more accurate forecasting so that concrete can be poured; the fishing industry requires better information; and other industries such as the recreational industry also require better information. The South Australian weather bureau compared to those in most other States of Australia and in fact in most other countries is

disadvantaged in its ability to gather accurate weather forecasting information because our weather tends to be generated south and south-west of Australia. That area is devoid of any land mass and so there is little opportunity to gather information on sea or air temperatures, atmospheric pressure, hours of sunlight, and so on.

Weather information is gathered by using floating buoys that are dropped from aircraft. I understand that there are plans regarding the deploying of fixed buoys to gather this information. Because of the financial restraints on the bureau, the purchase of these buoys has been rather limited and they are dropped only irregularly so that information is not constant. For the reasons I have given, will the Minister urge his Federal colleague to grant more funds for the purchase, location and development of floating and fixed weather buoys or transmitting buoys so that more accurate short term weather trends may be forecast in South Australia?

The Hon. FRANK BLEVINS: Yes.

OMBUDSMAN

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

Leave granted.

The Hon. R.I. LUCAS: On 23 October last year in a debate on the Appropriation Bill I accused the Ombudsman of going QUANGO hunting without a permit. In his last two annual reports he had indicated an intention to investigate QUANGOS, or statutory authorities, and took it upon himself to recommend abolition of certain QUANGOS he felt ought not exist. Certainly, it was my view, and I argued, that the Ombudsman was acting way beyond the authority of his constituting Act. On 24 October, the day after, the Attorney-General gave a tentative opinion in response to my allegation and agreed that his first view would be that it appeared on the surface that the Ombudsman was acting beyond his constituting Act.

On 1 November, about one week later, I asked the Attorney-General a question and once again he agreed with his tentative view and also agreed to take up the matter with the Premier and bring back a reply in due course (to use his phrase). Some three to four months later no answer has been provided. I am reliably informed that the Ombudsman is most upset about the series of questions and I hope that the Attorney-General and the Premier have not been daunted by the prospect of facing a most upset Ombudsman and so have not pursued my questions, as the Attorney indicated he would.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I do not know. We will find out. My questions are:

1. Will the Attorney-General say whether he has raised the matter with the Premier as he promised in this Council?

2. Will the Attorney say whether the Ombudsman has been called in to explain his position on this matter?

3. When will the Attorney-General bring back a reply to my question that was asked some three to four months ago?

The Hon. C.J. SUMNER: The answer to the last question is: 'In due course.' The question raised by the honourable member needed to be referred to the Premier as Minister with responsibility for the Ombudsman Act, in accordance with the usual practice adopted in this Council when honourable members ask questions of Ministers pertaining to matters in regard to which they represent Ministers in the other place. In accordance with that practice, the question was passed on to the Premier.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I understand that the Premier, or at least someone on his behalf, discussed the matter with the Ombudsman. I do not think that the Premier or anyone else called in the Ombudsman—that would probably not be a very wise thing to do. However, I understand that certain discussions occurred. I also believe that the Ombudsman does not intend to take further action with respect to the statutory authority which the honourable member indicated the Ombudsman had been pursuing and which, according to the Hon. Mr Lucas, he should not be pursuing.

However, I understand that the Ombudsman is of the view that he possesses such authority. Of course, as I have indicated, that is not my view. On this occasion I agree with the Hon. Mr Lucas. The honourable member is not a lawyer, but sometimes I think that he has pretensions of being one in this Council, and on this occasion he asserted the view that the Ombudsman does not have power to pursue statutory authorities. No doubt he took the view that whether a statutory authority should or should not exist is a matter of policy, a matter to be determined by Parliament or by Government and Parliament and, if Parliament determines that a statutory authority should be established, that is all there is to it. The Ombudsman may be able to investigate the administrative acts that occur within the statutory authority. Alternatively, if a statutory authority is established by the executive arm of Government rather than by legislative means, again I would think that that is a matter of policy, not a matter that comes within the Ombudsman's powers under the Ombudsman Act. However, there is clearly a difference of view between the Hon. Mr Lucas, me and the Ombudsman. So it is a question of what happens next. I have not yet obtained a formal opinion from the Crown Solicitor on the matter.

The Hon. R.I. Lucas: Are you doing so?

The Hon. C.J. SUMNER: I have not set that in train, because I have expressed my view in this Council and I still hold that view. In light of that view, and in light of the fact that I was advised by the Premier that the Ombudsman's view was that he had power to act as he acted in relation to this particular statutory authority, the matter should be referred back to the Premier for further discussion with the Ombudsman. That is where the matter rests. In due course I will bring back a reply, but to this time the Hon. Mr Lucas knows as much about this matter as I do. Whether it will be necessary to obtain a formal opinion on the matter, I do not know. However, at this stage, given that the Ombudsman has a certain role that is independent of Government (he is an independent statutory authority established with similar independence to that of a member of the judiciary), it is obviously not possible for the Premier to direct the Ombudsman with respect to his statutory obligations.

In the ultimate analysis, I suppose that if the Ombudsman continues to hold the view that he holds, that he does have the authority to investigate the existence or otherwise of QUANGOS, then the Government, if it opposed that view, would presumably have to take some kind of court proceedings to determine the issue once and for all. Obviously, that is not being contemplated at this time. A number of things that need to be done first are being done. As I have said, I have received the information that I have outlined to the Council and have referred the matter back to the Premier for further discussion with the Ombudsman.

ASSETS TESTS

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

Leave granted.

The Hon. L.H. DAVIS: Notwithstanding the fact that the imposition of the assets tests in respect of aged pensions is a Federal Government matter, at least one State Labor Government has protested about the administration and application of the means test. I recently received a call from a constituent who had received a letter from the Department of Social Security with regard to the application of the assets test. The letter, *inter alia,* states:

> There is no obligation to notify the Department of small changes in the value of your shares. If, however, the total value of shares should increase by $1 000 or more you are required to notify us.

This person, who has been retired for some time, has together with his wife a share portfolio worth, apparently, in excess of $100 000 which has been accumulated over many years as a retirement nest egg. Anxious to follow the Department's instruction this person kept a record of the value of his share portfolio. On the first day it fell by $2 400; on the next day it rose by $1 100; and, on the third day, it rose by $1 500. In the nine days on which he kept a tab on the value of his assets the shares rose or fell by more than $1 000 on eight days. The constituent was uncertain whether or not he was required to write to the Department of Social Security on virtually a daily basis and, if he was, whether the Department would lease or hire him a calculator to speed up the process.

This request from the Department is obviously impractical and a nonsense and joins the many other examples of complaints about the assets test, such as that of another lady constituent aged 84 years who was unused to public transport but who was forced to go by it to the city to see her accountant, where she arrived in tears, because she did not understand how the test worked. My question to the Attorney-General is: given that at least one other State Labor Government has complained about the administration and application of the assets test, has this State Government as yet lodged a complaint with the Federal Labor Government about this matter and, if not, does it intend to do so?

The Hon. C.J. SUMNER: To my knowledge there has not been any official complaint made about the administration of the assets test, but some correspondence or submissions may have been sent or put by individual Ministers or members about the administration of that test. The honourable member has raised a number of examples and if he would like me to take them up with Federal authorities I shall be happy to do so. On the other hand, he may prefer to raise the issues directly himself. Whichever way he prefers to go, I am happy to take those details and refer them to the Federal authority, should he wish me to do so. Apart from that, I do not believe that there has been any official complaint about the administration of the assets test. No doubt, as the Hon. Mr Blevins has said, the question of the assets test is something that might be able to be considered during the year in the context of the review of taxation that is occurring.

FINGER POINT

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

Leave granted.

The Hon. M.B. CAMERON: Today's *News* contains a lengthy report on Finger Point that states that the Greenpeace demonstrators and an array of media arrived at Finger Point to find it spotless and the concrete top of the outlet pipe as clean as the sidewalk in front of Parliament House. There are pictures in the newspaper indicating that the pipe has totally changed in character from being covered in green slime to being lilywhite. People quoted in this article say that the outlet has never looked like this before in the history of effluent being pumped into the sea at Finger Point. Not only has the pipe been cleaned up: the reefs around it have also been cleaned. An allegation has been made that a chemical was used to clean up the area before its inspection by people who are obviously very concerned about the situation in the area.

Can the Attorney-General say whether any Minister or the Government has authorised any superficial clean-up of the Finger Point area? Will the Government investigate this matter to ascertain whether or not this has occurred and will it, if necessary, arrange to have the pipes and other parts of the area analysed to ascertain whether or not chemicals were used in this clean-up? Has the Minister received notification that any public servant, departmental officer or other person has authorised a clean-up in this area?

The Hon. C.J. SUMNER: Not to my knowledge, but I will refer the honourable member's question to the responsible Minister and bring back a reply.

QUESTIONS ON NOTICE

COAL

The Hon. K.T. Griffin for the **Hon. K.L. MILNE** (on notice) asked the Minister of Agriculture: In view of the fact that New South Wales has enormous reserves of coal for over 200 years, has the Government considered the possibility of owning its own coal mine in New South Wales, which should allow coal to be procured for the people of South Australia at a price which would undoubtedly be cheaper than coal from any of the known local deposits, with delivery controlled by the State and would help to keep the prices of electricity down to a reasonable figure?

The Hon. FRANK BLEVINS: The Government prefers to promote the development of South Australian resources and has not given detailed consideration to purchasing a coal mine in New South Wales. The honourable member is referred to the answer to the next question for further elaboration.

The Hon. K.T. Griffin for the **Hon. K.L. MILNE** (on notice) asked the Minister of Agriculture: In view of the fact that the bulk of South Australia's supply of easily produced gas is committed to New South Wales and in view of the fact that New South Wales has enormous reserves of high grade, easily mineable coal, what action is the South Australian Government taking to pursue negotiations with the New South Wales Government to obtain coal for use as power station fuel at the lowest possible price?

The Hon. FRANK BLEVINS: The Government commissioned the Advisory (Stewart) Committee on Future Electricity General Options to report on, amongst other things, the supply and price of natural gas to South Australia and the appropriateness of using interstate sourced black coal or a local coal as a fuel for future electricity generation in South Australia.

Arising from one of the recommendations of the Stewart Committee, the Government is presently renegotiating the contractual arrangements for the supply and price of gas to South Australia. The Government is optimistic that satisfactory long-term arrangements can be put in place to ensure

the continued use of natural gas for power generation in existing plant for the rest of its economic life.

The Stewart Committee was unable to make a final selection of a local coalfield but presented indicative ETSA figures which demonstrated that a local coalfield could be as economic in cost per kilowatt hour terms as the use of interstate coal. Evaluation of the local coalfields has been handed over to the Future Energy Action Committee which is assessing commercial proposals from the various proponents.

Other considerations have to be taken into account in making a choice between developing a local coalfield and procuring black coal from interstate. These relate to security of supply and price, and the economic benefits including employment, both in construction and operation, which would accrue to South Australia in developing a local coalfield.

The experiences of relying on imported coal, which led to the development of Leigh Creek, should not be forgotten. Maintenance of South Australia's remarkable degree of energy self sufficiency has considerable advantages. The Stewart Committee recommended that work on a new black coal fired power station be placed in abeyance pending a decision on a South Australian coalfield.

Whilst the black coal market is being monitored both for comparative purposes with the costs of local coalfields and as an alternative fuel should a satisfactory supply and price situation for natural gas not be obtained and Torrens Island Power Station has to be partially converted to black coal, detailed negotiations of the kind contemplated in the question, on a Government to Government basis, have not been initiated.

VEGETATION CLEARANCE

The Hon. K.L. MILNE (on notice) asked the Minister of Agriculture: In relation to vegetation clearance regulations under the Planning Act, 1982:

1. *(a)* Has any land been resumed for National Park purposes on Kangaroo Island during the previous 12 month period?

(b) If land has been so resumed—

(i) how much land?

(ii) has any compensation and land value been paid for the resumptions of land?

(iii) if any compensation and land value has been paid, to what extent and value has it been paid, and to whom?

2. *(a)* At present, who is the person in charge of the Vegetation Retention Unit?

(b) In relation to that person—

(i) what are his or her qualifications?

(ii) what training does he or she have to enable him or her to negotiate with farmers?

3. What agricultural background does any assessment officer possess and what training is given to assessment officers to enable them to negotiate with farmers?

4. What basis does the Department of Environment use to value land that is to be resumed for compensation purposes or hardship payments?

5. What criteria is used by the department to choose areas of land that are to be resumed and to decide compensation payments for hardship so created?

6. What criteria is used by the department to refuse permission for vegetation clearance, in some cases offering no 'compensation' for certain areas, whilst making payments to others?

7. If the Department of Environment and Planning refuses permission to a farmer to clear certain lands, will the Department of Environment consent to the subdivision of those said lands and, if not, for what reasons?

8. Will the Minister table all scientific field officers' reports and documents and reports that have been submitted to the Assessment Committee by field officers and assessors retained by the Vegetation Retention Unit since the implementation of the Vegetation Retention Regulations made on 12 May, and all replies to any such reports and, if not, why not?

9. How many applications have been remitted to the South Australian Planning Commission for decision, and will the Minister table all minutes and decisions made by the Commission and, if not, why not?

10. How many applications for permission to clear have been remitted to the South Australian Planning Appeal Board for arbitration and what were the decisions?

11. Will the Minister support the establishment of a Select Committee to investigate the Western Australian Vegetation Compensation Scheme with a view to assessing the relevance to South Australia?

12. In view of the obvious difficulties which have been experienced in the administration of the regulations will the Minister consider the formulation of a separate Act of Parliament to deal with vegetation clearance?

The Hon. FRANK BLEVINS: The replies are as follows:

1. *(a)* and *(b)* Land is not resumed, acquired or purchased for national parks purposes in relation to vegetation clearance regulations under the Planning Act 1982.

Land is acquired on the basis of its requirement under the National Parks and Wildlife Act to provide for the establishment and management of reserves for public benefit and enjoyment, and to provide for the conservation of wildlife in a natural environment. Therefore the remainder of the question relating to land resumption is not applicable. It should be noted that land has been purchased during this period but not for compensation purposes.

2 *(a)* Mr A.T.H. Dendy.

(b) (i) Bachelor of Applied Science (B.App.Sci.); Diploma in Education (Dip. Ed.); National Certificate in Agriculture (N.C.A.); Dorset College of Agriculture, Certificate in Agriculture; City and Guilds Certificates in Animal Husbandry (Stage 1), Plant Husbandry (Stage 1), Farm Machinery (Stage 1); Farm Craft Certificates for proficiency, Stockman's Tasks—Pigs, Stockman's Tasks—Sheep, Stockman's Tasks—Cattle/Beef, Tractor Driving and Handling.

(ii) In addition to the formal training detailed above, Mr Dendy comes from a farming background and has had practical farming experience. Prior to the introduction of the controls, Mr Dendy was extensively involved with the establishment and implementation of the Vegetation Retention Scheme requiring considerable negotiations with rural landholders.

3. One of the assessing officers comes from a farming background and has a Bachelor of Agricultural Science Degree (Hons.) and a Ph.D. in plant pathology and horticulture.

Four senior officers have had experience under the vegetation Retention Scheme involving negotiations with farmers. These officers are principally involved with assessing clearance applications and are supported by a further eight scientific staff who have little or no agricultural training.

However, this team of scientific officers was principally selected on the basis of biological training and experience. More than half have higher degrees (Ph.D.'s or Masters degrees). The team is not experienced in the assessment of potential soil erosion, soil salinity and landslip. Advice on this area is sought from the Department of Agriculture.

Assessing officers are provided with guidance on how to relate to farmers by senior staff on an ongoing basis. In

addition, two short training courses on negotiating skills have been attended by these officers.

4. and 5. See Question 1 *(a)*.

6. The criteria for assessing a clearance application are contained in the development plan. No compensation has been provided in respect of refusals to clear.

7. In most parts of the State the decision in relation to subdivision applications rests with local government. The criteria for granting or refusing consent for subdivision are contained in the development plan.

8. No. All departmental reports of such nature are regarded as confidential.

9. Eighty-two applications have been submitted to the South Australian Planning Commission. There is no confidentiality with regard to the decisions or the minutes of the commission—these may be gained from the secretary following any meeting.

10. Thirty-four appeals have been lodged. Two appeals have been withdrawn. No appeals have yet been determined by the Planning Appeal Tribunal.

11. The compensation issue will be considered by the Select Committee.

12. The Select Committee will consider this matter.

POLICE REGULATION ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 14 February. Page 2505.)

The Hon. PETER DUNN: This Bill has been discussed at some length in another place. We have most of the information. I believe it is a Bill of some worth, because it endeavours to cure a human relations problem that has developed over many years with people who live some considerable distance from recognised police stations. When law and order is threatened it takes some time for police officers to arrive at these places. In the meantime, quite often, there can be disastrous results with violence and disruption to those living in these areas. The areas I refer to are specifically in the Pitjantjatjara lands in the North West of the State, which is a very isolated area. There is also a problem with the area of Yalata. In fact, it is possible that the disruption that was caused about 12 months ago in the Yalata area was the catalyst behind this Bill.

The Police Commissioner has obviously looked at the Bill very carefully and has decided that self-regulation is the most suitable and most plausible method of controlling outbreaks of disruption. He has asked that police aides be appointed in these areas. The aides will have limited powers, but I believe their very presence will be most successful in controlling something which presently costs the State a considerable sum of money to police efficiently. I do not believe that these areas are policed efficiently at the moment, because police officers can only visit irregularly and infrequently.

The Yalata community, which had problems—as I understand directly related to the consumption of alcohol—needs police aides or some method by which someone has authority to restrict the activities of people who may over-indulge or those who may bring in alcohol to the area. I believe the community recently asked for assistance to control the consumption of alcohol and the disruption that it causes. When there were problems with the school and with the community at Yalata last year, the police were required to visit twice daily. If members think that that does not sound very much, they should remember that the police must travel in excess of 200 kilometres to get to the area. It is a very expensive and time consuming exercise.

I believe the Bill will facilitate the control of this problem by setting up police aides. In fact, the Northern Territory has introduced police aides in Aboriginal camps situated some distance from police stations. That system appears to be working very well. During debate in another place the Hon. D.C. Wotton referred to the duties of police aides, as follows:

> Up there they have powers of arrest, overnight detention and release on bail for such offences as disorderly behaviour. They collect evidence, take statements and carry out a wide range of other police duties.

For police aides to be able to do that they will obviously need some training in the law. It is not unreasonable to expect that police aides will have to come to Adelaide or to a central area to receive instruction in the powers and the duties that they will have to perform.

The Bill does not spell that out. Perhaps in the third reading stage the Minister can describe those duties, where they will be carried out, for how long and what proficiency applicants will need to become aides. I believe that the project is very expedient, and it has been promoted by the Police Commissioner, whose initiative I applaud because I think it is a very good exercise in public relations. In my opinion this can only bring good to the community, to the Police Force and its standing in the eyes of the Aboriginal community. I know that Aborigines are charged with a disproportionate amount of offences. I think that this system will play an educative role in helping to demonstrate to people who become the butt of police action that, if they control their actions in another way, quite often they will not become subject to police action. It is with pleasure that I support this Bill and applaud the Police Commissioner for having it brought before the Parliament.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Duties and powers of special constables.'

The Hon. PETER DUNN: Has the Government any plan as to where, for how long and to what proficiency it will train these police aides or special constables? Will they be selected by the community itself or will the Police Force select these people?

The Hon. C.J. SUMNER: They will be selected by the Police Commissioner or by the Police Department. I do not have specifically in front of me the information as to the period for which they will be trained; however, the police aides will in general have the same responsibilities as have ordinary police officers. The limitation that is imposed will be territorial in that they will have those powers within certain prescribed areas of the State.

After a transition period of appointment as special constables, police aides will be granted the full powers of members of the Police Force, subject to territory limitations. This transition period will enable the training of police aides in the exercise of their responsibilities and enable them to develop the confidence of the communities in which they work. So, initially, they will be appointed as special constables and they will be subsequently granted full powers of members of the Police Force, but subject to limitation on territory—the area in which they are required to work. During the transition period, the training of the people selected as special constables will occur, the training being as police aides.

The Hon. PETER DUNN: Does the Minister anticipate paying them a salary for the duties that they will do?

The Hon. C.J. SUMNER: Yes, I understand that they will be employed.

The Hon. PETER DUNN: In selecting these people, is it the duty of the community to put forward a list of names, or does the Minister anticipate the Police Commissioner or his representative going to those communities and selecting those people?

The Hon. C.J. SUMNER: The Police Department will be ultimately responsible for the selection of the people, but no doubt it can receive applications and comments from people in the areas in which the policing will occur.

Clause passed.

Clause 6 and title passed.

Bill read a third time and passed.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 4)

Adjourned debate on second reading.

(Continued from 13 February. Page 2452.)

The Hon. C.M. HILL: In speaking to this Bill I am surprised in three ways: first, I am surprised that the Minister in charge of the Bill is not in the Council to listen to or take part in the debate. Secondly, I am surprised that the Minister of Local Government in the other place gave his word that consultations would take place prior to this debate commencing in this Council because the Government thought that it ought to consider some changes to the Bill before that. Neither my colleague Dr Eastick, the shadow Minister of Local Government, who the Minister stated was to be included in such consultations, nor I have heard anything further from the Minister. I make a plea to the Government to set those consultations in train: they concern the power that the Government proposes in the Bill to give to the Road Traffic Board over local government, and local government is incensed by the Government's provisions in the Bill, which on matters of road closures and the prohibition of traffic in streets mean that local government will no longer have the overriding say, irrespective of the size or importance of the streets involved, and that approval from the Road Traffic Board will be necessary before by-laws in regard to those matters can be approved by local government. I believe most strongly that this Council should oppose that provision in the Bill that is before us and I will deal with it in some detail later.

The third point that surprised me is that we did not have any announcement from the Minister when he introduced this Local Government Bill as to whether or not the Parliament can expect to see any further major reform Bills in this area of local government.

Honourable members will recall that the method by which local government was to be given a new charter, a completely rewritten Local Government Act, was through the machinery of several Bills being independently prepared and brought to Parliament. We had the first of these major measures last year in this Council in May, and I would think that the second one should be about the place for Parliament to consider. Labor Governments have procrastinated historically in this area of giving local government—

The Hon. L.H. Davis: Hysterically!

The Hon. C.M. HILL: No, historically—up-to-date legislation. That goes back to 1970 when the report of the Local Government Revision Committee was prepared and available to the Government. It has taken from 1970 until last year for the first step to be taken. We were told then that the second of this series of Bills was to be put in train. I hope that we will hear from the Minister, perhaps in his reply to the second reading debate, about the progress of this plan, because local government out in the field is expecting another major reform Bill. Of course, local government wants to complete as quickly as possible the whole business and have the total new Local Government Act available to it.

Much of this Bill deals with rather unimportant housekeeping measures that from time to time are necessary in local government legislation. There are one or two important measures in the Bill. The first of these deals with the change to the method of counting in local government elections. The Council will recall that this Bill before us was introduced in another place before Christmas and was lying on the table in another place over the recess and was activated again when Parliament resumed just a few days ago.

The result of the major measure last year in regard to council elections was that local government was confronted, first, with a system of proportional representation as a voting system, but that could be used only by councils which did not have wards; that meant that only four or five of the 125 councils in South Australia could resort to that means for voting in local government elections. The balance of South Australian councils were encumbered under that Bill by a ridiculous system of elections and counting in those elections. That system has become known as the 'bottoms up' system. A preferential form of voting is involved but the method of counting is, as I have just said, absolutely ridiculous. Over the months since the Bill was passed and enacted by the present Government a great deal of opposition has resulted from local government about this method of voting, which has to be faced by all those councils at the next election in May this year.

We saw letters to newspapers, and conferences were held; the Local Government Association got itself into all sorts of knots about the problem. A most striking letter came in from the country from the Mayor of Millicent, Mr Altschwager, in which he in very simple terms highlighted the ridiculousness of that system. However, the Government was determined to hold to it and repeatedly before Christmas the Minister of Local Government said that he was not going to budge; he wanted to give that new system a try and he gave an assurance that after the election some review would be made based upon the results that occurred at the first election under the new system.

However, that was not acceptable to local government and objections still came in. In the past few sitting days in another place when the Bill was brought on again for debate the Liberal Party announced that it intended to move in another place that local government be given an alternative system more acceptable to it. At that time there was an announcement in the press that Mr Martyn Evans, the independent member from Elizabeth, was giving some thought to moving for proportional representation to be introduced as a voting system.

The Hon. J.R. Cornwall: Independent Labor!

The Hon. C.M. HILL: Independent Labor; I am sorry—maybe independent Liberal one day. There was even some rumour in the corridors that Mr Evans might have been talking to Mr Gilfillan, but I do not know whether or not that is true. The Hon. Mr Gilfillan has been a strong advocate, as we all know, of proportional representation for local government. That seemed to steel the Minister of Local Government into action and right out of the blue he announced and subsequently moved in another place that the existing approach of having proportional representation for that small number of councils and his 'bottoms up' system—a mandatory method—for the balance of local government was to be changed. He was going to give local government across the State the option to choose one of those methods.

I must say that that was certainly a great improvement on the stance previously taken by the Minister. However, in the debate in another place the Hon. Dr Eastick moved

his alternative method that would have been the third alternative from which local government could have chosen, but his amendment was defeated in another place and so now the Bill comes before this Council with a local government election system giving local government a choice between proportional representation or the preferential 'bottoms up' system about which all the hue and cry has been.

The Hon. R.C. DeGaris: It is a ridiculous system.

The Hon. C.M. HILL: I agree with the Hon. Mr DeGaris. I think we realised that; when the Bill was going through this Chamber, we fought against it. Certainly, when it became public and known well to local government, and when people both in the country and in the city in local government and other scholars of voting systems really studied it carefully, it was known as an incredible system—an unbelievable system!

The Hon. J.R. Cornwall: You were in charge of the conference of managers for the Upper House.

The Hon. C.M. HILL: I was on the conference; I think the Minister was in charge.

The Hon. J.R. Cornwall: You were the *de facto*—

The Hon. C.M. HILL: The Minister was Chairman of it and managed to convince our good friend the Hon. Mr Milne as to the merits of the 'bottoms up' method, and then we had the Hon. Mr Milne supporting 'bottoms up' and the Hon. Mr Gilfillan—

The Hon. R.C. DeGaris: There are some merits in 'bottoms up'—but not in the voting system.

The Hon. C.M. HILL: We will not take that any further at this stage. However, at least the Bill is improved vastly in that area on what it was, but I hope that the Council will consider a third method that I intend to move in a series of amendments, and perhaps more discussion can take place on that matter in Committee.

There has been a lot of uninformed talk about the dangers of ticketing in local government elections and about the dangers of ticketing emerging in any form of preferential voting system. Preferential voting is by far a better and fairer method in contrast to the old first past the post system, but there will be some form of what is called ticketing. However, that ticketing need not necessarily be Party political. Naturally, in a preferential system some candidates have similar interests and are concerned with similar issues. There may be an issue which has raised emotions in a local government community and about which a group of people feel very strongly; naturally, those people tend to group their names together on a ticket. That is ticketing, and there is nothing wrong with that.

There will be a tendency for sitting members to face the ratepayers as a group, and I have no doubt that those sitting members will consider issuing a ticket and seeking ratepayer support based on that ticket. There are ratepayer groups, societies and organisations within local council areas, and their members have every right to support a group of candidates. Naturally, they have a right if they so wish to issue some form of ticket for the guidance of those who are voting in the council elections. So when we raise this catch cry of 'ticketing'—

The Hon. R.C. DeGaris: They do it now in some councils.

The Hon. C.M. HILL: Of course they do it now. The only danger that will emerge in regard to ticketing is where political Parties endorse candidates for local government elections, but neither of the major Parties has shown any interest for many years in endorsing candidates for local government elections. Therefore, I believe that there are too many fears about ticketing. It does not give me the concern that I know some people feel.

One of the important provisions of the Bill deals with pecuniary interests, and members will recall the long and rather heated debates in this Council last year about pecuniary interests being disclosed in local government. The Bill provides a change in this area in that, if a member of a council does not lodge his list of pecuniary interests with the Chief Executive Officer, he loses his seat in that council automatically. The Minister in his second reading explanation gave the reasons why the Government wants this change, but making such expulsion automatic is very harsh treatment.

I believe that the Government's intentions, could be met a little more fairly. Amongst the amendments that are being prepared is a proposal whereby, if a member of a council does not place his list with the Chief Executive Officer of the council, the fine as provided in the Act will apply and, if that member pays his fine, he will not be able to continue as a member of the council (as of course he can under the Act) but action can be taken in the courts to give him time in which to lodge his return; if he does not abide by the court order, under my amendment he can be automatically expelled.

That seems to me to give a slightly more democratic opportunity for the member to put his affairs in order rather than being faced with the sudden guillotine action of losing his seat. I accept that the Bill provides that, if there has been an unavoidable delay in the member's lodging the return, he can apply to the court against such proposed expulsion, but I believe that the provision can be fashioned more fairly than the way in which the Government has approached it. I refer again to the Road Traffic Board. Clause 45 provides:

> (2) No by-law shall have any force or effect unless it has been signed by the mayor or chairman and the chief executive officer and . . .
>
> *(b)* in the case of a by-law made with respect to—
>
> (i) suspending or prohibiting traffic upon certain streets or roads;
>
> or
>
> (ii) the temporary closure of streets or roads,
>
> unless it has been approved in writing by the Road Traffic Board of South Australia.
>
> (3) The approval of a by-law by the Road Traffic Board of South Australia under subsection (2) *(b)* may be granted upon such conditions as the Board thinks fit and may, by instrument in writing, be varied or revoked by the Board.

That lifts the power of the Road Traffic Board far above that which it now enjoys. It is not surprising therefore that councils such as the Corporation of the City of Adelaide object to this provision most violently. Material that the Town Clerk of the city council has sent to me goes right back into the history of the Road Traffic Board and indicates that in 1962 there was some concern in local government and the Adelaide city council as to the powers that the Road Traffic Board would ultimately achieve. It is interesting to note two sentences from a reply by the Hon. Norman Jude (whom some members will recall was a highly esteemed member of this Council and who at the time was Minister of Roads) to a query from the city council:

> I say emphatically that it is not the policy of the Government and that it will not be the policy of the Road Traffic Board to deal with what are obviously and essentially local government matters relating to roads. The Road Traffic Board will concern itself mainly with highways, main roads and arterial traffic.

That was the Government's policy in 1962, but gradually bit by bit the power of the Road Traffic Board has been extended until we see in the measure before us that in many cases local government staff experts (and this is the case in regard to the Adelaide city council, which has a department employed on such matters) are completely overridden by and are subservient to the Road Traffic Board with its staff and experts. The evidence provided to me by the Adelaide city council contains cogent arguments to support the fact that this is a very ill conceived and ill timed measure. I urge the Government to consider its position on this matter, because I (and I am sure other members on this side) will strongly oppose this part of the Bill. More debate in greater

detail can take place in relation to this matter during the Committee stage of the Bill.

The other housekeeping matters included in the Bill deal in clauses 3 and 43 with the destruction of sparrows. It is pleasing to see that the Government seems keen to deregulate here and has managed to delete 14 clauses from the Local Government Act, all of which deal with the destruction of sparrows. Of course, at the same time as those clauses were included in the original Local Government Act the Sparrows Destruction Act, 1889 was repealed. Over the years there has been evidence that the common sparrow has been a problem in this State. However, it has won out at last and local government will, in future, not be able to appoint inspectors, as it can under the present Act, with powers to destroy nests, eggs and remove heads, so hopefully a balance has been struck by the sparrows in partnership with nature and we have this change.

The Hon. J.R. Cornwall: It is the multicultural nature of things—the sparrow has been here for many generations.

The Hon. C.M. HILL: It is integrated but not assimilated. I like the sparrow, being interested in birds and aviculture. I feel that there certainly is not any need to take pest action against sparrows. I do not think that sparrows are a problem any longer in rural areas, either.

The Hon. R.J. Ritson: Some people like sparrow soup, I believe.

The Hon. C.M. HILL: That is a rather sensitive subject. Sparrows are not killed for that purpose any more, to my knowledge, in this State. Clause 4 of the Bill is an interpretive clause which makes the position and role of a Deputy Mayor, Chairman or Chief Executive Officer clearer than it is at present. I am touching on these explanations briefly because the Minister has given a detailed report upon them in his second reading speech, which is recorded in *Hansard*. Clause 6 improves the insurance provisions inserted in the major Bill of 1984. Councils will be obliged to provide insurance cover for each member of the council and that member's spouse or, alternatively, a person accompanying the member. The risks covered will be those associated with the performance of official functions and such risk coverage must be approved by the Minister.

Clauses 19 and 20 also deal with this matter. Clause 7 deals with notices of meetings. These must be displayed in the principal office of the council and must be available to the public for an appropriate fee, if they seek a copy of any such notice. Clause 8 is a detailed provision amending section 61 of the Act, which deals with the convening of council committee meetings and council meetings. Three days notice must be given of such meetings and, again, the notice must be displayed in the principal council office. According to this Bill special meetings can be called at any time, which I support. Council and committee meetings must still be held after 5 p.m. unless all members decide otherwise.

I was hoping, after the rather heated debate of last year relating to this matter, when this measure was retained in the Government's Bill even though strongly opposed by members on this side of the Council, that the Government would have adopted more moderate and more sensible views, but it has stuck quite steadfastly to this quite silly requirement of councils having to meet after 5 o'clock unless every member of the council decides otherwise. Clause 9 deals with the requirement for the presiding person to keep minutes if the Chief Executive Officer is excluded from attending meetings.

Clause 10 clarifies the situation that must pertain if the Chief Executive Officer is absent. Clause 11 ensures that regulations can be made to fix fees payable to the Local Government Qualifications Committee. Clause 12 deals with the nomination of a company or group agent for voting purposes. Clauses 13 and 27 correct some outdated or incorrect cross references. Clause 17 overcomes problems, and I think quite appropriately, in relation to the rate of interest due to ratepayers whose money councils hold on credit.

Clause 18 requires a council to adopt an annual budget and the relevant assessment before declaring its rate. I welcome that proposal. Many of the other clauses deal with a simple alteration of the responsibility of council surveyors and the amendments are that they should now read 'council engineers'. Clause 26 allows for cycles and horses to be permitted into safety zones or on median strips which form part of crossing places. Clauses 29 and 30 affect joint council ventures and the dates of their commencement. Clause 31 gives the Central Board of Health increased power for approvals of sewerage effluent schemes.

Clause 44 straightens up by-law provisions, some of which have been obsolete, and corrects them. I believe that in many ways the Bill is a Committee one and that further discussion will take place in greater detail when we reach the Committee stages. I stress this point so that members can give further thought to my proposed suggestion for preferential voting included in my amendments which, if carried by the Council and the Parliament, will provide a third alternative for local government. It is a simple system of counting in a preferential system. It is counting, in general terms, from the top down and is the old method of preferential counting that was the accepted form of counting before proportional representation came into favour years ago. It was the method of counting, as I understand it, for this Chamber before proportional representation was introduced.

This is simply a method by which the first successful candidate either receives 50 per cent plus one of the total count on the first count and if that is the situation is elected and all that person's second preferences are distributed as number one across the board. Alternatively, if the candidate receiving the highest number of first preference votes has not reached the 50 per cent plus one figure in the first count then the candidate with the lowest number of first preference votes is excluded from the count and that excluded candidate's second preferences are distributed, and so on, until the first successful candidate has that total of 50 per cent plus one. I think that all honourable members understand that system. I have been asked by members of the Adelaide City Council to consider an amendment that it believes is desirable with regard to counting by computer, using the proportional representation method or the preferential method.

The Adelaide City Council wondered whether it was necessary for the Act to provide for counting by computer rather than counting as it now occurs. From inquiries I have made, it seems that there is nothing in the Act to prevent a council counting by computer. There are some practical difficulties: the difficulty of scrutineers and whether or not they can still do their duty when a computer is involved; and the difficulty for coucils of writing a computer programme if they decided to change over. I support the second reading of the Bill. The amendments to which I have referred are about to be circulated and I will discuss those further during the Committee stage.

The Hon. I. GILFILLAN: It is a celebration that this Bill is before us in relation to voting methods. It has been a long, hard battle by a few determined advocates to eventually have the option of proportional representation for all councils. I was disappointed that a series of press statements and correspondence did not break through the media barrier, particularly the *Advertiser*, which ran a long series of letters of complaint on the bottoms up, but paid little heed to those suggesting constructive alternatives that were worked

out in a long and laborious process in this place, with major contributions from the Hon. Murray Hill and the Hon. Robert Lucas.

I believe that indicates the general support there will be in local government when they realise they have a very good option to bottoms up. Local government should not wait for the proclamation of this Bill but should immediately start to obtain advice on how proportional representation can be implemented. The Electoral Commission has already geared up to provide instruction to the two councils that have decided to use proportional representation. Councils that have not given this matter serious thought should realise that, although previously wards were a barrier to having proportional representation because of the ridiculous restriction in the Act, proportional representation is now a good deal simpler for councils with wards than those without because less members are involved in being elected in any one electorate. It will not be the complicated and confusing procedure that has falsely been put about.

It is ridiculous that another option is coming up. I think that it is only a token to some outside forces that do not understand proportional representation and want to go back to the dim dark days. Whether or not the Hon. Mr Hill intended to, he made it quite plain that this obsolete method is indeed obsolete.

If it were ever used in this place, it has been replaced by a much more enlightened and democratic process of proportional representation. That amendment should get very short shrift in this Council. There will be no dilly dallying; because of this amendment councils will have the option to choose proportional representation up to the closing of nominations.

I believe that the question of ticketing, which has been used to criticise proportional representation, is an insult to both the electors of local government and the candidates. If a group of people are elected through proportional representation it will be because the electors want them elected and not because of some magic manipulation or cheating device. Proportional representation will truly reflect the wishes of the people who elect local government, will encourage more people to take part in those elections and increase interest and support for local government.

In relation to computer assistance in counting, this would only apply in rare circumstances where there may be massive numbers of votes to be counted in any one election. In sympathy for those who are nervous about whether or not they will be able to handle it, it may deserve further consideration. But, I do not consider that it is of major significance. It is with great enthusiasm that the Democrats support the portion of the Bill dealing with this much belated amendment allowing local governments the options. I spent time discussing this Bill with the Minister. I am not sure whether the Hon. Mr Keneally has accepted this amendment graciously, enthusiastically or begrudgingly. It is difficult to interpret his speech and I do not want to presume that I know his mind, but I believe in the years to come this Parliament and local government will look back with satisfaction at this quite substantial improvement in the method of voting for local government. I look forward to councils picking up this option and giving it a go.

The Hon. K.L. MILNE secured the adjournment of the debate.

ASSOCIATIONS INCORPORATION BILL

Adjourned debate on second reading.

(Continued from 5 December. Page 2137.)

The Hon. K.T. GRIFFIN: This Bill is the third attempt by the Labor Administration to introduce legislation to repeal the Associations Incorporation Act of 1956 and introduce a greater measure of regulation of associations. On the first occasion in 1978 the then Attorney-General, the Hon. Peter Duncan, introduced the Incorporated Associations Bill. Honourable members will remember that this Bill provoked a great deal of public controversy largely because of its significant intrusion into the private affairs of associations. In 1983 a Bill was introduced on which I made a number of comments and criticisms. As a result, a further review has been undertaken resulting in the Bill that is now before us.

There are some significant changes in this Bill from that of 1983, but there are also a number of matters I raised on that occasion that either have not been addressed or, having been addressed, the Government has taken the decision not to accommodate the difficulties I raised.

The Bill was introduced in December and an invitation was made by the Attorney-General for interested bodies or persons to make submissions on the Bill to the Corporate Affairs Commission. I took the opportunity of forwarding the Bill to a variety of people and organisations with a view to receiving the benefit of their comments.

The major difficulty was that the Christmas/New Year period is not particularly conducive to prompt responses on a Bill as complex as this. Notwithstanding that, I have received submissions from a variety of people and organisations raising issues which need to be further addressed in the context of the consideration of this Bill.

I will be moving a number of amendments to deal with a variety of matters which, I believe, need to be dealt with to ensure that the Associations Incorporation Act continues to provide a flexible mechanism for groups of people formed together for particular purposes not directed towards profitmaking or business, but for charitable or other purposes, to gain the benefit of incorporation; and those benefits are substantial.

There was an occasion when South Australia, Western Australia and Queensland were the only States which had Associations Incorporation Acts. Other States looked with some envy upon South Australia and those two other States because of the legislation which enabled associations to incorporate quickly and cheaply and not require them to comply with rather extensive regulation. In those States which did not have an Associations Incorporation Act, the Companies Act (and now the Companies Code) was used to incorporate companies limited by guarantee which are companies with members and which are formed for purposes other than carrying on trade or business for profit.

Although those companies limited by guarantee have not been subject to the same measure of regulation as have companies with limited liability, limited by shares or no liability companies, they were subject to a greater level of regulation than associations under our Associations Incorporation Act. I know that it was also much more costly for such bodies to incorporate. Although we had the facility of the Associations Incorporation Act in this State, from time to time interstate bodies have wished to become incorporated but, because of the arrangements in their home State, have felt compelled to incorporate as companies limited by guarantee. In addition, those bodies which had been incorporated as companies limited by guarantee in other States to actually be able to establish in South Australia had to register as foreign corporations. Therefore, the Associations Incorporation Act has served a very useful purpose and in but a handful of cases has not created any particular concerns within the community.

Of course, the legislation covers churches, charities, benevolent societies, sporting and recreational organisations,

political Parties (I understand that the Australian Democrats is incorporated under this Act), and a variety of other social and charitable bodies. I am not sure of the number, but many thousands of associations are incorporated. I recognise that some of those bodies are probably now defunct. I noticed recently that the Corporate Affairs Commission was writing to a variety of public officers asking whether or not associations were still in existence and, if not, they could be removed from the register. That was a very useful exercise to update information on the Register of Associations incorporated under the Act.

The other difficulty is that there was no mechanism for filing changes of office or obtaining details of the membership of committees. Certainly, there has never been any mechanism for obtaining details of the whole membership of organisations. I will certainly be moving to ensure that that does not occur. Further there may well have been a change in public officer without that information being notified to the Corporate Affairs Commission. I agree that there is a need for accurate up-to-date information to be made available to the public at large about the office of an incorporated association, the membership of a committee and the name and address of the public officer.

I have a number of concerns about the Bill, and I propose to identify the major concerns with a view to moving amendments during the Committee stage. The first major concern is that this Bill incorporates a number of provisions from the Companies (South Australia) Code. I know that that follows the format of the Co-operatives legislation, but I think Co-operatives are in a somewhat different category because they are groups of people with a common interest generally orientated to a trade or industry activity and dealing with the public at large. Associations do not generally fall into that category, although there are some which do carry on business as incidental to their principal objectives. There are some difficulties about incorporating provisions of the Companies Code just by reference to those provisions and not having them set out in detail and in full in the Bill.

The first is that there are many thousands of incorporated associations, and I think it is important for those who may be responsible for the management of associations or involved on the committees or in the general membership of associations to have all of the statutory provisions applying to an association in the one piece of legislation. Another difficulty is that, if someone interested in an association wants to gain access to provisions in the Companies Code, he will either have to go to the library or pay $25 to CCH to obtain a full copy of the Code. For anyone who has seen that code, it is a very substantial volume, now put out by CCH in two volumes in very fine print. I think it is something of an imposition to those many thousands of people involved in incorporated associations that they should be required to obtain not only the Associations Incorporation Act but also the Companies Code to find out all of the statutory law which applies to a body.

I will seek to move amendments which either in the body of the Bill or by schedule will set out in full the provisions of the Code which apply to associations under this legislation with such variations as may be appropriate to deal with the peculiar circumstances of such associations. The other aspect which I think needs to be considered is that, if we merely adopt the provisions of the Companies Code, it is conceivable that amendments will be made to those provisions without any reference to this Parliament by virtue of the co-operative arrangements between the States and the Commonwealth for amendment of the Code, so that the Ministerial Council on Companies and Securities will make a decision about amendment. Those amendments, although they will be publicly exposed, will ultimately be passed by the Commonwealth Parliament.

Those amendments may amend the Associations Incorporations Act by virtue of the fact that that Act will incorporate provisions of the Companies Code. If there are to be amendments to the Companies Code in so far as provisions relate to associations, it is important that those amendments be made by this Parliament. That is another significant reason why the Bill ought to contain the detail of those provisions of the Code that are to be applicable to associations. I recognise that that may involve some work and a volume of material to be incorporated, but it will serve a very useful purpose in the regulation of associations.

There is a provision in the Bill that limits the power of associations to invite financial contributions from the public. Associations under the Bill can raise subscriptions or finance only from those who are members. I pointed out in 1983 that that demonstrates a misunderstanding of the present position of many incorporated associations. Many associations do not have members: they may be charitable trusts or development funds for the churches, for example. They will generally have the committee of management appointed by the governing body and there will be no provision at all for members.

The various churches have development or capital extension funds separately incorporated. The members of the committees of management are appointed by the governing body of the church, and those capital extension or development funds seek donations or loans from members of the wider church. There has not been any difficulty with that in the past. They have been able to circulate the various congregations and members, soliciting contributions for the wider work of the church, and I do not know of any occasion on which that sort of activity has created any public or private concern at all, but this Bill will make it impossible for those capital extension or development funds to seek money from any of the members of the wider church denomination. I am concerned about that and I want to ensure that so far as it is possible the *status quo* remains so that, where an association such as that to which I have referred is governed by a principal body such as a church synod, the raising of finance can be undertaken throughout all the members of that governing body.

The Baptist Church, for example, has raised this with me, and I imagine that it has raised it also with the Attorney-General. With the Baptist Church, all constituent congregations are members of the development fund, which is separately incorporated; yet, the separately incorporated fund will not be able to seek subscriptions and finance from the members of the constituent congregations of the Baptist Church.

Another area of difficulty with this relates to resident funded accommodation associations. This has been raised in another context under the prescribed interest provisions of the Companies (SA) Code. Notwithstanding that, the resident funded accommodation associations raise concern about the limitations imposed by this Bill. The Aged Cottage Homes made a submission in 1983 dealing with this problem, and I drew attention to it on that occasion. It provides homes and services to almost 2 000 aged people, but those people are not members of the organisation. If the association is not able to solicit from persons who are not members, the whole object of the charitable work undertaken by those associations, particularly the Aged Cottage Homes Incorporated, will be prejudiced, if not stifled.

The other difficulty is the wider difficulty of even such things as badge days, and requests for donations, run by many charitable organisations: for example, the Anti-Cancer Foundation and the Children's Hospital although I suppose that the restrictions will not apply to the Children's Hospital, now it is incorporated under the Health Commission Act. It seems that sending out circulars even by direct mail to

members of the community, soliciting funds for the continuing charitable works of various organisations, will run foul of this provision in the Bill because none of those people are members of the association that is seeking the funds.

I do not believe that there ought to be that sort of restriction on incorporated associations going to the public and saying, 'We need funds for a particular purpose: can you help?' It may even prejudice things like the Good Friday Appeal, although unless that is separately incorporated under the Associations Incorporation Act it may well escape the constraints of this legislation. That is a very real concern, and it needs to be addressed because I would not want us to pass any legislation that places the sorts of constraints to which I have referred on the fund raising capability of these voluntary organisations.

The related matter is that there are, as I have indicated, many organisations that do not have members. I know this from my own involvement with the Uniting Church and the former Presbyterian Church, where there were associations incorporated under the Associations Incorporation Act. The General Assembly of the Presbyterian Church appointed the members of the association; it was responsible for amendments to the rules, and the association was accountable to the General Assembly of the Presbyterian Church.

The same applies to the Synod of the Uniting Church, which appoints the members of particular incorporated associations. There is a mechanism in the rules of those associations for the filling of vacancies and the conduct of activity, but the ultimate responsibility for appointing members and for amending rules lies with an umbrella body.

The same point has been made to me by other bodies that have communicated with me about this problem. The Catholic Church Endowment Society, for example, does not have members. The Diocese of Willochra has members, but those members are limited to particular categories of members of the wider church.

The Diocese of Willochra has some other problems to which I will refer later. The difficulty with membership provisions in the legislation is that the members are required to hold an annual meeting; amendments to the rules can only be made by special resolution of members, yet that will in fact override even express provisions in constitutions as to who has the ultimate authority for the approval of amendments to rules and constitutions.

It is relevant also to the problem that I will deal with in more detail later, that is, that amendments to the rules come into effect only after acceptance by the Corporate Affairs Commission, and there is no reference at all to the ultimate approval of, say, the ultimate governing body. I do not disagree that where there are identifiable members there must be annual meetings, there must be proper elections and there must be mechanisms for amending rules. At present the Bill does not deal adequately or at all with the problems of those associations where there are no members.

The other problem is that the Anglican Church has drawn to my attention that, for example, the Archbishop of Adelaide is the only member of one particular incorporated association and, in that instance, it is a bit ridiculous for the Archbishop to hold a meeting with himself annually to approve his annual accounts.

The Hon. R.C. DeGaris: There is no problem electing a President!

The Hon. K.T. GRIFFIN: That is right. There are problems there and we really need to accommodate the problems that have been raised by those organisations about membership. The Bill also gives power to the Corporate Affairs Commission to decline to incorporate an association or to register amendments to the rules where the Commonwealth is of the view that the rules or the amendments contain oppressive or unreasonable provisions affecting the rights of members. There are no criteria specified for determining what may be oppressive or unreasonable. It seems to me to be a quite dangerous provision—to give to a Government instrumentality, subject to the control and direction of the Minister, a discretion to determine what may or may not be oppressive or unreasonable in the context of a particular association, particularly if there are no criteria.

When members join an association they must be presumed to know what the rules or constitution of the association contain and must at least be presumed to agree to be bound by the rules, whether or not they may in certain circumstances be regarded as oppressive or unreasonable. If there is to be any provision about oppressive or unreasonable provisions in rules, then I think the more appropriate mechanism for dealing with this is to give to a member or perhaps a group of members, a right to apply to the local court for a determination as to whether or not such rules are oppressive or unreasonable.

Minority interests under the Companies Code are protected in much the same way. Of course, it is not just one member who can take action there: it has to be a specified percentage of members who take action so that vexatious and frivolous matters are not taken to the court with the consequent waste of money and time. There needs to be some mechanism by which perhaps oppression and unreasonableness are determined, but only in the circumstances to which I have referred. I make the point also in this context that there is a right of appeal to the District Court against a decision of the Corporate Affairs Commission, but I do not think that that is an adequate mechanism.

I think that the determination ought to be with the District Court right from the start and not with an agency of the Government. Incidentally, there are a number of areas where the decision of the Corporate Affairs Commission can be appealed to the District Court, but it is curious that there is no appeal mechanism provided from a decision of the Minister. Whilst it seems appropriate that the Minister's decision also be subject to appeal, the Attorney may have some reason for providing only for an appeal against decisions of the Corporate Affairs Commission and not also from decisions of the Minister.

The other area of responsibility given to the Corporate Affairs Commission that is questionable is that the Commission has power to decline to incorporate an association if the incorporation is not in the public interest. There is no definition of 'public interest'. Again, that seems to be a wide power that is given to the Commission—to determine what is or is not the public interest. Therefore, I will probably be moving some amendments to delete that provision. I am willing to listen to some alternative if the Attorney regards it as important to have such a provision or a similar provision in the Bill.

I will now address the question of accounts. The Bill provides that any association with a gross income in excess of the prescribed amount per annum is required to have accounts audited by a registered company auditor and to lodge periodic returns containing accounts and other information relevant to the affairs of the association as the regulations may require. The second reading explanation indicates that $100 000 is the proposed figure below which annual accounts will not be required, nor will an audit by a registered company auditor be required. However, that figure ought to be in the Act and not in the regulations if a cut off point is to be prescribed. I have previously made the point in debate in 1983 that it is inappropriate to seek to require all the small tennis and social clubs and small groups in the community operating under the benefit of this Act to file annual accounts and have their annual accounts audited by a registered company auditor.

The definition of 'gross income' includes all the receipts of the body corporate. At law, those receipts will not necessarily be income. They may be subscriptions (and in the general law subscriptions are not income) or they could be capital bequests. The Bill seeks to provide that if all those subscriptions, capital bequests and real income exceed $100 000 in a year an audit will be required and accounts will have to be lodged. I am concerned about the $100 000 cut-off if it involves all those items. It may be an appropriate figure in relation to income from trade or business activity incidental to the principal objects of the association, but I really do not think it is appropriate for the average sort of association which may well have significant numbers of members but which may not carry on significant business or trading activity.

The regulations leave very much open the information that would be required to be lodged. I previously made the point that we should exclude specifically membership details, because I do not believe it is any business of the Government or the community who may or may not be a member of an incorporated association. Therefore, I will move amendments to exclude that information from the information that may be prescribed as necessary for filing at the Corporate Affairs Commission.

A submission has been made to me by the diocese of Willochra of the Anglican Church: the diocese would find itself in difficulty if it had to appoint a registered company auditor, not from a financial accountability point of view but from a cost point of view. They say that the turnover of the synod is more than $100 000 but that a good bit of that sum would be donations and levies upon individual congregations in the diocese. I would be surprised if there was very much real income at all, except perhaps from the camp site in the Wilpena Pound area. The bulk of the regular receipts would be only donations and subscriptions. They say that the income would exceed $100 000 on the basis of the definition and thus they would be required to employ a registered company auditor to do the auditing work. The present auditor is a retired bank manager who does an extremely careful audit for the moderate cost of travel and the rent of a caravan in the caravan park. To employ a firm of registered company auditors would increase costs by several thousand dollars, and they say that that does not seem to be the right use of funds given for religious purposes. I agree with that. Many other bodies are in a similar position. Although there is a power of exemption, I believe that there should be something more specific than that. There are considerable concerns about that aspect of the Bill.

The associations that do not fall into the category of having gross receipts in excess of $100 000 per annum must file triennial returns with a great deal of information, as set out in the Bill, together with such other information as may be prescribed. The second reading explanation indicates that the reason for this is to get some idea of what area of activity is covered by incorporated associations and to keep the public record up to date. I do not disagree with that. I would have thought that perhaps an interval of five years was more appropriate than an interval of three years. The disclosure of details of membership is inappropriate for that sort of small association.

I will draw attention to a number of other matters, not in order of significance, but they are matters that should be considered in the context of the Bill not imposing unnecessary extensive regulation on voluntary organisations. The first point is that the Bill does not seem to recognise that the Anglican Church, the Catholic Church and the Uniting Church have their own special Acts of Parliament providing for the major aspects of the structure of those denominations.

The Hon. J.C. Burdett: Some other churches, such as Christian Scientists, have a special Act.

The Hon. K.T. GRIFFIN: The Hon. Mr Burdett points out that the Christian Scientists have their own special Act of Parliament, and there may be others. We must ensure that this Bill does not override the provisions of those special Acts of Parliament. Clause 12 requires all deeds of trust on which property is held for the benefit of an association or to which property of an association is generally subject to be lodged with the Corporate Affairs Commission and any amendments to those trusts to be filed. I have some reservations about that. I do not see why it is relevant for those trust deeds to be lodged at the Corporate Affairs Commission. A submission on behalf of the Anglican Church makes the point that, if it is required to lodge trust deeds, it will be required to lodge over 100 deeds and perhaps more, some relating to the diocese and others relating to individual congregations and agencies. They will be required to keep tabs on all amendments made and lodge them with the Corporate Affairs Commission. It is not appreciated what reason may be required for the lodging of trust deeds and amendments.

The Bill also picks up provisions of the Companies Code in relation to membership of committees of management. The Companies Code provides that any person over the age of 72 years cannot hold office unless section 226 of the Code has been complied with. From memory, that requires annual general meetings of companies to unanimously approve the continuation in office of a director who is over the age of 72 years. I do not believe that associations can be equated with companies. We must recognise that a wide range of people in the community are involved with associations, and personally I see no problem at all with someone over the age of 72 years being a member of the committee of management of an association without the hassle of annual appointment by a majority of an annual meeting where, in fact, an annual meeting is required. We must recognise that in those associations there are hundreds if not thousands of people who will reach the age of 72 years in the foreseeable future.

I do not see any reason why they should be treated any differently from any other member of a particular association. I suppose that what the Attorney-General has to address his mind to is the fact that there are a lot of pensioner and senior citizen associations, and other such bodies, where the majority of the committee of management are probably over 72 years of age. It seems to me to be ridiculous to go through a mechanism for continuing their appointment different from a mechanism that applies to all the members of a particular association so that, too, is a matter of concern.

I want to address several other remarks to particular provisions of the Bill. Clause 7 allows the Corporate Affairs Commission to decline to receive a document or to request amendments to a document lodged with the Corporate Affairs Commission where it contains matters contrary to law (there is no quarrel with that), or where it contains matter that in a material particular is false or misleading in the formal context in which it is included. That is relevant in relation to prospectuses, for example, under the Companies Code, but I do not see at this stage that that is a power that the Corporate Affairs Commission ought to have in relation to an association which, generally speaking, will only be lodging rules or amendments to rules, and I do not see how any of those can be regarded as being false or misleading in a material particular, or accounts and prescribed information. Again, I do not see how the Corporate Affairs Commission can judge whether any aspect of that is false or misleading and, as a consequence, require amendment of the document or a fresh document to be provided in its place. Therefore, at the moment I am inclined to move an

amendment to remove that part of the Bill, but, if the Attorney-General has some persuasive argument that establishes some justification for it, I am prepared to give further consideration to it.

Clause 11 of the Bill deals with those organisations that can be incorporated under the Associations Incorporation Act. I think that it is important to recognise that the present Act allows a variety of bodies to be incorporated: a church, chapel or religious body; any school or hospital; any benevolent or charitable institution; any body or committee of persons formed for the purpose of administering, whether as trustees or otherwise; any scheme or fund for the payment of superannuation or retiring benefits to members of any organisation or the employees of any body corporate, firm, or person; any association formed for the purpose of recreation or amusement, or for promoting or encouraging literature, science or arts, or for promoting or improving community centres; any association formed or to be formed for promoting any like object or any of the aforesaid objects, or any other useful object, which does not include any association for the purpose of trading or for the purpose of securing a profit for the members from the transactions thereof.

That is much wider than clause 11 of the Bill. I draw attention to particular bodies that do not appear to be covered by clause 11. They are: employer and employee associations (and there are a number of both that are incorporated under the Associations Incorporation Act notwithstanding the fact that some of them are also incorporated under industrial legislation). There does not seem to me to be any provision in the Bill to allow those sorts of bodies to incorporate. The issue of intellectual disability has not been addressed—physical or mental disability have been, but not intellectual disability. Political bodies or those established for a political purpose are not permitted to be incorporated. I draw attention to the fact that if the Australian Democrats, which I understand is presently incorporated, were now to seek to be incorporated under this new legislation the incorporation would be refused—it would have to become incorporated under the Companies Code, a more expensive, lengthy and complicated process. Therefore, a number of areas need to be addressed and the permitted groups of interest widened.

Clause 11 also deals with the question of pecuniary profit and places constraints upon the associations that have as principal or subsidiary objects the securing of a pecuniary profit for members of the association, or any of its members. I agree that a principal object of securing a pecuniary profit ought not to be permitted. I have some difficulty with the question of a subsidiary object and also with pecuniary profit. Other profits may be made by an association that are not necessarily pecuniary profits. I think that the general concept of a pecuniary profit would be profit in monetary terms.

If I am wrong about that, I would be pleased to be corrected, but I draw attention to this matter because I think that it may be an unnecessary limitation. I turn to the matter of a subsidiary object. Subclause (5) of clause 11 states:

> An association shall not, for the purposes of this Act, be regarded as having as a principal or subsidiary object the securing of a pecuniary profit for its members or any of its members—

in certain circumstances. Paragraph *(b)* provides:

> that the association buys or sells or deals in or provides goods or services where those transactions are ancillary to the principal objects of the association and, in the case of the transactions with the public, the transactions—
>
> (i) are not substantial in number or value in relation to the other activities of the association;
>
> or
>
> (ii) consist in the charging of admission fees to functions organised for the promotion of the objects of the association;

There are bodies such as the various football clubs and cricket associations that certainly do have a substantial number of transactions with their members and, I suggest, also with members of the public. The South Australian Cricket Association, for example, probably has more substantial transactions with members of the public, and a greater number of them, than it does with its own members by virtue of admission of members to Adelaide Oval, although I recognise that the charging of admission fees does provide an out for that association. However, it does run other activities where non-members are entitled to participate if in the company of members.

The Hon. K.L. Milne: Building project contracts.

The Hon. K.T. GRIFFIN: Yes, but I think they are not necessarily transactions designed to make a profit for the association. They certainly embark upon building contracts for the benefit of their members, but not with a view to making a profit for the association. Under the licensing laws as we know them at present, non-members (I think two per member) can be admitted to licensed club premises and there can then be transactions that involve those non-members. Therefore, I think that there are some difficulties with the definition of a 'subsidiary object' and I would like the Attorney-General to have a further look at that matter. Clause 15 (8) provides:

> A reference in a will or other instrument to an association that is a party to an amalgamation under this section shall, after the amalgamation, be construed as a reference to the association formed by the amalgamation.

That clause has to be subject to any express provision in a testamentary instrument. There are occasions, perhaps remote, where wills provide for benefits to particular organisations and provide for alternative provisions if an association goes out of existence or takes some other action that the testator does not believe is appropriate.

Clause 17 deals with the alteration of the rules of an association only pursuant to a special resolution of the association. It has been suggested to me that that clause is ambiguous because it could be construed as saying that where there is a special resolution one has to file an amendment and, if it is not by special resolution but ordinary resolution, one does not have to file it. I am not sure whether that is the intention, but I draw it to the attention of the Attorney-General.

Notwithstanding that, there are associations that provide for an ordinary resolution to be sufficient for amendment of rules. There is no need to place special emphasis on a special resolution, which may be a statutory overriding of provisions already in existence in the rules of an incorporated association. Another point I made earlier was that some associations do not provide for an amendment of rules by the association itself, but the rules are amended by a governing body, such as a synod, and in those circumstances it seems to me to be inappropriate again to override the rules of an association that allow the governing body to make the alterations to the rules.

The other problem about the rules is that an alteration only comes into operation after registration by the Commission. That is different from the Companies Code where they come into operation on the day of passing by a special general meeting of the company. Again, the Anglican Church and the South Australian Cricket Association have drawn attention to this problem because, although there may, in some instances, be an appropriate reason for deferring the operation of a particular rule, it would be a quite cumbersome and inappropriate power in the Corporate Affairs Commis-

sion to only allow an amendment when it has finally been checked by the Commission.

I have other information on that which I will deal with during the Committee stage. I will be seeking to amend that provision of the Bill to ensure that amendments to rules come into operation on the day of enactment unless some other provision is contained in those rules. I have no difficulty with the disclosure of interests provision (clause 23), except that the disclosure has to be tabled at the next annual general meeting of the association. Although the Bill seeks to establish a mechanism for that, I do not see that there is any need, in some instances, for such an annual general meeting.

Those are the major problems that have been drawn to my attention, many of which I referred to in 1983 in debating the predecessor of this Bill. I will move a significant number of amendments during the Committee stage to ensure that the facility of flexibility of incorporation, ease of incorporation and ease of operation are retained, and that the sorts of matters that are currently permitted under the Associations Incorporation Act of 1956, but not picked up in this Bill, are adopted.

I believe that the Associations Incorporation Act of 1956 needs to be upgraded. I made that point when I was Attorney-General, although the review of the legislation had not been completed and no final decisions had been taken when the election was called in 1982. It is for those reasons that I believe that the second reading of the Bill can be supported. I am disappointed that some of the matters I raised in 1983 have not been effectively addressed in the new Bill. I hope that during the Committee stage there will be an opportunity to explore opportunities for amendment to do what I seek to achieve with this Bill. I support the second reading of the Bill.

The Hon. K.L. MILNE: I consider that incorporation is a great privilege: it is a useful instrument of administration and is widely used. The fact that it is sometimes abused should not divert us from what we are trying to do for those who want to use this method of administration and protection. It is obvious that a thorough review would be helpful and is necessary as things have changed and become more complicated and sophisticated since the original Bill was introduced. The danger is that the simple concept of incorporation, as distinct from the complicated legislation concerning limited liability and partnership, will be diminished or changed in character if are not careful, by trying to be too cautious in controlling people using incorporation.

The definition of 'gross income', as the Hon. Mr Griffin said, needs attention. As he rightly stated, all receipts are not necessarily income in the sense that we would assume the Government means. The Government should mean, and probably means, the gross volume of money handled. There is as much necessity to control money going out as to control it coming in. It is probably the volume of money handled, receipts and payments added together, that should bring an association within the ambit of this, or some Bill very like it. The income of many associations varies substantially from year to year. Some associations will have an appeal every year and some will have an appeal every five years. When an association has an appeal it gets an enormous amount of money and then perhaps little or nothing the following year.

It is very difficult to say that one must have a qualified registered auditor one year and then not appoint him or her the following year. I think these things must be considered. An association registered under this Act is not a limited liability company or a trading partnership—it is a special kind of organisation which I think we are trying to look after without killing the whole idea. It is expensive to hire a registered company auditor and his staff, and I agree with the Hon. Mr Griffin, who has foreshadowed amendments in this area.

I look at the age limit of 72 years with a jaundiced eye, as I gently and perhaps rapidly approach that age. The age of 72 years for voluntary members of an association is not very old. From my experience during my professional life when doing voluntary or honorary audits or serving honorary treasurerships I have noticed that so many members of committees are over the age of 75 years. In self defence I would like this figure to remain, as would others who are approaching that age, I dare say. I really think that to stipulate the age of 72 years for associations, especially some of the smaller ones, is not appropriate in this atmosphere.

The Hon. C.J. Sumner: Are you going to move an amendment?

The Hon. K.L. MILNE: I had not thought of it until the Hon. Mr Griffin brought it up. Will he be moving it?

The Hon. K.T. Griffin: Yes.

The Hon. K.L. MILNE: If the Hon. Mr Griffin is going to move an amendment, I will look at it. Many organisations, particularly those for pensioners, and church organisations will be placed in great difficulty. After all, many of these people do not become committee members until they are quite old. Many associations rely on older members and, inefficient though they may be, it is all many of them have. I will be looking at that, and I hope the Attorney-General will also be prepared to look at it. The Hon. Mr Griffin and the Attorney-General have looked into this matter deeply, and I rely heavily on their legal advice and expertise. Nevertheless, we are in sympathy with many of the suggestions of the Hon. Mr Griffin, and I think we will move amendments of our own. Reform is necessary. We support the Bill in principle and support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their indications of support for the Bill. Essentially, it now becomes a Committee operation and clearly there will be a number of important issues that will have to be further debated in the Committee stage. Therefore, I suggest that progress be reported at clause 2 to enable amendments to be prepared.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

REAL PROPERTY ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 December. Page 2143.)

The Hon. K.T. GRIFFIN: When I spoke to this Bill before Christmas I outlined what I saw to be some problems with the amendment to the legislation and I sought leave to conclude my remarks later, so that the matter could be held until the Attorney-General had had an opportunity to obtain advice on the matters that I had raised. As I understand it, the Attorney has received that advice and, therefore, I will support the second reading of the Bill to enable him to present that advice to Parliament. However, once we get into Committee I will ask the Attorney to report progress so that further consideration can be given to the matters that he will deal with.

The Hon. C.J. SUMNER (Attorney-General): The Hon. Mr Griffin raised a number of questions in relation to this Bill. The first query related to standard terms and conditions of mortgages. There is provision in the Bill that if the

mortgagee does not make available standard terms and conditions to a mortgagor before execution of the mortgage the penalty is $500.

The honourable member expressed the view that there should be some civil consequence which flows to the benefit of the mortgagor against the mortgagee in circumstances in which the standard terms are not provided. It is considered too harsh a consequence for the mortgage to be invalid or unenforceable if the conditions are not provided. If the honourable member would like to suggest a civil penalty less than unenforceability, which would be suitable for these circumstances, I would be happy to give further consideration to it. However, the best course at this stage would seem to be to implement the provision and monitor its operation before deciding whether a civil remedy is warranted.

Secondly, the Hon. Mr Griffin raised a number of problems with the proposal for postponement of mortgages. Mr Griffin's first question concerned notification to the Corporate Affairs Commisssion of the change in priority of mortgages that might affect publicly registered charges. The Corporate Affairs Commission has advised as follows:

> There is no issue about notifying alterations in the priority of mortgages. Mortgages secure the borrowings, while charges are a security over the equity remaining in land. How the priority amongst mortgages is altered will not affect the equity remaining in land over which the charge is given.

It should also be noted that legislation similar to that proposed is already successfully operating in the ACT, Tasmania, New South Wales and Victoria.

The second problem relating to the postponement of mortgages concerned a first mortgage for an unlimited sum and the consequence to that mortgage of an alteration of priority. Where a mortgage is to secure further advances of money it would be necessary for the mortgagee to inquire whether those moneys have been advanced and then to determine whether it would be prudent or advisable to permit the reversal of priority of registered mortgages. It would seem that, in these circumstances, where further advances are made by a first mortgagee who has agreed to rank subsequently to a registered second mortgagee, such further advances (as well as earlier ones) would also rank subsequently. In some circumstances it may be that a variation is inappropriate. In other circumstances it may be that several variations will be required to achieve the desired result. This aspect of the legislative changes is regarded as a matter for decision by the mortgagees and it should be emphasised that the Bill is intended merely to make available a means whereby mortgagees can obtain the reversal of the order of priority of mortgages; it is intended that the exercise of such option to vary will be a matter for the mortgagees themselves (or their legal advisers) to determine.

The third major point that the honourable member raised was the question of the mortgage guarantee becoming void on the variation of priority. This is another issue that will need to be considered between the parties before a memorandum of variation is lodged. The variation procedure is only an option. The situation of guarantors will need to be considered by mortgagees, who may decide that reversal of priority of mortgages is not appropriate to a situation which might release a guarantor.

Fourthly, the intention of the proposed legislation is simply to enable the mortgagee to lodge a document postponing his mortgage to a subsequent mortgage without the need for existing mortgages to be discharged and new mortgages to be registered. Accordingly, I do not believe that section 69 requires amendment.

Fifthly, the Hon. Mr Griffin states that mortgagors will not have to sign the variation in priority. It is intended that the 'appropriate form' will make provision for both mortgagors and mortgagees to execute the application to vary priorities, although the legislation does not specifically require execution by the mortgagors. If the honourable member considers that it would be more prudent to include reference to mortgagors, an amendment to that effect can be included.

Sixthly, regarding the intervention of caveats and liens, the Registrar-General has a discretion to vary the priority of mortgages and encumbrances. There is no reason why priorities should not be varied if liens and caveats intervene, provided that, for example, a caveat is not absolute in its prohibition against registering further dealings.

Seventhly, the honourable member complains that the Bill does not provide for priority for only part of the liability. The Registrar-General is of the opinion that to provide such priority would lead to many administrative difficulties. The facility available in other States is for the postponement of an entire mortgage, and the Law Society proposal was for whole mortgages to be postponed.

Eighthly, the 'questions of notice and no notice' would appear to be matters of concern to the mortgagee, as one of the objects the Bill is simply to provide a facility to record on titles variation in priority of mortgages. I trust that those comments answer the queries raised by the honourable member. He may wish to give attention to some of them by way of amendment.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

CONSTITUTION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 February. Page 2442.)

The Hon. R.C. DeGARIS: So far in this debate reference has been made to the point that the President of this Council is an elected member and should have the democratic right to cast a vote. We are to understand that until the 1973 constitutional changes the elected member who was President had the right only to use a casting vote. In effect, until 1973, the President did not have a vote.

The position in the House of Assembly was different because, the numbers in that House being odd, the Speaker could use, with equality of numbers on the floor of that House, the casting vote. This was not the position in the Legislative Council because of the even numbers in this House. The variation was needed in the House of Assembly to achieve a deliberative vote for an absolute majority, as the casting vote of the Speaker could not be used if one member left the Chamber, and an absolute majority could not be achieved because in such a situation the Speaker could not vote.

To overcome this problem, the Constitution Act was changed in 1973 to permit the Speaker and the President to cast a vote, other than a casting vote, at the second and third reading stage of any Bill, to permit the President and Speaker to express a vote.

I do not intend to speak on the argument whether the President and Speaker can vote only on a constitutional Bill, except to say that I agree with the view expressed by the Hon. Trevor Griffin that the President has the right to vote at the second or third reading stage of any Bill. The Attorney-General, armed with his opinions, disagrees with that view. There appears to be a strong case for the view expressed by the Hon. Trevor Griffin in the plain fact that this Bill is before us. However, that is not the point I wish to pursue.

The view that the President has a democratic right to vote 'as the President sees fit', to quote one comment from

a previous speaker, is not provided for in the present Constitution, nor was it before 1973. The President has never had the right to vote as he sees fit. The only way any elected person can vote as he sees fit is to vote from the floor of the Council. As soon as a member assumes the Presidency, for all practical purposes he no longer is a voting member of the Council. Therefore, under the past and present constitutional provisions all the elected members could not and cannot now express an opinion on all matters before the Council.

I could develop this theme along a number of courses as all honourable members of the Council will appreciate, but the point I wish to emphasise is that, since the adoption of proportional representation and the fact that the Council has an even number of members, the occupation by a member of the Council of the office of President has created in itself difficulties—difficulties in the perception of democratic principles.

The President, of course, cannot vote in Committee stages, except as a casting vote, and that rarely occurs in an even numbered Chamber and, of course, the most essential work of this Council is done at the Committee level. If we are interested in the democratic process—and I am not one to accuse the Attorney-General of not having a feeling for the democratic process—then we should be considering the position of the President as an appointed position, with no voting powers, deliberate or casting. This would ensure that the view of the elected representatives is always, in all circumstances, capable of being expressed on the floor of the Council. This process is already operating in other Parliaments in Western democracies, so it is not a new suggestion.

Further, there is no need to add any cost to the taxpayer for such a proposal, as the appointed President's salary need not include the salary of the elected member. Such a constitutional change not only would ensure the ability of the Council to express its view democratically but also remove the extreme conflicts that can occur in the acceptance of nomination from the floor of the Council for the position of President. In view of the proportional representation voting, it is quite undemocratic that there is a restriction on any member so elected to vote.

The other crucial point in this issue is that, with proportional representation operating, and equality or near equality of Party numbers, the governing Party will always try to buy a President from the opposite Party or Parties. The number of deals that can be done in this procedure are many and varied, and this only leads to public disgust with the institution of Parliament.

This process cannot be restricted only to the Government alone, subtle manoeuvres in other groups can also be involved. There are members who talk expansively of democratic principles then suddenly lose those principles in grasping for other benefits and positions. I would commend to the Council that such a constitutional change be made if the Council is concerned with the rights of all elected members to vote as they see fit.

I raise this question because I do not wish to frame an amendment in regard to this Bill unless there is some support for the view that I am expressing. I suggest to the Government, the Opposition and the Democrats that they look at this proposition of the democratic right of any elected person to cast a vote on the floor of this Council. The only way that that can be done in this situation is for the Presidency to be occupied by an appointed member by the Government for that particular Parliament and that the President does not have the right to cast a deliberative or casting vote.

The second point about which I will not speak at any length relates to clause 4, which repeals section 59 of the principal Act. As pointed out by the Hon. Mr Griffin and others, section 59 has been part of the British system for a long time and has been part of our Constitution. All I say is that I support absolutely the views that have been expressed. Section 59 of the Constitution Act should remain in the Constitution as it is presently drafted. I do not oppose the Bill as it stands but, if there is an acceptance of a change towards the question of the Presidency, I would be only too pleased to support the second reading.

[*Sitting suspended from 5.53 to 7.45 p.m.*]

The Hon. K.L. MILNE: I am not quite ready to discuss this matter, because by coincidence it is one of the subjects that I was studying overseas. As a result of what I discovered, I believe that we should try to look at this subject with a broader view than is occurring in this Council or in this Parliament. I have not had time to do all the homework that I would have wished so, if my comments are not too clear, I ask for the forebearance of members when they are reading my speech in *Hansard*. The Australian Ambassador in Vienna introduced me to a number of people, one being Professor Doctor Erika Wienzierl, who in turn introduced me to the Senior Clerk of the Austrian Parliament. He was kind enough to give me virtually a whole day explaining the workings of the Austrian Parliament and showing me and my wife around the building, which of course is very beautiful. The Senior Clerk is also Assistant Secretary-General of the Austrian group of the Interparliamentary Union, and I would like to place on record my gratitude for the courtesy shown to me.

I should explain that the Presiding Officer of the Lower House in the Parliament is the President; the Head of State is the Chancellor, who is elected separately, so the problem remains with the President, who is, in effect, the Chairman of the Lower House. The President of what is called the Nationalrat, or the national Parliament, has the right to vote in an open vote but seldom does so. Incidentally, the method of voting in the Lower House provides that members stand for 'Yes' and remain seated for 'No'. There are also secret ballots, in which the President always exercises his vote.

I will recount the fortunes of the Austrian Parliament. It was dissolved by Chancellor Dollfuss in 1933 on the spurious grounds that the Nationalrat, the Lower House, had no President. In actual fact there were three Presidents at the time—the President, the Deputy and a second Deputy. However, the numbers in the House at that time were such that all three Presidents resigned one after the other so that they could vote on adult suffrage; apparently, no-one would take their place. In other words, the President resigned because of the state of the House and no-one would take his place.

He resigned in order to vote. So, it is a parallel with the problem we are discussing here. Chancellor Dollfuss, who was Head of the State, said that the Lower House could not function without a President and dissolved it in 1933, carrying on the Government of Austria by decree. The Upper House apparently could have objected, but evidently did not protest, which was a source of some criticism. This situation continued until 1938 when some honourable members will recall that Hitler in Germany was virtually invited to come in. There was the Anschluss or joining of Germany and Austria.

The Hon. B.A. Chatterton: That's one interpretation of the events.

The Hon. K.L. MILNE: Yes. I am told that there were flags out, and so forth. I think it is rather a pity; because an awful lot of people did not want it. There is confusion in people's minds in Australia that Austria is part of Germany: of course, it is not. Then came the Second World War, and Austria was again separated from Germany, a

new Parliament was reconstituted, and an election held in 1945.

The Standing Orders of the Lower House were amended in 1948 to prevent the Dolfuss situation from arising ever again. They did this by writing into the Constitution in 1948 that if there is no-one prepared to take the Chair or act as President then the oldest member in years of the Parliament—and I do not like this very much—

The Hon. C.M. Hill: There's a bit of self-interest here!

The Hon. K.L. MILNE: I do not like this. The oldest member in years is obliged to do so, and his first duty is to try to have a President appointed. So, it is not quite as funny as it sounds. When we are discussing the position of the President I think it is a deeper subject than perhaps we anticipated. The Upper House is slightly different, and they call it the Bunderstrat. It is roughly the equivalent to our Senate and, like us, is influenced by the United States but owing to the huge disparity in numbers between some of the States in Vienna the State representation has been adjusted.

In the Upper House they do not have a name for the Chairman; they call him or her the Presiding Officer or Vorsitzender, and the Presiding Officer has never had the power to vote until the Upper House Standing Orders were revised as from 1 January 1985, which means that they revised their Standing Orders this year. Under section 53 of this new set of Standing Orders the Presiding Officer usually does not take part in a vote. However, he may use his right to vote before enunciating or announcing the result of the voting unless this would result in a tie. If it will result in a tie he is not permitted to vote.

He always votes in secret ballots and his vote is counted, even if the result is a tie. That is another matter that we have not considered—whether we should have secret ballots under some circumstances. I am sorry that I have not got with me details of the circumstances. I was given them but I did not write it down, so I would not even guess at it; but there are circumstances under which a secret ballot may be demanded. As is the case in this House, if there is a tie the motion before the House is lost. Voting in the Upper House is by show of hands, not by standing up or sitting down. Neither the President of the Lower House nor the Presiding Officer of the Upper House has a casting vote.

Another peculiarity relates to a restriction on the independence of the Chairman, President or Deputy President. The President of the Nationalrat at present happens to be Secretary General of the Austrian Trade Union Federation, which is reasonably non-partisan as it has both left wing and conservative unions as members, I am informed by the Chamber of Commerce. Just the same, it seems rather peculiar to me, even if, as I am given to understand, the current President is strictly impartial in his decisions in the Parliament, that he can hold two positions of this kind.

I was grateful to the people involved for their explanations, because there are certain parallels for us, and certain things I want members of this Council to think about. I wanted to get this information on record, although it is not in the condition that I wanted it to be. I hope that members have found the information of some interest because it adds to our knowledge of what other people have done when faced with a situation that we might face here at some time.

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

PRICES ACT AMENDMENT BILL (No. 3)

(Second reading debate adjourned on 13 February. Page 2444.)

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Regulations.'

The Hon. J.C. BURDETT: When I spoke last week during the second reading debate I pointed out that, although it was apparent from the Minister's second reading explanation that the Bill was supposed to be about bread, there was nothing whatever in the Bill about it. The Bill simply gave a wide regulation making power to attach by regulation any conditions of sale at all, which could include minimum price or whatever one likes in respect of any specified declared goods. Any goods could, of course, be declared by the stroke of a pen. I made clear then that that is not acceptable to me.

The Minister's second reading explanation went on to say that the two things that he proposed to do about bread by regulation related, first, to the wholesale price: he was going to prescribe a maximum mark up in respect of the actual wholesale price. In regard to the corner delicatessen, the actual wholesale price would be the maximum justified price. For some of the intermediate retailers, it would be a lesser price because of the economies of scale and the ordinary commercial practice of giving discounts in respect of volume. For supermarkets it would be a lower price still. However, there was to be a maximum wholesale price.

In discussions that I have had with bread manufacturers and the unions, they agree that this would not have solved anything and would not have solved the problems of the industry. I made clear that anything which ought to be included and which would help the industry I was prepared to write into the Bill, without leaving the very wide regulation making power. I invited any suggestions which might come with the approval of the Department of Public and Consumer Affairs for control of the wholesale price and of discounting at the wholesale level, which might be acceptable, but none were forthcoming. So, I am not prepared to do anything about that.

The other matter raised by the Minister was that of credits for unsold bread. In respect of credits for unsold bread, the bread industry is the only industry in the food area where waste is left to the manufacturers and not to the retailers. For other perishables such as chickens, fruit and vegetables, the retailers order and bear the loss. For bread at the present time the retailers do not order—the manufacturers come and fill up the shelves to their own level and the retailers demand credits in respect of unsold bread which is not returned and not allowed to be sold.

I recognise this as being one of the problems of the industry, and I do not suggest that the amendment which I have placed on file, giving the Government the power to prohibit any transaction or arrangement under which financial relief or compensation is directly or indirectly given or received in respect of bread having been supplied for sale by retail but not sold by retail, will solve all the problems of the industry. I recognise that, if one takes away the evil of credits on unsold bread, the supermarkets will still be able to screw the manufacturers in regard to the actual price.

Because no-one has been able to come up with a formula about price, this is the best we can do at this time. It does have some benefit: it does mean that there will not be the enormous wastage of bread as there is at present. It is that enormous wastage in the manufacture of bread that is not sold that increases the price of the manufacture of bread and, ultimately, the general price to everyone.

So, for these reasons, I repeat that I am certainly not prepared to allow the Government the power to impose by regulation any conditions on any specified declared goods, which, in fact, means any goods at all, whether it be heli-

copters, outsize pantyhose or whatever. I am not prepared to do that. However, I am prepared to address the problems that have been raised and the solutions that have been suggested. The only effective one—

The Hon. C.J. Sumner: Do you think that this regulation making power gives the power to impose minimum prices?

The Hon. J.C. BURDETT: I certainly do.

The Hon. C.J. Sumner: And you are opposed to that?

The Hon. J.C. BURDETT: Yes, in the Prices Act. As I said before, the only place in the Prices Act where there is a minimum price relates to wine grapes, and that has been an enormous can of worms. It is very different from bread, of course.

The Hon. C.J. Sumner: I just want to clarify it. You are opposed to minimum prices with respect to bread?

The Hon. J.C. BURDETT: Yes, unless the Attorney wants to propose it and unless there is a proposal that we can look at. Proposed new section 51 (2) *(b)* states:

Impose conditions with respect to the sale of specified declared goods;

That could be absolutely anything.

The Hon. C.J. Sumner: I understand that. I am asking whether you believe that could also include minimum prices?

The Hon. J.C. BURDETT: I certainly believe that.

The Hon. C.J. Sumner: And you are opposed to it?

The Hon. J.C. BURDETT: I am opposed to the clause which gives that very wide power and which could include anything. If the Attorney-General wishes to come up with a counter suggestion about a specific proposal for minimum prices, he may do so. I have been inviting that ever since I have been dealing with this matter—to know just what the Attorney wants to do. I am not prepared to vote for that power. I want to write into the Bill—

The Hon. C.J. Sumner: I am not quite sure of your argument.

The Hon. J.C. BURDETT: The proposed new section states:

Impose conditions with respect to the sale of specified declared goods;

That is absolutely any goods, any conditions.

The Hon. C.J. Sumner: If you say that there should be something there with respect to the price of bread, why don't you put in the proposition?

The Hon. J.C. BURDETT: The Attorney has the facilities of Government; he should propose that, as I have invited him to do. What the Attorney proposed is hopeless and would have not helped the situation at all. I am not prepared to write that in. The only thing which the Attorney-General proposed and which would be useful is the prohibition of credits on unsold bread, and I seek to write that in. I move:

Page 2, lines 3 and 4—Leave out paragraph *(b)* and substitute new paragraph as follows:

'*(b)* prohibit any transaction or arrangement under which financial relief or compensation is directly or indirectly given or received in respect of bread that, having been supplied for sale by retail, is not sold by retail;'.

The Hon. K.L. MILNE: The Government is on the right track and I am sure that it is trying to do what we had hoped it would do after the last Bill on the bread industry was not satisfactory, that is, to solve the problem in this difficult industry where present circumstances allow various interests to bully each other. All the parties are suffering, and it is a very serious matter. Something has to be done quickly. The Hon. Mr Burdett is right. It was suggested that people could get 17.5 per cent discount on various purchasing rates, but that was quite unworkable because it would have created a differential in price, and one would have had a price war again in no time. If we are really trying to solve a problem in the bread industry we should solve it for the bread industry.

When the previous Bill was before us, I and other honourable members said that we hoped the Government would look at a simple amendment to the Prices Act. That is exactly what it has done. I congratulate and thank the Government for it. But, it is not wise to make an all-inclusive provision in this fashion to give this power to regulate industries that do not need it. The bread industry is rather unique, and many sentiments are attached to the arguments on bread. This has always been so throughout history. It is better, when dealing with the bread industry, to say so and give the Government the powers that we and the industry hope it will take on the bread industry alone.

There may be others later but to leave it open, as in this clause that the Hon. Mr Burdett wishes to delete, is virtually introducing price control, or the threat of it, without controlling wages. I am sure that that is not intended.

The Hon. C.J. Sumner: We already control prices.

The Hon. K.L. MILNE: But only some prices, about five or six. Most people are against a real price control system unless there is control of wages and salaries as well, but that is another matter. To get this organised for the bread industry, I am quite prepared to support what the Government has done and I am pleased it has done it, but I wish to have it restricted, as Mr Burdett suggested, and I support his amendment.

The Hon. C.J. SUMNER: I oppose the amendment. The situation as far as this Bill is concerned is that it was always put forward as enabling legislation; it was not put forward as legislation which immediately came into effect to deal with problems in the bread industry. It was put forward to give the Government by way of regulation the power to deal with the problems in the bread industry. That was clearly outlined in the second reading explanation. The action the Government intended to take was outlined in the second reading explanation, so there cannot be any doubt about the effect of the Bill—an enabling Bill to deal with the bread industry—and the Government outlined the way in which it intended to deal with the bread industry.

The problem with the honourable member's amendment, in restricting it as it does, is that, if a regulation is promulgated to deal with the credits on bread, there may be other ways of getting around that as far as the supermarkets and those manufacturers who are prepared to co-operate are concerned. Therefore, the amendment was prepared in its broader terms to give the Government the power to deal with potential evasions of the legislations. I make it clear that the Government has at no time hidden its intentions; it has outlined in the second reading explanation what it envisaged once this legislation was passed.

It now appears that the Opposition wants to restrict the Bill to bread. Although it may not be directly pertinent to the amendments before the Committee, nevertheless, the Opposition, through its spokesman, and the Democrats, have indicated they will not contemplate minimum prices. The Hon. Mr Burdett indicated that minimum prices exist only in one area—the area of grape prices.

The Hon. Frank Blevins: Wine grapes.

The Hon. C.J. SUMNER: Yes. The honourable member pointed out, quite rightly, that that has created some problems and is a source of continual controversy. That is a fair enough point to make. However, I think it needs to be said that the Opposition does not support minimum prices. I am not sure that the Government amendment allowed for minimum prices. However, the Opposition has interpreted it as giving regulation making power to enable that to happen, and the Opposition and the Democrats have indicated that they are not in favour of minimum prices in this

or any other industry. I do not wish to debate the matter any further, because the position has been made clear.

I wish to put forward two simple points: first, there was no intention on the Government's part to hide what it intended to do, because it was set out in the second reading explanation. I do not necessarily believe that the amendment that we introduced would have allowed for minimum pricing, and that was certainly not outlined in the second reading explanation. However, even if it did, as the Hon. Mr Burdett suggests it would, it is clear that that course of action is not acceptable to Parliament. I ask honourable members to support the original Bill. I do that on the basis that although it is broader it enables regulations to be made to counteract other actions that may be taken to avoid provisions which prohibit credit on returns of bread.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. R.I. Lucas. No—The Hon. B.A. Chatterton.

Majority of 3 for the Ayes.

Amendment thus carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

CHILDREN'S SERVICES BILL

Adjourned debate on second reading.

(Continued from 6 December. Page 2276.)

The Hon. J.C. BURDETT: I rise to speak to the second reading of this Bill, but I cannot support it in its present form. This Bill flows from the Review of Early Childhood Services in South Australia by Marie Coleman conducted in 1983. The main thrust of her recommendations was that child care and pre-school services should be incorporated under the one office. In addition, CAFHS and independent pre-schools were also to be incorporated. While the concept of incorporation of child care in education has generally been accepted in the community, this Bill does not achieve that object and does not implement all of the Coleman recommendations.

The Bill seeks to incorporate child care centres, baby sitting agencies, private family day care and registered children's services centres in the Children's Services Office. In addition, it seeks to license child care centres, baby sitting agencies and family day care agencies. It sets up powers of inspection and entry for all the above and provides for cancellation of licence appeals to the Minister.

The Bill allows for the approval of staff from public services or other agencies while maintaining benefits such as superannuation. The Bill sets up a Children's Services Consultative Committee and a regional services advisory committee. There will be a director and other staff. The Bill also repeals the Kindergarten Union Act and makes amendments to the Community Welfare Act. In this Bill the Government is instituting a typical bureaucratic exercise consisting of over-regulation, and, I expect, an over-commitment of resources.

Honourable members will be aware that the Premier has taken over the handling of this matter because there is a difference of opinion between the Ministers of Education and Community Welfare as to whom the Bill should be committed and because there is strong feeling among pre-school teachers that the Bill should be committed to the Minister of Education. Therefore, we have a situation where the Premier is designated as the Minister, but the Minister of Education is assisting him in this matter.

It is important to realise that the Government has not included Education Department child-parent centres in the new Children's Services Office. The parents and teachers who are associated with these centres wish to remain in the Education Department. However, there is provision in the Bill to bring these centres in at a later stage. In other words, in implementing part of the Coleman recommendations the Government has decided to provide only half of the solution, and this for political reasons.

It is interesting to note that, if this legislation is passed, children will no longer be going to a kindy, but to a Children's Services Centre. I agree that co-ordination of children's services is necessary. The co-ordination ought to extend to kindergartens, child care, child care and pre-school teaching in the independent sector, and child-parent centres. However, it is the wrong approach to set up a Childhood Services Office co-ordinating under one office and under one director several of these activities while doing nothing to co-ordinate the activities of the others.

The necessary degree of co-ordination could be arrived at simply if all of these activities were responsible to one Minister, and I suggest that the Minister should be the Minister of Education. The existing services such as the Kindergarten Union and the child-parent centres are operating extremely satisfactorily at the present time and, provided that there is co-ordination, there is no reason why these structures should be changed.

My colleague the Hon. Michael Wilson (shadow Minister of Education) has received the following letter from the staff of Manor Farm Kindergarten:

As members of the Pre-school Teachers' Association and trained early childhood teachers, qualified to work with children 0-8 years, we are concerned at the hurried introduction of the Children's Services Office. We agree that child care and pre-school services need better co-ordination throughout the State, particularly the child care component. However, the Children's Services Bill, if rushed through Parliament, will not guarantee the current high standard of pre-school education in South Australia; nor are we sufficiently assured that the method of implementation now being developed under the currently proposed legislation, will achieve this co-ordination.

The Bill at this stage does not include Education Department child-parent centres, non-government pre-schools and CAFHS. It is upsetting to hear that the Minister of Education has given verbal assurances to the Primary Principals' Association, Junior Primary Principals' Association and the Junior Primary Parents' Association, that the child-parent centres would not be forced into the Children's Service Office (opposing the legislation on the grounds that the educational strength of pre-school will be lessened within the new office). We, too, are very concerned on these same grounds!

Another area of great concern to us (as evident in recent communications received by us), is that it is obvious that Kindergarten Union employees will not be guaranteed positions of equal status and that the proposed pay structure and status of our administrators is being undermined. This will lead to a reduced incentive for people with the right qualifications for administrative/regional positions. The quality of pre-school education must suffer in the long run if the staff in these regional/administrative positions are not properly qualified and experienced.

To maintain teacher status and the education standard of kindergartens, all pre-schools should be brought together and come under the control of the Minister of Education. The very fact that Kindergarten Union centres and child-parent centres are intended to come under different Ministers and administrators indicates that they will be going in different directions. What guarantees are given to trained teachers that:

they will continue to be recognised as teachers and not care-givers;

salary structure remains tied to all Education Department awards;

working hours and holidays remain the same as Education Department teachers;

all fully trained teachers employed in the Childhood Services Office do not lose their teacher registration;

lesser trained staff are not employed in centres in place of fully trained teachers; and

ratio of trained teachers to untrained staff remains at current acceptable levels, as stated by the South Australian Institute of Teachers, for pre-schools?

Finally, we feel that the intended complex bureaucracy administering all the proposed services of the new CSO cannot offer a satisfactory service for parents, children and staff.

That is the end of the letter. The Director of the Lady Gowrie Child Centre in a letter to the Minister of Education of 11 February, a copy of which was sent to my colleague the Hon. Michael Wilson, said:

If the draft children's services legislation allows the proposed structure of the Children's Services Office to be put into practice, then you as Minister of Education must be extremely concerned. In attempting to service the needs of the growing child care field and other early childhood services, the legislation will enforce on the educational field in general a social welfare, managerial structure—a precedent which is alarming. It is my opinion that within a short period of time there will be no pre-school education as we know it for children in centres which will be administered by the new statutory body.

Advances in the provision of pre-school education in kindergartens, made through the process of continued education of the pre-school teachers by early childhood educators and other professional advisory services and the development of a supportive administrative structure over a period of 80 years, will be history. I beg you to examine the draft legislation and the structure closely to identify what has been happening to the education sector of children's services in the proposed changes.

As Minister of Education, does this legislation please you? Would it be tolerated if it were a blueprint for changes in the Education Department? Do you consider pre-school education should be divorced from other levels of education?

It is significant that members of the Education Department child-parent centres and the decision makers in the Kindergarten Union are united in their deep concern. Both align themselves with the discipline of education but welcome the support for the child care field. There appears, however, no guarantee that the centres funded by the Commonwealth Government will be part of the new office. The basic negotiations must still take place. Which services will be in the new office? Who will be providing similar services but not be part of the new office? Will this be putting into practice the principles outlined in the Coleman Report?

It seems that a line was missed out in the letter, but the letter as it has come to me continues:

of consultation when very few questions could be answered or when a process of telling was used? Who was consulted?

I am sure that no-one will argue the fact that the needs of the child care field are great and in need of administrative support and that there is a great need for the co-ordination of services. It would seem to me that the method proposed under the draft legislation will destroy more than it will achieve.

That is the end of that letter. The Hon. Michael Wilson has also received the following letter of 8 February from the Director of Catholic Education (and a letter has been received from the Director of Lutheran Education stating that he is in full agreement with all the points raised in that letter):

Recently the Catholic Education Office has considered the Children's Services Bill, 1984, shortly to be considered by the South Australian Parliament. During these considerations a number of issues relating to Catholic pre-school education have arisen and I present a summary below:

1. This office is concerned that the problems that have beset the administration of pre-school education in South Australia will continue unless the Children's Services Office is placed under the administration of the Minister of Education. It is our view that there should be strong links in the planning and development of pre-school and schoolchildren's services. Education Department and Catholic parent/child centres have demonstrated the viability of this approach. Also changes in the demography of local areas can be accommodated better where flexibility has been built into school and pre-school accommodation. It is thought that a better flow of early childhood curricula would be achieved between pre-schools and schools if both were placed under the Minister of Education.

2. The question of property ownership, rightly, is raised in a number of places in the Bill. This office is concerned that there be proper retention of the property rights of non-government bodies involved in pre-schooling, particularly when a pre-school is wound up.

3. Part II, clause 8, of the Bill, particularly paragraphs *(e)* and *(h)*, makes it quite clear that the Minister and the Children's Services Office will have a direct involvement in non-government pre-school education. Accordingly, it is believed that a statement ought to be included in the Bill covering the involvement of the non-government sector in children's services advisory and management structures. In particular it is noted that the Children's Services Consultative Committee will be appointed by the Governor and that it will 'advise the Minister and Director on any matter relating to the administration of this Act (other than employment of staff)'. It will 'identify and assess the needs and attitudes of the community . . . and investigate and report to the Minister . . .' The non-government sector is not mentioned in the section on membership. Inclusion of the non-government sector, it seems, will be left to the discretion of the Minister.

4. The Bill mentions regional advisory committees (RACs), which will 'consider, and report on, any matter relating to children's services'. The suggested legislation relating to RACs is very poor as it lacks detail and leaves the non-government sector to wonder how its pre-schools fit into the Government's regional children's services plan.

Earlier it was suggested that Catholic pre-schools ought to be considered to be a separate region and be treated accordingly. Alternatively consideration might be given to applying this principle to the total non-government sector.

5. In Part III, Division I, of the Bill it is stated that there will be annual licensing, inspection of centres and possible cancellation of a licence 'where the Director is satisfied that proper cause . . . exists'. This licensing sector will have to be detailed in the regulations. Proper protection of the rights of non-government parties ought to be written in.

It is our belief that the Children's Services Bill, 1984, has been drafted with the Kindergarten Union centres in mind and without proper consideration of the non-government sector. Very little mention is made of the financing and management of non-government pre-school centres. Accordingly we request that issues relating to non-government pre-schooling be considered in the debate on the Bill when it is reconsidered shortly.

The President of the Primary Principals Association, Mr A. Talbot, forwarded a long letter to the Premier raising a number of matters in regard to the Bill. I do not propose to read the whole of the letter, because it was long but, after raising a number of matters that he said were unsatisfactory, Mr Talbot states:

The objection is to the Bill as a whole rather than to its bits and pieces. In short, if one does not like a house the dislike of it is not improved by a different coat of paint or by replacing the iron roof with shingles.

It is clear that he opposes the Bill. He is saying that the Bill is unamendable, and that is what the Opposition is saying. He continues:

It is my conviction that the whole matter has been handled with a degree of ineptitude on the part of those most involved and certainly the consultative processes appear to be a classic model for those who would wish to guarantee a measure of suspicion and anxiety.

The Hon. C.J. Sumner: That's what everyone says. If they do not agree with the Bill the first thing they say is that they have not been consulted, despite the fact that there have been reports and public discussion for months and months.

The Hon. J.C. BURDETT: I will read that again, because I was interrupted. Mr Talbot goes on further to say:

It is my conviction that the whole matter has been handled with a degree of ineptitude on the part of those most involved and certainly the consultative processes appear to be a classic model for those who would wish to guarantee a measure of suspicion and anxiety.

The Hon. C.J. Sumner: Months of consultation.

The Hon. J.C. BURDETT: You do not seem to have succeeded very much in your consultation.

The Hon. C.J. Sumner: The report was produced months and months ago.

The Hon. J.C. BURDETT: It does not matter how long ago it was produced. The question is what the degree of agreement is now of those in the childhood services area. I think we have a situation where about 70 per cent of the people involved in the area are opposed to the Bill.

The Hon. J.R. Cornwall: That's not true.

The Hon. J.C. BURDETT: I say it is true. The Kindergarten Union, in a letter dated 1 February to the Premier, stated—

The Hon. C.J. Sumner: They changed their mind.

The Hon. J.C. BURDETT: They are allowed to change their mind, but this is what they said:

> At a meeting the Union's Vice-Presidents and I had with you on 9 January last, I informed you that the Board of Management of the Kindergarten Union reserved the right to make a final judgment on whether or not to continue its support of the Government's decision to establish a Children's Services Office and in doing so repeal the Kindergarten Union Act. This decision was to be made at the Board's meeting on 31 January 1985. I now wish to inform you of the Board's decision in this regard, a decision made after considerable thought. The Board resolved as follows:
>
> > The Board of the Kindergarten Union advises its continued support of the principle of co-ordination of children's services, but that it is not sufficiently assured that the method of implementation now being developed under the currently proposed legislation will achieve this co-ordination.
>
> Furthermore, it is not convinced that the Children's Services Office, as proposed, will maintain the high standard of pre-school education now applying in South Australia.

It appears to me that the Government, through its handling of this issue, has managed to get about 70 per cent of the people concerned in the childhood services area against the Bill. Certainly, the great majority who have brought anything to me have said that. For those reasons, I cannot support the second reading.

I noted when I was on the steps of Parliament House at a demonstration, when the Democrats were present, that while the Democrats said they would support the Bill they said that they would give their attention to amendments. I do not know what amendments they might have had in mind. Any that they bring up I will be pleased to look at if it gets to that stage, but while they glibly said that they would look carefully at amendments and it had to be all worked out they were not prepared to suggest what amendments they would look at.

I have given notice of motion contingently upon the Bill being read a second time that it be referred to a Select Committee. I am opposed to the Bill in its present form for the reasons I have given, but I suggest, as the Primary Principals Association has suggested, that the Bill is unamendable; it is a package. I do not believe that it can be satisfactorily amended this week or next week through the ordinary Parliamentary procedure. If the Democrats are serious in saying that they will take into account the matters that were raised by the demonstration on the steps of Parliament House this afternoon (and there had been an earlier one in support of the Bill) but I am talking about a second one which is opposed to the Bill—

The Hon. Diana Laidlaw: What did the Democrats say earlier?

The Hon. J.C. BURDETT: I do not know; they probably said the same. The question is: what are the amendments? I have made out a case, the Hon. Michael Wilson has made out a case and the primary Principals have made out a case that the Bill is unamendable. I believe, also, that in the ordinary course of Parliamentary debate it is unamendable. However, Select Committees have been known to do remarkable things and to come up with solutions that could not be arrived at in the ordinary course of Committee debate. If the Democrats are serious about wanting to amend the Bill and wanting to take into account the matters raised by the protesters, I ask them, if the Bill is passed (and I propose to oppose it), in due course to support my contingent notice of motion to refer the matter to a Select Committee.

I believe that, if it is possible to retrieve this Bill, that is the only way to do it. The Bill did not implement the whole of the Coleman Report, but only selective parts of it. It does not totally address the question that needed to be addressed. I tried to emphasise, when reading the letters, the emphasis on co-ordination raised in all of them. We agree that childhood services have to be co-ordinated. We believe that they can be co-ordinated simply by making all the various aspects of child care the responsibility of the Minister of Education without incorporating this bureaucratic, heavy handed, over regulatory system that, even then, deals with only half the question.

If this Bill can be rescued (and I put this very strongly to members of the Australian Democrats), I believe that the only way to do that is through a Select Committee. I do not believe that a Select Committee would have to sit for a very long time, because it can start with the Coleman Report and we have all the other matters that have been put to us by way of letters. I believe that it may be possible to rescue the Bill by that means in fairly short order. I oppose the Bill for the reasons I have given. If it passes the second reading stage I propose to move that it be referred to a Select Committee.

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

CONSUMER CREDIT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 December. Page 2255.)

The Hon. J.C. BURDETT: I support the second reading of this Bill. Ever since the parent Act was passed in 1973 there have been provisions in the Act for what has been currently referred to, particularly by the Commissioner of Consumer Affairs, as 'truth in lending'. I believe that this is an important matter. There were requirements applying particularly to finance companies and retail stores that ran credit plans that they were obliged to disclose in a prescribed form the true rate of interest, the simple rate of interest, and other conditions of the credit contract.

Until now, those provisions of the principal Act in regard to disclosure of interest and conditions have not applied to banks, credit unions, building societies, friendly societies, industrial and provident societies and insurance companies. This Bill simply, together with the consequential Bill (the Consumer Transactions Act Amendment Bill), brings those organisations into the net and requires that they also disclose in the prescribed form the simple interest rate, the actual interest rate and conditions of the contract.

The Government's argument, which is difficult to refute, is that any credit provider ought to disclose the true interest rate and the conditions, and ought to do it in a prescribed form so that the prospective borrower may have the information from all prospective credit providers in the same form and may compare that information and know that what the bank, finance company or industrial and provident society says is all in the same form and comparable. It is also an argument of the Government that uniformity is needed in this area and that most other States have provided that banks and other credit providers that I have mentioned that have not previously been included should be so included in the net.

The Hon. C.J. Sumner: They have agreed in principle but have not done it.

The Hon. J.C. BURDETT: That is right. It is fairly hard to argue against all this. On the other hand, it should be said that the banks, building societies, credit unions or other organisations to which I have referred have not been the culprits in not making full disclosure, generally speaking. There are questions of flat rates of interest, and so on, but

broadly speaking the banks have not been the culprits, and that is why they were not included in 1973. They are now to be included.

I believe that they have a reasonable argument in saying that they have not done anything wrong and asking why, therefore, they should be regulated against. There is a further fairly genuine argument that I believe those organisations can bring.

The Hon. C.J. Sumner: Have you ever got money from a bank?

The Hon. J.C. BURDETT: Yes, I have.

The Hon. C.J. Sumner: And what did they do?

The Hon. J.C. BURDETT: There was no trouble at all.

The Hon. C.J. Sumner: Do you know what interest rate you were paying?

The Hon. J.C. BURDETT: Yes. I have always asked and known the interest rate. One has merely to ask.

The Hon. C.J. Sumner: What about all the other charges?

The Hon. J.C. BURDETT: If one does not ask I guess one does not get told. However, if one does ask one does get told. I make the point that the banks and these other organisations have a fair argument because South Australia had the first comprehensive credit legislation in Australia in 1973. Prior to that there was the Money Lenders Act and things of that sort. We had the first comprehensive credit legislation in Australia. Now that is not the case, as other States have introduced more modern credit legislation.

The Hon. C.J. Sumner: That is necessary, too.

The Hon. J.C. BURDETT: That is what I am coming on to say, and it is one of the arguments. It is likely that there will be virtually uniform credit legislation in Australia before very long. Perhaps the Victorian Act may be taken as the model; I do not know. The banks and other institutions are saying that, if this Bill is passed and if they are obliged to comply with the disclosure of interest rates, and so on, legislation in accordance with the prescribed forms, it will cost a considerable amount of money that will be passed on to the consumer.

Then, probably in 18 months or two years time, our legislation will be completely changed, undermined and re-enacted in accordance with a model piece of legislation. One will then start all over again, and the same costs will be experienced. That is a pretty reasonable sort of argument. For the reasons that I have mentioned, because it is very hard to argue against the proposition that people who lend money should disclose the rates of interest and conditions, and because it does not matter whether it is a finance company, a retail store, a bank or building society, I find it difficult to oppose the second reading.

During the Committee stage, in conjunction with my colleague the Hon. Trevor Griffin, I will be looking at amendments to ensure that the Bill deals with disclosure only and does not through prescribed forms enable the actual method of lending (the type of loan—be it a credit foncier loan, or whatever) to be legislated for. All the Bill purports to do, and all the second reading explanation said it would do, is provide for truth in lending and to provide that disclosure be made. In Committee, I will look at whether that is all that it does and that it does not enable strictures to be imposed on the actual form of lending. For the reasons that I have stated, I support the second reading.

The Hon. K.T. GRIFFIN: I support what my colleague, the Hon. John Burdett, has said about this Bill, particularly in the context of uniformity with other States. Banks are particularly concerned, because they operate on a national basis, that if there is a lack of uniformity with different forms for each State it will add to their costs and, ultimately, to the costs of borrowers. There is a very good argument for uniformity if this legislation is to proceed. As my colleague said, it is not possible to argue against the principle of full disclosure. It is really a question of how it is to be achieved.

Building societies have expressed considerable concern about the application of the legislation to them and they make the quite proper point that under the Building Societies Act there is already provision for disclosure requirements to be prescribed. In fact, that is done in Western Australia and Queensland under the relevant building society legislation in those States. The last thing that building societies want is to be bound down by bureaucratic red tape which compliance with many aspects of the consumer credit legislation will require. They have no objection at all to proper disclosure of real interest rates, but it is just the way in which this Bill seeks to do it that causes them concern. They say that it will undoubtedly add to administrative costs of a building society and, as building societies are essentially mutual associations, there is no doubt that the increases in costs incurred will be passed on to their members and those who borrow from them.

The other concern that they have is that the constraints of consumer credit legislation may well result in credit foncier home loans being prejudiced. Of course, they use those quite extensively, and they provide for fluctuations in interest rates according to the market place and the cost of borrowing funds.

I do not think anyone has raised any objection to that sort of home loan, recognising that in the realities of life, if there were no fluctuations allowed, that source of finance to the building industry could dry up or be seriously curtailed. The other concern they have expressed is that, if credit foncier loans are constrained and variations in interest rates are to be notified on every occasion (reductions as well as increases), that will ultimately add substantial costs to their borrowers.

Credit unions, too, have particular problems; they are mutual societies. There is no evidence that they have been guilty of failure to disclose information to their own borrowers but, if the legislation applies to them, I understand they will be seeking some extensive exemptions from the provisions of the legislation.

Therefore, like my colleague the Hon. J.C. Burdett, I will support the second reading of this Bill, but he and I together, because of our related interest in the agencies covered by the Bill, will seek to limit the application of it to ensure that it does not ultimately place unrealistic and costly burdens upon borrowers and that the disclosure provisions relate only to disclosure and all the other paraphernalia of the legislation does not apply to those agencies which have previously been exempt from a substantial amount of regulation under the Consumer Credit Act and Consumer Transactions Act. Therefore, for those purposes, I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their support of the second reading. When I introduced this Bill last year on 6 December, I indicated that this Bill and the Consumer Transactions Act Amendment Bill, 1984, would not be proceeded with immediately to enable comments to be obtained from interested parties. I understand that submissions have been made to the Commissioner for Consumer Affairs, and obviously certain submissions have been made to honourable members opposite. The Commissioner and the Department are currently assessing those submissions and it may be that there will be some Government amendments as well to the legislation in the Committee stages.

I thank the honourable members for their indication of a stance on the Bill, noting that they will also be proposing amendments. I indicate that the Government is also looking

at the submissions it has received and may itself be proposing amendments. That being the case, although the pressures of business would prompt me to say otherwise, I will, once the two related Bills are in Committee, be suggesting that they are further adjourned for some time to enable the submissions to be properly assessed.

The Hon. J.C. Burdett: Until next week.

The Hon. C.J. SUMNER: Certainly until next week, and it may be longer. It depends on the Commissioner for Consumer Affairs and the Department's negotiations and discussions with the interested bodies which, no doubt, have been in touch with honourable members opposite as well. Therefore, at this time the Government does not intend to push the Bill through rapidly. There will be Opposition amendments, obviously; there may be Government amendments as well in the light of submissions received and discussions we intend to have with the people who have made the submissions.

My proposition is that we go into Committee and then report progress. We should not proceed any further until those discussions have concluded and we have a clearer picture of what amendments will be moved. I thank honourable members for their general support for the legislation.

The Hon. K.T. Griffin: Will you provide us with the amendments?

The Hon. C.J. SUMNER: In responding to the interjection, I am quite happy to provide details of the amendments as soon as they become available.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

CONSUMER TRANSACTIONS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 December. Page 2256)

The Hon. J.C. BURDETT: Subject to the considerations that I have already raised in regard to the Consumer Credit Act Amendment Bill, I support this Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

SECOND-HAND GOODS BILL

Adjourned debate on second reading.

(Continued from 4 December. Page 2011.)

The Hon. C.J. SUMNER (Attorney-General): I thank the Hon. Mr Burdett for his support of the Bill. I think he raised only two major issues that were giving him some concern, and he sought some assurances from the Government. In relation to the first, he asked for the assurance that the six time rule will apply to people who purchase goods for the purpose of sale at a garage sale or in a trash and treasure market, and I can give that assurance.

The police are concerned with all avenues of potential trading in stolen goods, and this includes trash and treasure markets and garage sales. The practice of people attending auctions and other sales outlets to purchase goods at low value for the purpose of re-sale on the market is precisely the type of activity that requires regulation under the new Act. The police will pay particular attention to the activities of people trading at venues such as trash and treasure in order to detect breaches of the legislation. So, that answers the honourable member's second question requesting that I give an assurance that the activities of garage sales and trash and treasure markets will be scrutinised. The police will be responsible for enforcing this legislation, and that will certainly be their intention. I think the honourable member asked a question relating to second-hand goods markets, in relation to which the original intention, as suggested by the working party in 1981, was to impose certain recording obligations on the organisers of those markets. I understand that the key information to be recorded was the vehicle registration numbers of those persons who attended the market: the numbers were to be processed by the police in an endeavour to identify those persons who were trading at the market on more than six occasions throughout the year. In the end, after further discussion, this proposal was unacceptable.

In practice it would be very difficult to enforce and would require a considerable amount of time, perhaps with very limited results. It is considered to be more appropriate to allow, and in fact encourage, people to trade at these venues so that police can concentrate their resources on the scrutiny of these markets. It is quite clear that the police intend to give attention to trash and treasure markets with a view to ensuring enforcement of the Act. If people are encouraged to deal through these venues that will be properly scrutinised there will be a greater possibility for the police to detect breaches of the Act, detect and apprehend people who may be dealing in stolen goods. I think that that answers the honourable member's two questions.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. J.C. BURDETT: I will address my remarks towards clause 2 because this clause deals with the commencement of the new Act. I thank the Minister for his comments. When I spoke at the second reading stage I indicated that, while there had been a clause in a previous draft of the Bill to provide in relation to secondhand markets of the trash and treasure type (I think Trash and Treasure is the name of a particular organisation) that prescribed information ought to be provided to the Commissioner of Police, I did not propose to proceed with amendments in relation to that in any shape or form.

It was largely for the reasons that the Minister has given, but particularly in consultation with the Second-hand Dealers Association—and I know that the Department has been in close consultation with that Association also—I was certainly alarmed by the operation both of garage sales and, more particularly, of second-hand markets of the trash and treasure type in regard to stolen goods. Many of the other States do not have second-hand dealers licensing provisions at all. As I believe in deregulation, one of the things that I considered was that perhaps there should be no form of regulation at all, but I know that the police value the present second-hand dealers legislation and would value this legislation as being a means of tracking stolen goods.

The Association has pointed out to me that very few stolen goods are sold through its members, because of the requirements and the regulations by which they are obliged to keep records, hold the goods for a certain period, and so on, but there is a bit of an open door in regard to garage sales. Nobody objects to people selling their own goods and having a garage sale. One does find some people who have garage sales once a fortnight or once a month, who obviously buy goods to sell at the garage sales. Even there, it is not as wide open as it is through the trash and treasure type outlets, because the garage sales are advertised in the press. The police can chase up those advertisements if they want

to, and people are selling on their own premises. One would be fairly unwise to sell stolen goods on one's own premises.

The Minister has given an assurance that the police will police this kind of thing: will he say whether the police will consider checking out the advertisements for garage sales? When I had consultations with the Second-hand Dealers and Antique Dealers Associations, I contacted the police. Both the official police and the Police Association supported an amendment of the kind that was in the draft Bill. They said that that ought to be there. The trash and treasure type operation is far more suspect than a garage sale: it is certainly an opportunity to cleanse stolen goods. They change hands and, therefore, it is very difficult to follow them after that.

At the second reading stage I mentioned that cases certainly occur—and the Attorney-General indicated by interjection at the time that they occur—where people drive a truck around, pick up all the hanging plants out of a garden, drive the truck home, and next morning take the plants to the trash and treasure sale and dispose of them. The rightful concern that the members of the Second-hand Dealers Association have is that they are regulated, pay the fees, are subject to police inspection any hour of the day or night, and all the rest of it. They are not the culprits: the avenue for the disposal of stolen goods that is much more likely to be taken by persons who have possession of stolen goods is the trash and treasure type operation or the second-hand market.

I ask the Minister, who has already given some assurance, to repeat the assurance and expand it. Will he assure the Committee that the police and his Department, so far as it is in their area, will keep this kind of outlet under surveillance and will bear in mind that the only reason for the parent Act is the scrutiny of the possible sale of stolen goods? Will they look at these other areas where the goods can be sold rather than by secondhand dealers themselves? I merely ask for those assurances again.

The Hon. C.J. SUMNER: I am happy to give those assurances. As the honourable member has said, there might be a case for deregulation in this area, and I can understand why he would put that forward. Indeed, I would be sympathetic to that in certain circumstances and in regard to other industries. As the honourable member said quite rightly, the major enthusiasts for regulating the sale of secondhand goods are the police, who believe that to repeal the Secondhand Dealers Act and not replace it with anything else would hamper their efforts in controlling the traffic in stolen goods.

It is basically a policing function which puts forward the argument for such a Bill. It would seem to me that the Opposition conceded that, although flying a sort of kite of deregulation. If it were possible to deregulate this particular group and these sales I would be quite happy to go down that track. Certainly, I do not have any ideological predilection to regulation in this area, but it is a matter about which the police are very concerned.

The police believe that the registering of dealers in secondhand goods and other outlets provides them with another avenue to assist in law enforcement. On that basis, given this Government's strong commitment to upholding the authority of the police in a large number of areas, which is evidenced by the recent introduction of the Police Offences Act and a large number of other measures which have been taken and which I outlined in the second reading debate on that Bill, we would not wish to undercut their authority in this area.

I am pleased to see that despite the Hon. Mr Burdett's flirtation with deregulation he accepts the arguments of the police that regulation is necessary. However, the honourable member also asks that the police take particular care with those outlets that may provide greater capacity to fence or traffic in secondhand goods than applies to normal secondhand dealers. He refers to garage sales and trash and treasure markets. I have given him an assurance, when I replied to the second reading debate, that that is one of the important aspects of the legislation. The police will give particular attention to those outlets, including garage sales, but in particular so-called trash and treasure markets.

The honourable member refers to scrutiny of advertisments. I am not sure whether the police thought of that, but it is not really for me to instruct the police how to go about investigation procedures. I am certainly quite happy to draw to the attention of the Police Commissioner the honourable member's comment in that regard. I understand from the officers that the police would take all necessary steps to ensure that none of these avenues for secondhand dealers, such as trash and treasure markets or garage sales, were used for the fencing of stolen goods. I trust that that assurance satisfies the honourable member.

Clause passed.

Remaining clauses (3 to 36) and title passed.

Bill read a third time and passed.

SECOND-HAND MOTOR VEHICLES ACT AMENDMENT BILL

(Second reading debate adjourned on 4 December. Page 2011.)

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

LAND AND BUSINESS AGENTS ACT AMENDMENT BILL

In Committee.

(Continued from 14 February. Page 2524.)

Clause 13—'Entitlement of corporation to licence.'

The CHAIRMAN: When the Committee last considered the Bill the Hon. Mr Griffin had moved an amendment to clause 13. I understand that he has a newly drafted amendment to that clause and seeks leave to withdraw his earlier amendment.

The Hon. K.T. GRIFFIN: I seek leave to withdraw the amendment that I moved with a view to moving the redrafted amendment.

Leave granted; amendment withdrawn.

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

Page 6, after line 41—insert paragraph as follows:

(ab) by inserting after paragraph *(c)* of subsection (4) the following paragraph:

(ca) a corporation is a proprietary company with not more than two directors, one being a person who is licensed or registered as a manager under this Act and the other being the spouse of that person and registered as a salesman under this Act and the tribunal is satisfied that no other prescribed officer of the corporation who is not licensed or registered as a manager under this Act will actively participate in the business conducted in pursuance of the licence;.

Honourable members will recall that last week there was some discussion about the form of the amendment which I had then moved which, upon closer examination, did extend beyond what I was seeking to deal with. The amendment which I now move more accurately reflects what I want to achieve, namely, that, where there is a company which is carrying on business as a real estate agent, has two directors, one director is a registered manager and the other

is a licensed salesman or saleswoman under the Act, then that is sufficient for the corporation to be licensed.

Of course, the matter still goes before the Commercial Tribunal where the exemption is to be granted and it may be granted on such terms and conditions as the Tribunal deems appropriate, but the Tribunal also has to be satisfied that no other director or other prescribed officer who is not licensed or registered as a manager would actively participate in the business conducted in pursuance of the licence. That, I believe, adequately deals with the small family companies, a number of which have drawn the problem to my attention. With one director registered as a manager, a spouse registered as a licensed salesman, the Board has granted an exemption for the spouse for just over five years, since the two director rule came in under the Companies Act. The Board has now said, 'We are not going to continue the exemption.'

It seems to me an unnecessary imposition on that small family company for the spouse director to be required to retire as a director and for some stranger to be imported into the business both assuming the responsibilities of a director under the Companies Code and also becoming privy to all of the affairs of the company which are essentially of a private or family nature. I believe that the amendment is sufficiently narrow to overcome the concern which the Attorney indicated when he spoke to my earlier amendment and yet is wide enough to deal with what I regard as an anomaly in respect of the husband and wife corporation carrying on business as a real estate agent.

The Hon. C.J. SUMNER: The amendment moved by the honourable member is less objectionable than the one which he moved last Thursday and which would have permitted an unqualified person to participate as a director in a real estate business.

The Hon. K.T. Griffin: That was not intended.

The Hon. C.J. SUMNER: The honourable member interjects and says that that was not intended, and I accept that, but that, nevertheless, was the effect of it and that ran counter to the basic philosophy of the legislation. In relation to the registration of people involved in the real estate industry, namely, that they should have appropriate qualifications before they carry out business as managers or salespeople in that industry. The honourable member's new amendment has overcome that objection. It permits the husband and wife corporation to obtain a full agents licence so long as one spouse is licensed or registered as a manager and the other is registered as a sales person.

It is worth while pointing out that in section 16 (4) *(c)* there is a provision that enables a two director corporation to obtain a licence when one director is licensed or registered as a manager and the other, who is unqualified, performs solely clerical or secretarial functions. Section 16 (4) *(c)* is a much broader exemption provision than is the one that the honourable member now seeks to place in the legislation. It is worth while pointing out (whether this is justifiable or not I suppose it is worthy of some consideration) that section 16 (4) *(c)* is not confined to two directors who are spouses but is confined to two directors one of whom is qualified and the other of whom can be unqualified, provided that unqualified person does solely clerical or secretarial functions.

As an exemption that is potentially quite broad and it could be argued, I suppose, that it is an exemption that is too broad and that perhaps it ought to be looked at. However, I say that the honourable member's present amendment is not as broad as that and therefore fits into the general intent of the exemptions in section 16 (4). I raise only as something for future consideration the question of whether or not there needs to be a review of section 16 (4) to determine whether such broad sections as section 16 (4) *(c)* are still necessary. However, it is in the legislation and is quite a broad exemption.

The exemption that the honourable member seeks to include is not as broad as that and I think that, to be consistent with the existing Act, there is no difficulty in accepting what the honourable member says. However, there can still be concerns, particularly I think that the body that represents the industry is very wary about watering down the provisions in legislation that require appropriate qualifications in order to conduct a business or act as a salesperson in the industry.

Those exemptions are there now. Whether they will need to be looked at at some stage in the future, we will have to leave to the future, as we will any possible representations in regard to exemptions. The honourable member's amendment provides another exemption, but one which is less than the one contained in section 16 (4) *(c)*, in that it is confined to two directors and spouses. Given the existence of section 16 (4), I will not oppose the amendment.

The Hon. K.L. MILNE: I was pleased to hear that the Government is accepting the amendment as it will make it easier for the professional body to interpret the Bill where it or its members might not get the message under section 16 (4) *(c)*. We keep repeating that we are all in favour of small business, but more often than not we inadvertently continue to do things to make it more difficult to trade, where in the small business case what we design does not really matter.

I am pleased to see the Hon. Mr Griffin's amendment. I did not realise at first that there was a possibility of its already being in the Act. This clarifies the distinction between the responsibility of a spouse as a director, a spouse as an operator and a spouse as a clerical operation. The clarification of that would help the Real Estate Institute and the real estate profession.

A small business company run by a husband and wife have approached the Attorney-General and the Opposition. I am pleased that their complaint has been dealt with. I believe that it will be well received in the Real Estate Institute, most of its members being small business people.

Amendment carried; clause as amended passed.

Remaining clauses (14 to 75) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (COMMERCIAL TENANCIES) BILL

In Committee.

(Continued from 14 February. Page 2508.)

Clause 8—'Insertion of new Part IV.'

The Hon. J.C. BURDETT: Last Thursday, I moved my amendment to insert a new definition of 'office premises'. In order to explain the amendment I will have to refer to that part of the amendment which follows further on. The only reason for defining 'office premises' is to relate it to the prescribed limit. I note after looking at other amendments on file, that this seems to be a matter of some controversy. The Bill as it presently stands recognises that there should be an upper limit of rental beyond which premises should not be bound by the Bill. This seems to make sense. Large organisations, such as banks, can be as large or larger than the landlords, are quite capable of obtaining legal advice, of looking after themselves and of not needing to take up public time and money through the Commercial Tribunal or whatever to have their interests looked after.

It has been recognised by all that there are some malpractices in this area of commercial tenancies. Some small people particularly have been unfairly dealt with and have

been screwed by the landlords. The Bill as it stands recognises that there should be a cut-off point beyond which the ambit of the Act is not brought into operation. I understand that it was the Government's intention to prescribe by regulation $60 000 as being the cut-off point. I believe that the small business person (the hairdresser, fruit and vegetable shop, and so on) needs protection, whereas a bank or large retail outlet is quite capable of looking after themselves and does not need protection.

The purpose for inserting this definition is to refer to 'office premises' and to distinguish such premises from other business premises. The limits should not be left to the Government to be prescribed by regulation, but should be written into the Bill. It is important whether particular premises are or are not involved in the Bill and whether they do or do not come under the operation of the Bill. My proposal has an indexing system to allow for inflation. From inquiries I have made, it appears that there are two classes of premises that are quite different. One is office premises and the other is other business premises.

In regard to office premises, they are usually smaller in terms of size. The amount of money involved is usually smaller. A very common rental for office premises is of the order of $15 000 or thereabouts. Therefore, in regard to office premises I propose that, if the annual rental exceeds $25 000, they should not be caught: they should not come within the ambit of the Act, and that figure ought to be indexed in the way set out in the subsequent amendments.

In regard to other business premises, the rental is usually much higher; quite small businesses pay an annual rental of $60 000. In regard office premises, that is not so. In regard to shops and retail outlets, it is common for quite small businesses to pay as much as $60 000 and in regard to those premises you are still dealing with a small businessman. In regard to office premises, below $15 000 or $25 000 you might have a doctor, lawyer, or people like that. Once you get above $25 000 you are looking at banks and people of that kind who are capable of looking after themselves. In regard to other businesses, you get up to about the $60 000 mark before that applies and you have quite small retail outlets paying in the order of $60 000. It seems to me to be important to write into the Bill which organisations should be brought in and which should be left out.

As I said, I note that this is a matter of some contention because the Hon. Mr Milne has on file an amendment to take out all limits and include all premises, however much the rental might be and however much the tenant might be capable of looking after his own affairs. It is for the reasons I have outlined that I have moved the amendment.

The Hon. K.L. MILNE: Perhaps I should begin by stating that we will oppose the amendment of the Hon. Burdett, partly on the ground that it will complicate matters. From my reading of the Bill and the second reading speeches, it seems to me the whole object is to prevent powerful landlords from bullying less powerful tenants. It would seem in the case of the very powerful landlord that some protection would only be fair and it would also appear that shopping centres are a typical case from which examples keep being drawn.

In principle, the Democrats support this legislation. However, new section 55 (1) *(b)* of Division I introduces the idea of a prescribed rental limit above which the Act may not apply, does not apply or shall not apply, and we disapprove of this in principle. We feel that there is no need to have a distinction between professional offices and other businesses, nor is there a need for a distinction between rental levels.

When one is drawing a distinction between offices and other businesses, one has a mixture of office space where there is perhaps a storeroom, a shop and an office. Where does one draw the line and define it? One cannot define it on a square footage basis because a small shop may be only one in a chain of 10 shops and the owner a very big business person. Therefore, an attempt to make these distinctions will cause trouble.

In any case, indexation of rent levels on a cost of living basis could be inaccurate because property rents very often move in a different way to the cost of living. Rents and prices of real estate in the past 18 months, for example, have increased enormously, whereas other cost of living prices have not done so to the same extent.

Why not leave it optional for all tenants to use the protection of this Bill? It is all very well to say that bigger tenants can afford a lawyer. However, both parties can waste an awful lot of money in a legal action over rent when an arbitrator might do it better and for less, saving money on both sides. New section 67 under Division IV provides that the parties may (and I emphasise 'may') apply to the Commercial Tribunal in the case of a disagreement. There may be a relatively small shop which is part of a large company, for example, but it does not have to apply. If a very large store has an enormous amount of space in a shopping centre, it does not have to go through the Tribunal; it can do it itself, if it wishes to try. That can be an advantage for a large store and for the landlord.

I do not think it is any great help in making the distinction which the Hon. Mr Burdett makes. I suggest that the Government could even dispense with the prescribed amount altogether. Furthermore, I feel that a set rental limit will cause significant complications very quickly. As we all know from other instances, setting a definite limit above which an Act would apply to this or that would often be unfair to those paying either just below or just above that figure. Further, it sounds easy to index that figure, but in practice it causes trouble over the years. We fail to see why there should be a distinction between large and small tenants or between offices and shops. Accordingly, I foreshadow that I will move an amendment to delete new section 55 (1) *(b)* so that there will be no limits and no distinctions at all and far fewer complications.

The Hon. C.J. SUMNER: I am in the very sad position of not being able to accept either amendment. In relation to the Hon. Mr Burdett's amendment, there is a need for some limit—and he accepts that. However, the honourable member wishes to write into the Bill a very complicated procedure to determine what the limits should be. Quite frankly, I think that to write into a Bill a complicated mechanism for arriving at a figure by reference to the CPI or whatever means that no one will know where they are during the year with respect to the limit that applies.

It is all very well to say that it will be adjusted, but we will end up with some absurdly artificial results if we rely on the CPI. As the Hon. Mr Milne has quite rightly pointed out, people will not know with any precision where they stand at any moment in time. In the interests of certainty, for instance, it may well be better to leave the upper limit in position for a couple of years rather than adjusting it every year, because that may not be appropriate. It seems unnecessary to enshrine that in legislation.

Also, the honourable member's proposition to divide up the different sorts of premises is not acceptable, either. We could end up in the one arcade or shopping centre with some tenants who will be covered by the legislation and with others, because they are different sorts of tenants with different businesses, who would not be covered by it. An office with a gross annual rental of $30 000 may not be covered by the legislation, whereas another business with a gross annual rental of, say, $25 000 or $30 000 may be covered by it.

I believe that that is undesirable. Should there be a case for exempting certain sorts of tenancies or business premises, under the legislation there is power to do that. So, I oppose the honourable member's amendment. I believe that there is a need for a limit, but I think that it can be adjusted from time to time by regulation, which is subject to Parliamentary scrutiny.

Unfortunately, I cannot support the Hon. Mr Milne's amendment either. That would create quite severe difficulties. The basis of the discussions that led up to this Bill was that it was applicable to small businesses only. Very firm representation has been made to the Government that it should not apply across the whole range of commercial relationships. That position has been accepted by the Government. The need to act in this area arose because of complaints by small business people who are tenants, generally in larger shopping centres. I believe that it would be quite wrong to make the legislation applicable to everyone who leases premises, no matter how large a business may be involved.

I put to the Hon. Mr Milne the example of Myers: the freehold of Myers is currently owned by the Emanuel Group of Companies which leases those premises to the Myer company to enable Myer to conduct its retail business in Rundle Mall. If the Hon. Mr Milne's amendment were accepted, the Myer company, as a tenant of the Emanuel Group of Companies, would have access to the Tribunal and would be governed by the terms of the legislation. The strongest representation that we have received is that that should not occur, and quite clearly, Myers for example, is not what one might call a small business. The Myer company decided to get out of the business of owning premises because it was felt that the company needed certain capital in order to assist its business and also because, as a number of companies are doing these days, it took the view that Myer is a retailer and not a developer of real estate.

However, if the Hon. Mr Milne's amendment were accepted, that very large corporation, Myer, which has decided to get out of owning real estate, would have access to the Tribunal and would be able to take advantage of the protections that are offered by the legislation, and that is not intended. The strongest representation has been made to the Government against such a proposal because that would open up an enormous area of breadth in relation to the ambit of the legislation, which I think would interfere with normal commercial relationships, where companies like Myer, and so on, are in an equal bargaining position. They have expertise and they have the power to engage people to advise them. They enter into leasing arrangements with the benefit of that advice, and in that case the landlord and the tenant are really on an equal footing. The Government took the view that there was no need for legislative intervention or protection in those circumstances.

The legislation is designed to help the small business person who is faced with a very large corporation as a landlord, where the bargaining position is unequal. That has really been the basis of consumer protection legislation over the years, that the consumer is in a weaker bargaining position than the corporation.

Therefore, there is a need for fair trading legislation, or legislation that places the consumer in a more equal bargaining position. Similarly, if one extends that analogy to small businesses, it is those small businesses that are in a weaker position and do not have equal bargaining strength with larger organisations for which one may need to legislate to overcome any abuses.

Whilst I understand the Hon. Mr Milne's proposition and have some sympathy with the motives behind it, I think that it would undercut the basis of the legislation: certainly, it would be utterly unacceptable to landlords because it would open up any tenant to the benefits of the legislation, even though that tenant may be in some circumstances a larger and more powerful corporation than the landlord itself. So, I cannot accept either amendment and I ask the Committee to stick with the Government Bill.

The Hon. J.C. BURDETT: I certainly agree with the latter part of the Attorney's remarks—not the earlier part. In regard to what the Hon. Mr Milne said, just to give another example: one can easily get a situation where the Commonwealth Bank is the tenant in a six unit strip shopping centre, and it is ridiculous that the Commonwealth Bank should have the protection of this Act in that situation.

I really could not understand the Hon. Mr Milne's reasoning at all when he spoke of fixing limits and said that the problem with limits is that one gets people just above and just below. I recall that very late last year, in regard to the Prices Act Amendment Bill when we were dealing with the question of limits above and below which the Commissioner of Consumer Affairs could conduct actions on behalf of the consumer before the courts, the Hon. Mr Milne himself fixed the limits of $20 000 and $40 000 and whatever: so, I do not understand his inconsistency.

The Hon. R.I. Lucas interjecting:

The Hon. J.C. BURDETT: That was late last year, yes. I do not understand the inconsistency in saying that one cannot have limits because they are unfair because of the aboves and belows. We know that they are a problem, but one has to have a limit.

The first part of the Attorney's remarks did not appeal to me nearly as much. My point is that it is a legislative matter: it is a matter for the Parliament and not just for the procedure of regulations. I know that regulations go before the Subordinate Legislation Committee and can be disallowed in the Council, but I do not believe that this matter should be left to the Government by regulation. That is a most important point. It is a point that my Party has raised on very many occasions.

The Hon. C.J. Sumner: In Opposition.

The Hon. J.C. BURDETT: We raise it in Opposition, of course, but it is our principle that, generally speaking, only minor matters ought to be left to regulation. A question of whether or not the Act applies should, as far as it can, be fixed in the Act itself. This is not an extraordinarily complex system, but a simple system. For those reasons, I oppose that part of what the Attorney said; I certainly very strongly oppose what the Hon. Mr Milne said, and I support my amendment.

The Hon. I. GILFILLAN: As a matter of clarification: the Attorney says that the Hon. Lance Milne's amendment is contrary to the intention of the Bill.

The ACTING CHAIRMAN (Hon. C.M. Hill): Order! Perhaps the Hon. Mr Gilfillan had better refer to his colleague's amendment when he moves it. It is not proper to merge the two into one.

The Hon. I. GILFILLAN: With due respect, everyone else who has spoken until now seems to have merged them very neatly together. I thought that this was the context of the debate.

The ACTING CHAIRMAN: I will put the first one first: then I will give you an opportunity.

The Hon. I. GILFILLAN: As you wish, Sir.

The Committee divided on the amendment:

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

Noes (11)—The Hons Frank Blevins, G.L. Bruce, 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.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 3, lines 15 and 16—Leave out paragraph *(b)*.

As the two previous speakers have made clear what they think and as my amendment will be lost unless they change their minds—I have no additional information to provide to persuade them—I will not call for a division on the amendment.

The Hon. I. GILFILLAN: Will the Attorney explain the signficance of new section 56 (2) as it relates to some of the criticism of the amendment before us? I understand that 'exceeding the prescribed amount' means exceeding the upper limit.

The Hon. C.J. SUMNER: I am sorry that I was not able to advise the honourable member formally in time. Proposed new section 56 refers to the jurisdiction of the Commercial Tribunal where a claim is made in relation to the tenancy agreement and where the prescribed amount is $5 000. If a tenant claimed a breach of tenancy conditions from the landlord, or vice versa, I suppose, and if the amount claimed was less than $5 000, the matter could be dealt with by the Commercial Tribunal. However, if the claim is more than $5 000, the matter may be heard by the Commercial Tribunal with the consent of both parties: if the parties do not agree, new section 56 (2) provides that the matter must be removed from the Commercial Tribunal to normal court proceedings.

Amendment negatived.

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

Page 3, line 44—Leave out 'matter' and insert 'claim'.

This amendment is of a technical nature. I am concerned about the extent of the jurisdiction of the Commercial Tribunal. I gained the impression from the second reading explanation that it is not intended to give the Commercial Tribunal power to ascribe terms and conditions that are not in a lease or tenancy agreement. If that is the case, I want to make it quite clear, because I believe that that should be the position. New section 56 (1) could be construed as applying to any matter or dispute whether or not it was covered by the tenancy agreement, whereas if it was any claim it would tend to restrict it to what should be the jurisdiction of the Commercial Tribunal.

To some extent the amendment has to be read in conjunction with a subsequent amendment which seeks to ensure that in this legislation it is made clear that the Tribunal is to determine the matter that is the subject of proceedings before it according to law. So, I am seeking to put any doubts that there may be about the jurisdiction of the Tribunal beyond doubt and this is one step in doing that. I move that amendment, indicating that I have noticed that in the drafting for two subsequent amendments 'matter' is referred to and it will be desirable to change that and move it in an amended form to deal all the way through with a claim rather than a matter.

The Hon. C.J. SUMNER: The amendment is acceptable.

Amendment carried.

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

Page 4, line 12—after 'Part' insert 'and, except where the provisions of this Part otherwise provide, the Tribunal shall determine a claim that is the subject of proceedings before it according to law'.

I have just indicated that there is a slight drafting error, as much my fault as anybody's, in that I did not check it adequately, but I move the amendment in a slightly different form so that instead of 'a matter' it will be 'a claim'. The advice which I have is that that is in fact covered in the Act which establishes the Commercial Tribunal.

It is important that that be identified expressly in this piece of legislation because there has been some concern expressed to me about the extent of the jurisdiction of the Tribunal. The Attorney will notice that the exception is where the provisions of this Part otherwise provide, so that the intended jurisdiction of the Tribunal is maintained, but in determining other claims which relate to a tenancy such as the interpretation of a tenancy agreement then it must determine that question according to law.

What I do not want to see is the Commercial Tribunal importing into a tenancy agreement terms and conditions which are not specifically provided for in the tenancy agreement and which are not to be specifically imported into it by this piece of legislation. There is a risk that this piece of legislation could be interpreted as allowing the Tribunal to exercise some discretion when, in fact, that is not intended.

The Hon. C.J. SUMNER: That is acceptable.

Amendment carried.

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

Page 4, after line 12—insert new subsection as follows:

(4a) The Tribunal is not empowered to decide any claim relating to an extension or renewal of the term of a tenancy under a commercial tenancy agreement unless the agreement makes provision for an extension or renewal.

Again, I move this in a slightly amended form so that instead of the word 'matter' the word 'claim' is inserted.

Again, I really wanted to make it clear that, except to the extent that the legislation specifically makes provision for the Tribunal to impute terms and conditions, the legislation is not intended to deal with extensions or renewals, except to the extent of interpreting the provisions of any right of renewal or extension. If, for example, there is a tenancy agreement that says that a tenancy shall be extended upon specific terms and conditions then the Tribunal is able to interpret those terms and conditions according to law. If the tenancy agreement makes no provision for an extension or a renewal, but the parties are negotiating for an extension and there is a holding over, then the holding over is subject to the Act.

However, if there is no agreement then the landlord can go to the Tribunal and obtain an order for the tenant to quit the premises rather than the Tribunal being able, again, to declare a renewal on terms that may not have been agreed because the parties could not agree on some of the terms and conditions, including rent. Therefore, again, it is a matter of clarifying what the jurisdiction of the Tribunal is. I understood from the second reading speech that this was really what was intended and I want to put beyond doubt that the Tribunal's jurisdiction is limited to what is proper and is in accordance with the law. I hope that the Attorney is able to accept this amendment in those terms.

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

The Hon. J.C. BURDETT: The new subsection that I propose to insert is labelled (4a). If the Hon. Mr Griffin's amendment is passed then my new subsection will become (4b). The two amendments are not inconsistent in any way. I believe that the best way to proceed is to deal with the Hon. Mr Griffin's amendment first and then deal with mine.

The CHAIRMAN: We will do that.

The Hon. C.J. SUMNER: I have been very co-operative with the Hon. Mr Griffin so far, but it may be that we are at cross purposes here. I cannot accept what the honourable member is putting forward, and I draw his attention to proposed section 55 (1) *(d)* which provides that the Part applies to a commercial tenancy agreement. That indicates the scope of the legislation. It identifies those tenancy agreements to which the Act will apply. Proposed section 55 (1) *(d)* provides that it will apply even if the commercial tenancy agreement is entered into, extended, renewed, assigned or otherwise transferred after the commencement of this Part. Therefore, the clear intention was for the Act to apply not just to an agreement entered into after the coming into

operation of the Act, but also to any extension, renewal, assignment or other transfer of the lease.

The Bill is not intended to apply to those tenancy agreements that were entered into prior to the operation of the legislation and is therefore not retrospective. However, once an agreement is renewed, extended or assigned, it is a new act in relation to a tenancy agreement and should be picked up by the legislation. If the honourable member's amendment is accepted, a large number of tenants would not be caught by the legislation for very many years. If a small business entered into a tenancy agreement last month for a 12 month period and the tenancy was renewed in 12 months, under the honourable member's amendment the legislation would not cover that tenant. If it is a stable successful small business, that situation would apply for years if there were rights of renewal in the original tenancy agreement.

The Hon. C.M. Hill: There must be some retrospectivity allowed.

The Hon. C.J. SUMNER: No, the legislation is designed to apply to any renewal. The alternative is that one is providing for many tenants not to be covered by the legislation for many years.

The Hon. C.M. Hill: A very fine point.

The Hon. C.J. SUMNER: It is not a fine point as far as the tenants are concerned. I draw the honourable member's attention to proposed new section 55 (1) *(d)* and indicate that the legislation was designed to pick up renewals, extensions, and so on. Therefore, the amendment put forward by the honourable member runs counter to the intention of the Bill. For that reason, I oppose it.

The Hon. K.T. GRIFFIN: I do not agree with that. The situation that I am endeavouring to address is not that where there is an express provision for an extension or renewal where the terms are identified because, quite obviously, the Tribunal will have a responsibility in interpreting the rights of renewal or extension. So, if, for example, there is a disagreement about the escalation in rent under a formula in the right of extension or renewal, obviously that will go to the Commercial Tribunal. However, where there is no right of renewal or a right to an extension, one has at the end of the term a conclusion of the tenancy.

The Hon. C.J. Sumner: No you don't.

The Hon. K.T. GRIFFIN: One does. If there is an agreement for a tenancy for a fixed term and no right of renewal or extension, at the end of the term that is the end of the tenancy.

The Hon. C.J. Sumner: It is the end of that agreement—it is not the end of the tenancy.

The Hon. K.T. GRIFFIN: It may have some holding over, and, in that event, the holding over will be subject to the jurisdiction of the tribunal, but only in relation to the holding over and not in relation to the new tenancy to be negotiated between the parties.

At the end of the term fixed in the tenancy agreement there may be no right of renewal for tenancy. I hope that the Attorney-General is not suggesting that, if the tenant stays put and says, 'I am negotiating with the landlord and we cannot reach an agreement,' the Tribunal is then able to step in and say, 'You cannot reach agreement and therefore we determine that these terms and conditions apply for the holding over.'

The Hon. J.C. Burdett: The tenant could stay forever.

The Hon. K.T. GRIFFIN: Yes. I am saying that at the end of that term, if the landlord says, 'I am not prepared to negotiate a renewal', and the tenant holds over, the landlord is entitled to go to the Tribunal and get an order to eject that tenant. That is really what I am endeavouring to put beyond doubt in the amendment that I have moved.

If the Attorney-General is saying that in those circumstances the Tribunal should have some jurisdiction to resolve the inability to reach an agreement during that period of holding over, that is a very serious step to take, and it would significantly prejudice the rights of landlords to obtain vacant possession of their premises at the end of a lease. I am trying to identify, in terms of renewals or extensions, that the Tribunal has some jurisdiction in determining any disagreement on the terms of the tenancy but, where the agreement comes to an end and there is a holding over, if there can be no agreement in respect of rent, for example, or other terms and conditions, perhaps the term, the Tribunal has no right to impute terms and conditions that have not been agreed.

The Hon. C.J. SUMNER: There is no intention to give the Tribunal that sort of power. Clearly, if the tenancy is at an end, that is it as far as the Tribunal is concerned. However, there may be a verbal agreement to extend or renew. The honourable member's amendment would, if carried, mean that a tenant who acted on the basis of a verbal assurance that the tenancy could continue, even though there was no provision for it in the original tenancy agreement, and had placed himself at a disadvantage (continued to operate his business or make improvements to the premises, etc.), would not have access to the Tribunal. The Government does not consider that to be a fair situation.

If the tenancy agreement is at an end, there is no fear. If there is a holding over, the Tribunal does not have the right to come in and sustain the tenant's position; it does not have a right to say that vacant possession should not be given. However, if the landlord has not just overlooked the termination of the written tenancy agreement, and they have negotiated and the landlord has said, 'Yes, it is all right for another couple of years; we can continue on the basis of the previous agreement; the rent is so and so,' and the tenant says, 'Fine', they could then go ahead on that basis. But, in six months the landlord could decide that he has had enough of this tenant, for whatever reason—he might want another one or want the shop for himself—under the honourable member's amendment that tenant would not have access to the Tribunal. The Government does not believe that that is a fair situation.

The Hon. K.T. GRIFFIN: This introduces a new dimension into the ambit of the legislation. I would have thought that, if there was no agreement in writing, where the previous tenancy was a tenancy in writing, whether or not there was an agreement would have to be determined according to the ordinary provisions of the law as to whether or not on the evidence there was such an agreement. In those circumstances, if there has been the sort of agreement to which the Attorney-General refers, he probably has some other problems with the Real Property Act, which says that an agreement such as that in excess of one year has to be in writing.

The Hon. C.J. Sumner: Less than one year.

The Hon. K.T. GRIFFIN: We are now changing the factual circumstances. I do not agree in the circumstances to which he refers that the Tribunal's jurisdiction is ousted if, in fact, it can be established that there is a tenancy.

The Hon. C.J. Sumner: That is the point. Who is to establish that?

The Hon. J.C. Burdett: You have to establish it, anyway.

The Hon. K.T. GRIFFIN: You have to establish it anyway before the Tribunal, as my colleague interjects. I am essentially seeking to ensure that the Tribunal does not have any jurisdiction where there is no right of renewal or extension. At the end of the term the landlord and the tenants say, 'Let's talk about it; we may be able to reach some agreement' and it rolls on for a month or two, after which time it becomes obvious that they cannot reach an agreement and, although there has been no provision for renewal or extension with specific terms and conditions, the Tribunal then exer-

cises a jurisdiction not to terminate the tenancy under the 'holding over' provisions, but acts to import terms and conditions into the new arrangement, even though it cannot be agreed between the parties. That is what I am concerned about and I want to put it beyond doubt.

The Committee divided on the amendment:

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

Noes (10)—The Hons G.L. Bruce, 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 Weise.

Pair—Aye—The Hon. R.C. DeGaris. No—The Hon. Frank Blevins.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 4, after line 12—Insert new subsection as follows:

(4a) Where under the provisions of a commercial tenancy agreement a matter in dispute between the parties is to be determined by arbitration, or by reference to a licensed valuer or other expert, the Tribunal is not empowered to decide the matter unless it appears that there is some substantial reason why it cannot, or should not, be decided in the manner contemplated by the commercial tenancy agreement.

I acknowledge what you, Mr President, said previously, namely, that it is now subsection (4a). In this case, the amendment is self explanatory. The Bill provides for matters in dispute between the parties to be determined by the Commercial Tribunal. However, where there is provision for this in the agreement, where it is lawful in accordance with the Arbitration Act (and there are some circumstances where it is not lawful), that matters in dispute are to be determined by, for example, reference to a licensed valuer or other experts (and that is quite common matters which are not judiciable by a court and therefore are still valid in accordance with the Arbitration Act), and where the parties have agreed and have both signed the agreement and accepted a procedure set out in the lease to provide for these matters, there is no reason why the matter should be referred to the Commercial Tribunal.

I hope that the Government will accept the amendment. It simply provides that, when the parties lawfully agree and have both signed the agreement and acknowledged a particular procedure, that procedure ought to be adhered to, rather than referring it to the Commercial Tribunal, except where it appears that there is some substantial reason why the matter cannot be resolved by these means.

The CHAIRMAN: I presume the Hon. Mr Burdett is referring to 'a matter.' It has almost been established elsewhere that any matter is a claim. On this occasion I presume that the honourable member is happy to leave it as 'matter'.

The Hon. J.C. BURDETT: Yes, 'matter in dispute'.

The Hon. C.J. SUMNER: This amendment is opposed by the Government. I am a little unsure as to just what the honourable member is attempting to do. The first point I want to make is that the Bill does not oust provisions for arbitration. Where there are provisions in a tenancy agreement for arbitration, those provisions ought to be able to apply unless they are overridden in some way by the general law; in other words, whether or not people are bound by an arbitration clause in a tenancy agreement should be determined by the general law. The honourable member's amendment provides that, if there is a provision for arbitration in a tenancy agreement, the Commercial Tribunal cannot be seized of the situation.

The Hon. J.C. Burdett: Do you want duplication?

The Hon. C.J. SUMNER: No. All I am saying to the honourable member is that whether or not an arbitration clause in a tenancy agreement is valid and should be resorted to by the parties is a matter for determination by the general law and should not be a matter that is specifically referred to in this Bill. Where arbitration is not successful, it is fair that the parties should have recourse to a tribunal arbiter, and that maybe the Tribunal itself. What the honourable member seems to be doing is to oust the jurisdiction of the Commercial Tribunal in certain circumstances. Where there is an arbitration clause in a tenancy agreement he is saying that the Commercial Tribunal cannot be seized of that situation.

The Hon. J.C. Burdett: Except in certain circumstances.

The Hon. C.J. SUMNER: Except in very vague and ill defined circumstances.

The Hon. J.C. Burdett: Very explicit circumstances.

The Hon. C.J. SUMNER: They are not explicit. Quite simply, it says, 'unless it appears that there is some substantial reason why a matter cannot or should not be decided in the manner contemplated by the Commercial Tribunal in terms of the agreement'. All the honourable member is doing is creating a new law for no purpose. I am saying that there are provisions in the general law which apply to arbitration clauses in agreements and that that general law should apply in this case. I believe that the Bill should not go off on a frolic of its own with respect to arbitration clauses. Therefore, I oppose the amendment.

The Hon. J.C. BURDETT: The Attorney says that there are provisions in the general law relating to arbitration, which of course there are, but if the Bill remains in its present form, who will determine those provisions? Will it be the Commercial Tribunal? There should not be a duplication; there should not be an ability to go either to an arbitrator in accordance with the agreement or to the Commercial Tribunal. If an agreement is signed and is valid (if it is not valid it can be determined in accordance with general law by the courts, and should not be determined by the Tribunal), and there is a valid arbitration procedure that should be complied with. That is what I am saying. There should not be a duplication. The Attorney has said that the jurisdiction of arbitrator should not be ousted, but he is also saying that the jurisdiction of the Commercial Tribunal should not be ousted. Apparently, there are two areas to which parties can go. I am simply saying that where the parties have signed an agreement, have agreed and are in a consensus situation, and have agreed that in certain circumstances matters ought to be referred to arbitration, where it is lawful that is what happens.

I have set out the circumstance that, where it appears that there is some substantial reason why it cannot or should not be decided in a manner contemplated by the commercial tenancy agreement, the Commercial Tribunal shall have jurisdiction. That is not vague, because that matter can be determined by the Tribunal. For those reasons, I cannot see why the Attorney wants to have it both ways and wants to say that one can go either to an arbitrator or to the Commercial Tribunal. I am saying that it ought to be spelled out where one can go, and where one has agreed to go to an arbitrator that is where one goes.

The Hon. C.J. SUMNER: I cannot accept the honourable member's proposition. The question of whether parties should go to arbitration or not should be dealt with by the general law. That seems to be not unreasonable. The jurisdiction of the Commercial Tribunal should not be ousted unless that happens in accordance with the general law. We should not go off on a legal frolic of our own with regard to tenancy agreements.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett (teller), M.B. Cameron, R.C. DeGaris, Peter Dunn, K.T. Griffin, C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (10)—The Hons G.L. Bruce, 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. R.C. DeGaris. No—The Hon. Frank Blevins.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 7, line 7—Leave out 'fourteen' and insert 'twenty-eight'.

I hope that the Government will accept the amendment which relates to the time in which a copy of the agreement has to be delivered to the tenant. The time in the Bill is a little restrictive having regard to the necessity to stamp and register if the case applies. It is simply a technical amendment to which I hope the Government will agree.

The Hon. C.J. SUMNER: The honourable member is right, and the Government accepts the amendment.

Amendment carried.

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

Page 7, line 8—After 'Stamp Duties Act, 1923' insert 'or, if the document is to be registered under the Real Property Act, 1856, or the Registration of Deeds Act, 1935, within twenty-eight days after its registration'.

This amendment is really part of the same amendment.

The Hon. C.J. SUMNER: The amendment is accepted.

Amendment carried.

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

Page 7, after line 40—Insert new section as follows:

63a. (1) It shall be a term of every commercial tenancy agreement that the tenant has the right, subject to the consent of the landlord, to assign his rights arising under the commercial tenancy agreement or to sublet the premises subject to the agreement and that the landlord will not—

(a) unreasonably withhold his consent;

or

(b) make any charge for giving his consent other than his reasonable incidental expenses.

(2) Where in any proceedings the question arises as to whether or not the landlord unreasonably withheld a consent referred to in this section, the burden shall be on the landlord to prove that he has not unreasonably withheld his consent.

It is considered desirable to ensure that landlords do not capriciously or vexatiously withhold consents to assignments of tenancies. This provision is designed to ensure that rights of the parties are governed equitably. There has also been evidence of landlords extorting certain payments from tenants as the 'price' for their consent. This practice is unconscionable and has caused considerable trouble and anxiety to affected tenants. The landlord can now only ask and obtain his reasonable expenses under the proposal, and I believe fair balance is therefore struck between the landlord and tenant.

The Hon. J.C. BURDETT: I do not oppose the amendment.

Amendment carried.

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

Page 8, line 25—Leave out 'agreement between'.

The amendment ensures that all options for continuing a tenancy are envisaged and not necessarily those only by agreement between the parties or by the determination of the tribunal. There are other variations of that. In view of the hour, I move the amendment without further expanding on it.

The Hon. C.J. SUMNER: The amendment is acceptable.

Amendment carried.

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

Page 8, line 26—After 'Tribunal' insert 'having regard to the terms of the agreement.'

Amendment carried; clause as amended passed.

Remaining clauses (9 to 12) and title passed.

Bill read a third time and passed.

REAL PROPERTY ACT AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 2589.)

Clause 2 passed.

Clause 3—'Priority of instruments.'

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

Page 1, line 26—Leave out 'and'.

After line 32—Insert new word and paragraph as follows:

and

(c) must be made with the consent of the mortgagor.

I appreciate the Attorney's reply to the matters that I raised in the second reading debate. There was one matter that his response indicated could be considered favourably, and that was an amendment to ensure that both mortgagor and mortgagee executed any application to vary priorities on the basis that that requirement was intended in any case. My amendment does that. I believe it is appropriate that both mortgagee and mortgagor sign any variation in priorities.

I believe that highly technical problems about priorities are likely to occur, particularly in relation to company charges, but, on the basis of what the Attorney has indicated, I do not propose to move an amendment in that regard. It is a highly technical area. I have received advice that indicated that there were problems that were not foreseen by the Attorney and his advisers—I presume the Corporate Affairs Commission and the Registrar-General of Deeds. I leave my concerns on the record and merely move the two technical and related amendments. I suggest that they be taken together.

The Hon. C.J. SUMNER: I am happy to support the amendments.

Amendments carried; clause as amended passed.

Clause 4 and title passed.

Bill read a third time and passed.

CARRICK HILL TRUST BILL

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

SOUTH AUSTRALIAN WASTE MANAGEMENT COMMISSION ACT AMENDMENT BILL

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

INDUSTRIAL AND COMMERCIAL TRAINING ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The Industrial and Commercial Training Act, 1981, came into operation on 19 May 1981. It replaced the Apprentices Act, 1950, and established the Industrial and Commercial Training Commission. From experience since that time it has become apparent that various amendments are desirable

to facilitate the operation of the Act. This Bill provides those amendments.

The proposed amendments are in the main machinery matters relating to the intended roles of the Training Commission and of the Disciplinary Committee which was also established under the Act. Whilst most of the amendments will significantly assist their operation, several do extend the Commission's authority and responsibilities and those of the Disciplinary Committee.

Experience with the administration of the Act in respect of the provisions covering the Disciplinary Committee has shown a need for some broadening of the responsibilities of that Committee. At present the Committee can only deal with matters where there has been a breach of the contract of training or of the Act. At times difficulties arise between the parties to a contract of training which cannot be satisfactorily resolved even with the involvement of training supervisors and other officers of the Commission. The view is held that a resolution of these difficulties could be aided by the involvement of the committee which has members representing the interests of both employers and employees. Thus the Bill proposes that the Disciplinary Committee be renamed as the Disputes and Disciplinary Committee and that it be given power to deal with disputes between parties to a contract of training whether or not there has been a breach of the contract or the Act.

The definition of 'pre-vocational training' is broadened from training designed as preparation for training in a 'trade or other declared vocation' to training in 'an occupation'. The view is held that all of the courses of 'pre-vocational training' developed from consultation between the Commission and the Department of Technical and Further Education should be dealt with on the same basis irrespective of the occupations to which they are directed. The separation of such pre-employment training into two groups, one relating to 'trades and other declared vocations' and the second to 'all other vocations' is seen as inconsistent with the broad intentions of the Act. It is also seen as potentially confusing in the community and for those responsible for developing and administering this important new thrust in vocational education and training. The amendment will enable greater co-ordination and increased flexibility in respect to the pre-vocational training programme. It is in line with the prime function of the Commission 'to inquire into, and keep under review, the training that is being, or should be, provided in order to develop the knowledge and skills required in industry and commerce'.

A provision has also been inserted to widen the category of people to whom the Commission can delegate its functions. At present the time-consuming function of approving employers to take on an apprentice or a trainee under a contract of training is performed, by delegated authority, by the Chairman or the Deputy Chairman. Decisions in this area are made on the recommendation of a training supervisor. To facilitate the processing of approvals, it is proposed that the Commission establish the criteria for approval and that the power to approve be delegated to the senior training supervisors on recommendation from the training supervisors.

A further amendment proposes that contracts of training in force at the time of a change of ownership of a business will be deemed to have been assigned to the new owner. This provision is to protect the interests of apprentices and other trainees by preventing their displacement in situations where a new owner may decide not to employ apprentices or wishes to offer the apprenticeships to other persons in their stead. The provision will assist in restricting the size of the pool of 'out-of-trade' apprentices. Of course, where there are circumstances which justify termination, suspension, transfer or assignment of a contract of training by the Commission a new owner is no differently placed than any other employer of an apprentice or other trainee. The rights and obligations under the contract pursuant to the relevant provisions of the Act will apply.

Certain other amendments are made by the Bill to facilitate the administration of the Act and to improve the quality of training available to apprentices and other trainees. Specific authority is provided to the Commission to determine ratio requirements in respect of a particular employer or employers of a particular class. This concerns the ratio of the number of apprentices and other trainees employed by an employer in relation to the number of persons who are to supervise their work. Because it is appropriate and because of the Act's requirement for it to consult, the Commission will in all circumstances establish ratios in agreement with the relevant unions and employer organisations. Where ratios are established in industrial awards and agreements they will provide the basis for decisions, but the amendment provides scope for the Commission's consideration of individual circumstances and flexibility in the application generally of ratio requirements.

The Bill will empower the Commission to withdraw an approval given in relation to an employer under new section 21a in circumstances where the employer no longer reaches the standards required by the Commission. At present, the Act provides for the Commission to revoke an approval only in cases where a condition of that approval has been breached.

The Disputes and Disciplinary Committee is also to be provided with the power to withdraw an approval in dispute situations after suitable inquiry. The committee may require that no apprentice or trainee at all be employed, or alternatively only those, or some of those, who are currently employed continue to be employed. This will introduce a desirable element of flexibility into dealing with disputes in this area.

A further amendment is to enable the Commission to determine that all or part of a period of training occurring immediately before a formal contract of training is entered into can be taken as part of the term of the contract. This will simplify present procedures where parties have entered into a contract of training some time after a relationship of employer and apprentice has been established. In the year to 30 June 1984, there was a need to vary over 130 contracts of training in order to recognise time served with the employer prior to the contract of training being entered into.

Similarly, it is proposed that the time during which an apprentice or trainee has been absent from employment and training be also taken into account. This will ensure that the training period is adequate in relation to the training term determined for each vocation.

This same power in regard to absences from employment and training is also proposed for the Disputes and Disciplinary Committee. The Commission will act where there is no dispute between parties and the Committee will act where there is a dispute or breach situation. The provision will provide for the term of a contract of training to be computed with all related considerations being taken into account. Specifically, it will enable the committee to determine that a contract of training be terminated on a date which best provides for a suitable and just resolution of a situation in dispute, rather than as the provisions of the Act presently require—a decision only with effect on or after the date when the Committee determines the matter.

An apprentice or other trainee who is dismissed from his employment will not be able to make a claim under the Industrial Conciliation and Arbitration Act, 1972, for wrongful dismissal because the relevant provisions of that

Act only apply where the dismissal is not reviewable under any other Act or law.

All of the proposed amendments have been subject to extensive consultation with relevant employer and employee organisations and have been agreed to by the Industrial and Commercial Training Commission and the Industrial Relations Advisory Council, both of which are tripartite bodies. Overall there has been a broad and general acceptance of the provisions of this Bill. There has indeed been much advice and assistance provided during the period of consultations. The substantial value of the principal Act to industry and commerce is acknowledged, I believe, by the support which has been given to this mainly refining exercise. I wish to record the Government's appreciation to all who have contributed.

Clauses 1 and 2 are formal. Clause 3 makes a consequential amendment. Clause 4 amends the interpretation provision of the principal Act. Paragraph *(a)* makes a consequential change. Paragraph *(b)* widens the definition of 'pre-vocational training' so that it can embrace all occupations. Clause 5 amends section 13 of the principal Act by widening the Commission's power of delegation to any person it may choose. Clauses 6 and 7 make consequential amendments.

Clause 8 amends section 21 of the principal Act. The substance of subsections (4) and (5) is replaced in new section 21a. Paragraph *(b)* makes a consequential change to subsection (12). New subsection (13) prevents the parties to a contract of training from terminating or suspending it without the approval of the Commission. This provision will protect apprentices who are under pressure from their employers. If the agreement to suspend or terminate is not in the best interests of the apprentice the Commission will be able to refuse its approval. New subsection (14) also protects an apprentice where there is a change of ownership of the business in which he is employed. Without subsection (14) a change of ownership results in termination of the contract and the new owner is not obliged to enter into a contract of training with the apprentice. The effect of subsection (14) is that the contract of training will remain on foot with the new owner taking the place of the previous owner as the employer under it. Subsection (15) will allow for variations to be made in the form of a contract of training.

Clause 9 inserts new section 21a into the principal Act. The new section replaces the substance of subsections (4) and (5) of section 20 with some additional provisions. Subsection (1) *(d)* requires the employer to comply with the ratio of apprentices to supervisors fixed by the Commission under subsection (5). Subsection (3) enables the Commission to withdraw its approval given under subsection (1) if the matters referred to in that subsection are no longer suitable. Clause 10 amends section 23 of the principl Act. New subsection (1a) will provide a simple method of rectifying the common problem of an apprentice working for an employer before a contract of training is executed. Under paragraph *(a)* this period will be able to be included when calculating the term of the contract served by the apprentice. Paragraph *(b)* enables the inclusion of a term served under a previous contract of training with a previous employer and paragraph *(c)* enables the exclusion of periods of absence.

Clause 11 adds subsection (3) to section 25 of the principal Act. This new provision ensures that an apprentice will be entitled to wages for time spent by him in fulfilling the requirement of subsection (1) to attend at courses of instruction except where he is repeating the course. Clause 12 replaces section 26 of the principal Act. The new section expands the role of the committee to deal with disputes generally between parties to a contract of training. Subsection (3) sets out the powers of the committee on inquiring into a matter before it. Paragraph *(b)* allows a suspension from employment to be backdated and paragraph *(c)* allows cancellation of a contract to be backdated. Paragraphs *(f)* and *(g)* give the committee power to require performance, or excuse performance, of terms of a contract. Paragraph *(h)* allows the committee to order the exclusion of a period when computing service under a contract. By paragraph *(i)* it may withdraw approval given by the Commission under section 21a and paragraph *(j)* enables the committee to order an employer not to employ any apprentices in the future. Clause 13 makes a consequential change to section 28 of the principal Act. Clause 14 amends section 31 of the principal Act by extending the time that records must be retained by an employer to two years after the contract of training expires or is terminated.

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

ADJOURNMENT

At 11.15 p.m. the Council adjourned until Wednesday 20 February at 2.15 p.m.