LEGISLATIVE COUNCIL

Thursday 14 March 1985

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

PETITION: CONSTITUTION ACT AMENDMENT BILL (No. 2)

A petition signed by eight residents of South Australia praying that the Council amend the Constitution Act Amendment Bill (No. 2) to provide for a referendum on the issues of a fixed term for the House of Assembly and extension of the life of Parliament from three to four years was presented by the Hon. R.J. Ritson.

Petition received.

QUESTIONS

PUBLIC WORKS STANDING COMMITTEE

The Hon. M.B. CAMERON: I seek leave to make an explanation before asking the Attorney-General a question about the Public Works Standing Committee.

Leave granted.

The Hon. M.B. CAMERON: In debate on yesterday's motion of the Opposition in reference to the escalating costs and growing delays associated with the State Aquatic Centre, the Attorney-General sought to direct blame for the almost 90 per cent blow-out in costs on the Public Works Standing Committee and the Hon. Mr Hill. The Attorney-General said:

> All I say is that it raises a question about the quality of the investigation that was carried out by the Public Works Standing Committee.

The Public Works Standing Committee comprises seven members: two from the Legislative Council and five from the House of Assembly. Of those seven members, four, including the Chairman (Mr Whitten), the Hon. Mr Creedon, who sits opposite, the member for Unley (Mr Mayes) and the member for Peake (Mr Plunkett) are members of the Attorney-General's own Party, and performance was clearly questioned by the Attorney-General. In fact, I believe that what was said was a direct vote of almost no confidence in that Committee by the Attorney-General. Will the Attorney-General withdraw the implied criticism in his statement of yesterday or does he stand by his criticism of the Public Works Standing Committee and the quality of its investigations, which he made in the Council yesterday?

The Hon. C.J. SUMNER: The honourable member will recall that yesterday in the Council he moved a motion relating to the Aquatic Centre at North Adelaide. I responded, quite rightly, by saying that the motion was unnecessary and that the powers of the Auditor-General were quite clear.

I also replied that the Auditor-General would be able to investigate and inquire into any overruns that might occur in Government department expenditure. However, in moving his motion the honourable member did not seek in any way to be fair or unbiased in the proposition he put forward. He was, of course, as one would expect from the Leader of the Opposition, solely concerned with attempting to denigrate the Government, and the whole of his speech revolved around the responsibility of the Ministers concerned and indeed the responsibility of the Public Buildings Department as the project manager.

That was the essence and the range of the Leader's criticism. He did not mention that contract quotes for the design had been taken from the private sector or that construction was being carried out by the private sector. He did not mention the potential causes of any delay or escalation in costs in any other sector. So, of course, what the Leader put forward was a political speech, not in any way attempting to analyse the situation in a serious manner.

The Hon. L.H. Davis: There were pretty hard facts.

The Hon. C.J. SUMNER: It contained no hard facts.

The Hon. L.H. Davis: Don't you call a blow-out of—

The PRESIDENT: Order!

The Hon. C.J. SUMNER: It was as hard a fact as I gave to the Council yesterday (and honourable members were surprisingly quiet about it) that in six months in 1982 the cost of the Liberal project in Hindley Street—that is, the project that never was, the project that we are not sure would ever have been—if it was to be, had escalated by about $5 million within six months. Honourable members cannot have it both ways. During the Liberal term of office that was the sort of escalation involved in the Hindley Street aquatic centre, and no doubt the figure assessed in October 1982 would probably have been even greater than was indicated at that time.

The speech made by the Leader of the Opposition was, as I said, a fairly obvious attempt to sheet home all the responsibility for some delay and escalation of cost in this project to the two Ministers and the Public Buildings Department. It was an attempt to denigrate the Public Buildings Department as the project manager. All I was concerned to do (and I did it) was to point out that other parties are involved in the project; other parties are involved in assessing the project; and other parties are involved in the design and construction of the project—not the Public Buildings Department as the project manager, but obviously the private sector is involved, a private company having tendered for the job. Two private companies and, indeed, I suspect perhaps more are involved in some capacity in the construction of the Aquatic Centre.

I further pointed out that the Public Works Standing Committee had assessed the project prior to its being approved. The Hon. Murray Hill (who sits behind the Hon. Mr Cameron) and I had a little discussion about that: I thought it was quite a jocular interchange. No particular malice was involved in it. The Hon. Mr Hill, who was in the Chamber at the time, was quite aware—

An honourable member interjecting:

The Hon. C.J. SUMNER: The Hon. Mr Hill took the comments about the Public Works Standing Committee in the manner in which all members in the Council took them. I am not sure whether the *Advertiser* journalists are losing their sense of humour, but anyone in the Chamber yesterday who witnessed the debate would have noticed that the comments about the Public Works Standing Committee were made in interchange with the Hon. Mr Hill, an esteemed member of that committee and former property developer, a man of significant experience in assessing construction projects. Indeed, one of his very redeeming features is his sense of humour. He is well known for his humorous interjections in this Chamber and for engaging in a certain amount of banter across the floor.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: The Hon. Mr Creedon, as I recall, was reposing on the back bench at the time, and there is nothing wrong with that. While that exchange was of a somewhat jocular, albeit rowdy, nature, because of interjections that were being made by members opposite, I would have thought that a witness to the comments about the Public Works Standing Committee would appreciate the nature of the remarks that were made. Nevertheless, that does not detract from the point that I made, which was that the Public Works Standing Committee did assess the project.

To sum up, the effect of what I said yesterday was in response to the Hon. Mr Cameron's biased and narrow political attack about the Aquatic Centre. I was concerned to point out that more people were involved in the decisions relating to the Aquatic Centre than the Ministers concerned and that more people were involved in the construction of the Aquatic Centre than the Public Buildings Department, which was just the project manager. It was in that context that the Public Works Standing Committee was mentioned and also, therefore, obtained some notoriety in the daily press.

I do not believe that there is any need for further action as far as the Public Works Standing Committee is concerned. Indeed, I was complimentary yesterday about the Hon. Mr Hill's skills as a member of that Public Works Standing Committee. He is a long serving member of the Parliament, a man with significant and considerable experience in local government, a very successful property developer in this State and a man who has been on many occasions used to assessing large projects. I indicated yesterday that that was his reputation and that he as a member of the Public Works Standing Committee was also involved in an assessment of this project.

The Hon. M.B. CAMERON: A supplementary question, Mr President. That is what they call a round-and-round-the-mulberry-bush answer. My supplementary question, which will give the Attorney-General one more chance to lift the cloud that he has put over the Public Works Standing Committee, is: will he withdraw the following statement that he made yesterday:

> It raises a question about the quality of the investigation that was carried out by the Public Works Standing Committee. Will he also apologise to the Public Works Standing Committee for the slur that he cast on it? Despite his attempt to laugh off the matter today, that was a slur.

The Hon. C.J. SUMNER: I do not believe that there is a cloud over the Public Works Standing Committee.

The Hon. M.B. Cameron: There is.

The Hon. C.J. SUMNER: If there is any cloud, it has been created by the honourable member's accusations. If there is any cloud over the PWSC as a result of this project, it should be sheeted home to those responsible. Those responsible are clearly the Leader of the Opposition in another place and the Leader of the Opposition in this place, who raised the matter and who sought to criticise the Government, and say that the only people involved in this project were the Ministers, and the Public Buildings Department. The Leader introduced his motion yesterday in a manner that completely evaded the facts of the situation. I add that, in the interests of free, democratic and open debate on such matters in South Australia, we facilitated the Leader's introducing his motion.

There should be no doubt about who raised the issue: the Hon. Mr Cameron raised it and, as I said, as far as the PWSC was concerned in an assessment of the project (including the Hon. Mr Hill who, of course, is an esteemed member of the PWSC), I was concerned to point out that whatever the result of any ultimate Auditor-General's inquiry, or any revelations—

The Hon. M.B. Cameron: You need not go on.

The Hon. C.J. SUMNER: I understand the honourable member: when he does not get the answer that he so often seeks in this Council—

The Hon. M.B. Cameron: I just want an answer.

The Hon. C.J. SUMNER: I have given you an answer; I have given a lengthy comprehensive answer about the issue.

The Hon. M.B. Cameron: Round and round the mulberry bush.

The Hon. C.J. SUMNER: No. I will repeat it again if the honourable member wishes me to do so. I indicated that the PWSC was involved in an assessment of the project, and I stand by that. There is no cloud over the PWSC. If there is a cloud, it has been placed over it by the honourable member's accusations about a project that was assessed by the PWSC.

The Hon. M.B. Cameron: Do you refuse to withdraw the remarks—yes or no?

The Hon. C.J. SUMNER: There is no cause to withdraw the remarks that I made about the Hon. Mr Hill. In fact, I was very complimentary about him.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: I am not as churlish as the honourable member. I maintain my complimentary remarks about the Hon. Mr Hill and maintain my comments about the PWSC, which was involved in assessing the project. The private sector was involved in construction of the project and so it is wrong—almost verging on dishonest—for the Hon. Mr Cameron as Leader of the Opposition to come into this place and give the impression to the South Australian public that somehow or other the only people involved in this individually were the Ministers and the Public Buildings Department, as project manager. Clearly, that is not correct. The Hon. Mr Cameron knows that that is not correct, and yesterday I set that record straight, very correctly and, I thought, at times, in quite an entertaining way as far as the Hon. Mr Hill and my exchange was concerned.

FROZEN FOOD COMPANIES

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about frozen food companies.

Leave granted.

The Hon. J.C. BURDETT: There has been quite a lot in the media recently about frozen food companies, that is, companies which, as I understand it, contract with consumers to provide frozen food over a period in return for a stated sum of money.

On 12 March there was a programme about this matter on 5DN at 6 o'clock and another on the Ford show at 9 o'clock. Complaints were made both about the quality of the product and the high rate of interst charged. I do not know much about the operation of these companies, and ask the Attorney to investigate these matters. As I understand, quite often the credit provided to the purchaser of the food who enters into a contract is not provided by the company involved but by a finance company. Complaints made on that programme were about very high rates of interest of around 27 per cent. Of course, finance companies commonly charge figures of that order.

Will the Attorney investigate this matter and bring back answers about whether the way in which these frozen food companies are operating brings them within the provisions of the Consumer Transactions Act with regard to quality of food, and, more particularly, with regard to the provision of credit? Also, where these companies provide credit, are they credit providers within the meaning of the Act and do they bring themselves within the provisions relating to truth in lending? Further, are they obliged to make full disclosures as to true interest rates, and do they in fact, do this?

The matters raised on 5DN and elsewhere have been referred to by the member for Unley in another place, and they certainly give rise to concern. Will the Attorney examine the operations of these companies to determine whether their operations are such as to bring them within the purview of the Consumer Transactions Act as to the quality of the food sold, and more particularly as to the credit given so that they are obliged to disclose in the prescribed manner the actual credit charges that they make?

The Hon. C.J. SUMNER: I have had some inquiries made into these allegations, and will have the matters raised by the honourable member investigated and bring back a reply.

ACCESS FOR DISABLED

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking you, Mr President, a question about access for the physically disabled to Parliament House.

Leave granted.

The Hon. I. GILFILLAN: The Year of the Disabled has come and gone, and although one would not expect all problems relating to the disabled to have been solved in that year it appears to me that, were I limited in my mobility to a wheelchair or some other means that prevented my ascending stairs, I could not get into Parliament House by normal means.

There do not appear to be any signs indicating to the physically disabled how they can find access to Parliament House. However, once they are inside, I am pleased to note they would have absolutely no difficulty in finding toilets, because there seems to be a generous display of signs indicating to the physically disabled where the toilets are in the building. There may be other signs, not clearly apparent to me, that are adequate.

I ask these questions to highlight the fact that I believe, and I am sure other members also believe, that Parliament and Parliament House should be as freely available to the physically disabled, particularly the users of wheelchairs, as it is to those of us who are fortunate enough to be able to climb stairs. What and where are the signs and directions to allow entry to Parliament House by physically disabled members of the public? Do you, Mr President, regard these directions as adequate? If not, what do you consider adequate directions and what action would you be taking to have these directions implemented?

The PRESIDENT: Certainly, I can take action to have further signs placed, if that is of benefit. However, the provision of doors that are accessible to a person in a wheelchair means that that person would need some contact with a member or someone inside Parliament House to open the doors for them. There is access by wheelchair through the front verandah of the Constitutional Museum, through the small gate and in the western door opposite the Constitutional Museum. There is also access by wheelchair at the second level of the carpark, entering the basement of Parliament House. Again, a person wishing to enter would either need a card, be with someone with a card or have someone inside Parliament House prepared to let them in. I presume that it is not difficult to ring the caretaker or someone to be at the door at a set time to let such a person in. If that is the case, then I presume that any further signposting would not be necessary since they would get their directions when they rang Parliament House.

The Hon. M.B. Cameron: There is a bell.

The PRESIDENT: They could ring the bell, yes. I presume that it is within reach. The bell is on the western side door opposite the Constitutional Museum.

The Hon. I. Gilfillan: There are no signs at the front of the building for someone to readily pick this up, I understand.

The PRESIDENT: That is right. I do not think that there are any signs there.

CHILD CARE

The Hon. ANNE LEVY: I seek leave to make a brief statement before asking the Minister of Agriculture, representing the Minister of Education, a question about child care in TAFE.

Leave granted.

The Hon. ANNE LEVY: The report of the Federal Technical and Further Education Council recommended that action be taken in technical and further education departments in different States both with regard to the provision of student services and child care. I understand that TAFE in South Australia has recently appointed a Superintendent and an Education Officer to consider the matter of student services in TAFE, presumably from money allocated by the Commonwealth Tertiary Education Commission on the recommendation of the Technical and Further Education Council. I understand that one only of the tasks of the Education Officer is to inquire into the needs in TAFE regarding child care. Such an inquiry is obviously a very valuable component of student services, for which her appointment was made.

Can the Minister say whether the Technical and Further Education Council and the Commonwealth Tertiary Education Commission have allocated any money to TAFE in South Australia specifically for staffing and supervision required in expanding child care facilities in TAFE? If money was specifically allocated for this purpose, that is, for staff relating to child care provision, can the Minister say how much, and when these child care staff can be expected to be appointed?

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

PARLIAMENT RECORDS

The PRESIDENT: On Thursday 28 February the Hon. Mr DeGaris asked me a question concerning legislative records and was granted leave to table a document from the Canadian Parliament concerning Bills introduced into that Parliament. I have perused the document that was tabled, and it suggests that it is produced on a sessional basis.

The honourable member would be aware that the Council, at the end of each session, has a Bill list compiled showing the Bills that have passed, the amendments thereto, and the relevant Act number, and the subsequent fate of the Bills that did not pass. In addition, a weekly index of Bills is produced and this, together with the daily Notice Paper, would provide interested persons with adequate information concerning the sessional legislative programme.

Of course, *Hansard* also contains all the information concerning the stages of the Bill before the Parliament. To produce this information in another form or on a regular weekly basis for general circulation through the post would be a costly exercise and beyond the very limited resources available to the Council. I mention here the very valuable newsletter produced and distributed by the honourable member himself, which presently costs nearly $10 000 per year. It is obvious that many persons would be interested only in certain legislative areas. Consequently, such a mailing list would become so extensive, not only to accommodate these interests but also those with general interests in Parliament.

Persons interested in the fate of particular Bills have always had this information given to them readily by officers of the Council, often on a daily basis. I presume that that is a satisfactory answer to the honourable member. It seems to me that it would be testing resources beyond a necessary point to try to publish a further list of Bills during the session.

ROAD FUNDING

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Transport, a question about road funding.

Leave granted.

The Hon. PETER DUNN: The Federal Government receives $5.2 billion from petrol tax, and $3.6 million of that sum is South Australia's share. Whatever criteria is used, we cannot get more than $3.6 million, or 7 per cent of the $5.2 billion. The population of South Australia represents 9 per cent of the population of Australia; the number of cars registered in this State is in excess of 10 per cent of the total number registered in the country; and South Australia has more than 11 per cent of the country's roads. In fact, we would be entitled to about 12 per cent of that $5.2 billion because South Australian motorists use in excess of 12 per cent of all petrol consumed in Australia.

South Australian roads, to say the least, are in rather poor condition. In parts of my district the roads are in very poor condition, so poor that some arterial and main roads are not sealed, even though there is a reasonably heavy traffic flow not only of cars but also of vehicles that carry grain and stock. These vehicles carry the produce that brings a great deal of revenue to this State. Many of the roads require sealing immediately; those that do not need sealing should be upgraded or resheeted; and a number of sealed roads need resealing. The condition of the roads is a great disadvantage to a number of projects and to tourism.

The costs of living in some areas are enormously escalated because a car lasts half the time that it would last if it was driven over sealed roads. Transport costs have increased enormously because trucks break down and wear out more quickly. There is a very unfair impost on those people who live far from the city. Many amenities are provided in cities, such as a transport system, which costs the Government an enormous amount but which is provided for everyone to use.

The Hon. C.M. Hill: Those people make a very strong contribution to the economy of the State.

The Hon. PETER DUNN: Indeed: the contribution from these areas is enormous. What action is the Minister taking to ensure that our share of the road funds is increased so that it may be at least equal to the percentage of any of the criteria I cited, that is, road miles, the number of cars, the number of people, and the amount of fuel consumed?

The Hon. FRANK BLEVINS: Despite the fact that the Hon. Mr Dunn said that it would be impossible to devise a formula for the Commonwealth to use, obviously a formula has been devised, and the Commonwealth is using it. I will attempt to ascertain—

The Hon. Peter Dunn interjecting:

The Hon. FRANK BLEVINS: Obviously, that is not the case. The Commonwealth is using a formula that gives us less. However, I will bring this matter to the attention of the Minister of Transport and bring back a reply.

HOUSING INTEREST RATES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General, in the absence of the Hon. Dr Cornwall (who represents the Minister of Housing), a question about housing interest rates.

Leave granted.

The Hon. L.H. DAVIS: This question should perhaps more properly be directed to the Leader of the Government in any event. Honourable members would be aware that the recent softness in the Australian economy, as reflected by the decline in the value of the Australian dollar as against the American dollar, has led to some firming in interest rates. Indeed, I understand that at present one of Adelaide's leading building societies is offering as much as 14.5 per cent for money fixed for just three months. Inevitably, this pressure on both short and long term interest rates will flow through to the housing sector. I understand that at present housing interest rates offered by South Australian building societies are possibly up to 1 per cent lower than housing interest rates available from their Eastern States counterparts.

However, with the increase in borrowing rates by building societies, inevitably the margins will be squeezed, and in fact the margins obtainable from building societies on borrowing and lending have reduced by .5 per cent in the past two months. Something has to give, and it would seem that an increase in interest rates for housing loans is inevitable. Has any South Australian building society made application to the South Australian Government to increase housing interest rates?

The Hon. C.J. SUMNER: Not to my knowledge. There have been comments about interest rates in the daily press from both the Manager of the State Bank and the Chairman of a building society, Mr Fidock, in this regard. I understand that to some extent pressure on interest rates develops at this time every year but it does not last beyond a certain temporary period. I do not intend to speculate about building society interest rates or any other interest rates: that would serve no purpose. As the honourable member said, comments from those two institutions at least have appeared in the press. I do not believe that any formal application has been made for an adjustment of building society interest rates but, no doubt, if any application is made and if it is approved, the honourable member will hear about it. I do not envisage that there will be a need to approve an increase in interest rates at least in the immediate future.

HUMAN TISSUE

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Attorney-General, in the absence of the Minister representing the Minister for Environment and Planning, a question about the disposal of human flesh.

Leave granted.

The Hon. R.J. RITSON: Honourable members will recall that I asked the Minister of Health a question about the absence of any requirement for hospitals to dispose of parts of the human body in a particular way. Since I asked that question I have been contacted by constituents, and I have discovered that a number of hospitals possess the type of oil-fired furnace that reaches a temperature of 700 degrees centigrade, that is, a satisfactory heat to cremate these parts of the body; however, the hospitals have ceased to use these furnaces. Therefore, one assumes that dumping of tissue in ordinary rubbish dumps continues.

This is a cause of great concern to a number of people because the dumping occurs in plastic bags in a way in which neither the proprietors of the dump nor the Waste Management Commission has any idea as to what is going into those dumps. The temperature at which such rubbish is burned, if it is burned, is low, which would not in any way destroy the material. I understand also that the amount of earth layered over the material is not sufficient in many cases to prevent the material being dug out by dogs or other stray animals. This is a most undesirable set of circumstances.

I ask the Minister to consult with his colleagues and discover, first, whether any officer of the Department of Environment has within the past five years contacted any hospital to prevent or dissuade that hospital from using its

furnace for the purpose of disposal of waste. I ask the Minister to consult with his colleague, the Minister of Local Government, to see whether that Minister could have discussions with the Waste Management Commission to see whether some identification and quantification of this type of waste could be made so that if such dumping is to continue a deeper burial and heavier coverage of earth could be guaranteed.

The Hon. C.J. SUMNER: I will refer the question to the appropriate Ministers and bring back a reply.

STATE BUDGET

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

Leave granted.

The Hon. L.H. DAVIS: The South Australian Government, since its election in November 1982, has been for the most part fairly coy about the state of the finances of South Australia. This is in sharp contrast to some other State Governments: for example, the New South Wales Government releases an interim or six-monthly report on the Budget. In other words, it gives Government, Opposition and community members an opportunity to review the progress of the State's finances. To date, as far as I am aware, the Treasurer has not done so. I ask the Attorney-General:

1. Will the Government consider introducing an interim Budget report, that is, a six-monthly report on the Budget in each financial year, as a matter of course?

2. Will the Attorney-General advise the Council what is the current expectation for the 1984-85 State Budget: that is, is it expected to come in over or under the Budget as forecast when the Budget papers were presented to the Parliament last year?

The Hon. C.J. SUMNER: The Government has not been coy about the Budget or about the financial position of this State. Information has been provided regularly to the Parliament about budgetary affairs. No change of procedure as far as information is concerned has been adopted by this Government from that of the previous Government, or Governments before that, except that this Government has provided more reports on the state of the Budget than the previous Government did. Certainly, in the first six months of this Government there were several reports on the state of the finances; those reports only served to indicate the parlous state in which the Tonkin Government had allowed the finances and budgetary position of this State to arrive.

Members interjecting:

The Hon. C.J. SUMNER: Any honourable members can interject, but they know, as the Hon. Mr DeGaris knows, when they really bother to look at it objectively, which unfortunately they are incapable of doing—

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: The honourable member is interjecting again. His interjections got him into a lot of trouble yesterday. He should refrain. What the Tonkin Government did—

The Hon. C.M. Hill interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: The esteemed Chairman of the Public Works Committee is content with his position.

The Hon. C.M. Hill: He wasn't yesterday.

The Hon. C.J. SUMNER: And the honourable member—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: No. The Hon. Mr Whitten and I had a convivial lunch—

The Hon. C.M. Hill: I bet that you paid!

The Hon. C.J. SUMNER: No.

The Hon. C.M. Hill: It was a front-page scandal, even to the photographs.

The PRESIDENT: Order! The Hon. Mr Hill has had a pretty good run now.

The Hon. C.J. SUMNER: The honourable member was not here attending to his Parliamentary duties when I answered—

The Hon. C.M. Hill: I was in the gallery with my Vietnamese friends.

The PRESIDENT: Order! I call the Hon. Mr Hill to desist from any further interjections.

The Hon. C.J. SUMNER: The honourable member was not here when I answered a question from the Hon. Mr Cameron on the topic.

The Hon. C.M. Hill: I was in the gallery.

The Hon. C.J. SUMNER: I do not intend to be distracted from the original question by that interjection. Regular financial reports were presented, particularly in the earlier stage of this Government, on the Budget—

The Hon. L.H. Davis: Not lately, though!

The Hon. C.J. SUMNER: That is not true, either. They showed the parlous state of the State Budget, which everyone who honestly looks at it has had to admit, including the Hon. Mr DeGaris, who has spoken about it on several occasions in this Parliament. Since then, action has been taken by the State Government to attempt to correct that deficiency which existed and which everyone knew about because of the Tonkin Government philosophy—it was the first time in the history of South Australia—to use capital works funds on a regular, sustained basis to prop up the Revenue Account. Everyone knows that that is what occurred and that that is how that Government financed tax cuts.

The Hon. M.B. Cameron: You are still doing it.

The Hon. C.J. SUMNER: Yes, but to a much less extent.

The Hon. M.B. Cameron: Ahhh!

The Hon. C.J. SUMNER: That interjection is dishonest, as the honourable member knows. Because of the state of the deficit, it is not possible to wind back a situation that was created by a transfer of some $140 million of capital works funds to Revenue in the three years of the Tonkin Government. That is what occurred. Capital funds are still being used on the revenue side of the Budget because, clearly, one cannot turn around that sort of situation overnight. This Government has moderated the extent to which capital works funds are being used for the revenue budget, but every honest member of this Parliament cannot deny that that was the tactic employed by the Tonkin Government. I am pleased to see the Hon. Mr Davis nodding affirmatively to that proposition.

The Hon. L.H. Davis: I am nodding off.

The Hon. C.J. SUMNER: Then I take it that the honourable member talks in his sleep. Regular reports have been provided: the regular Budget, the Estimates Committee analysis, the Supplementary Estimates Committee debate last year, the Supplementary Estimates Committee debate in 1983, the regular Budget debate, debates on the special Budget papers and statements provided by the Treasurer, particularly in the early months of this Government. There have been at least two Supply Bills in each year.

The Hon. L.H. Davis: We have to have those, don't we?

The Hon. C.J. SUMNER: Of course, and they would have provided the honourable member with an opportunity to question the Government about the budgetary position and to make contributions to the debate.

To suggest that the Government is being coy about the Budget is nonsense. I am advised by the Treasurer, that there is no cause for the introduction of an interim Budget in this particular financial year and generally, as I understand it, the Budget is on course.

The Hon. L.H. Davis: I asked for a half-yearly report.

The Hon. C.J. SUMNER: Your words were: 'an interim Budget'. The honourable member used those words; I noted them.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: The honourable member then went on about a six-monthly report. I am responding by saying that there is no need for an interim Budget. I am responding by saying that, as I understand the situation from the Treasurer, the Budget is on course in terms of the original proposition that was put before Parliament last year.

The honourable member seems to get prematurely agitated about things in this Parliament. If he took notice of what happened in another place he would know that a Supply Bill has been introduced and is now being debated by his colleagues in another place. They are in the midst of a detailed debate about the Supply Bill which, of course, raises the question of the State Budget. Also, the honourable member knows that in order for that Bill to become law it has to be introduced into this Council and must pass this Council. When it is introduced reasonably soon the honourable member will be able to make his usual contribution about the state of the nation, and I would advise him to do that. The honourable member is always very well prepared in contributions that he makes. The only exception was his contribution the other evening to the Liquor Licensing Bill which, I thought, he had hurriedly cobbled together but, nevertheless, he usually spends a little more time in research. I would expect him to do the same when debating the Supply Bill that will be before this Council soon. If the honourable member has any contributions to make, I will look forward to hearing them then.

STATE TAXES

The Hon. R.I. LUCAS: Can the Attorney-General bring back at some future stage an update as to the progress of the review into State taxes?

The Hon. C.J. SUMNER: I am sure that the Treasurer will provide information on that topic at the appropriate time. I can indicate only that I will refer the honourable member's question to the Treasurer and ascertain the position.

FINGER POINT

The Hon. M.B. CAMERON: Has the Attorney-General a reply to my question of 19 February about Finger Point?

The Hon. C.J. SUMNER: The honourable member's questions on the alleged clean-up of the Finger Point area were referred to the Minister of Water Resources who is responsible for the operation and maintenance of the outlet and the designated restricted beach area. He has advised me that it is normal procedure for the Engineering and Water Supply Department to patrol the area every 2-4 weeks to ensure that trade waste controls under the Sewerage Act are being met by local industries. This may result in the collection for analysis of small quantities of whey sometimes discharged by local cheese industries.

I am assured by the Minister that there has not been any attempt by the Engineering and Water Supply Department to clean up the beach using chemicals or any other means, nor is either he or the Department aware of any other authority or person having done so. He does not consider it necessary to conduct an investigation to determine whether a clean-up using chemicals was attempted.

STEEL REGIONS ASSISTANCE SCHEME

The Hon. PETER DUNN: Has the Attorney-General a reply to my question of 21 February about the Steel Regions Assistance Scheme?

The Hon. C.J. SUMNER: The answers are as follows:

1. Yes. The Government is working with the community of Whyalla to develop projects to be funded under the Steel Regions Assistance Scheme. An allocation of $10 million is available for Whyalla, of which $1.8 million is already committed. $1.5 million is to be spent on developing the Whyalla foreshore and $0.3 million on the employment of an industrial development officer.

2. The Government in conjunction with the Whyalla community is already developing such a plan.

3. If this plan includes projects which do not meet the scheme's criteria but nevertheless are essential for the future of Whyalla, the Government will press strongly to have the criteria modified to ensure that such projects can be funded under the scheme.

QUESTION ON NOTICE

SPLATT ROYAL COMMISSION

The Hon. J.C. Burdett, for the **Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: In relation to paragraph 4 of the answer to Question on Notice answered on 17 October 1984 relating to the Splatt Royal Commission:

1. Have all accounts outstanding as identified in that answer now been paid?

2. If not, which accounts are still outstanding and for what reasons?

3. When were the accounts finalised and paid?

4. How were the accounts finalised and what amounts were paid in respect of each account?

The Hon. C.J. SUMNER: The replies are as follows:

1. Yes.

2. Not applicable.

3. and 4.

Account	Amount $	Paid
Mr M.A. Abbott	14 700	28.11.84
Ms M. Shaw	24 000	28.11.84
Mr P. Norman	32 000	5.12.84
Prof. J. Haken	700	5.12.84
Dr M. Pailthorpe	16 693.23	5.12.84
Mr P. Hastwell	11 881.53	28.11.84
Dr T. Beer	8 500	22.11.84
Mr G. Dickinson	2 175	29.1.85
Mrs M. Millingen	4 268.70	5.12.84
Telecom	1 179.72	17.10.84
Telecom	70.15	4.10.84
Government Printer—report	8 316.18	4.10.84
Government Printer—reprint	3 850	17.10.84

The accounts of Ms Shaw, Prof. Haken, Dr Pailthorpe, Mr Hastwell, Mr Dickinson and Mrs Millingen were settled in full.

As a result of the negotiations, Mr Abbott, Mr Norman and Dr Beer agreed to accept a lesser amount than their submitted accounts.

TRESPASSING ON LAND ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Trespassing on Land Act, 1951. Read a first time.

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

That this Bill be now read a second time.

This Bill seeks to increase penalties for conduct which is in breach of the Trespassing on Land Act, 1951. That Act came into effect on 6 December 1951 and created certain criminal offences. In particular, section 5 laid down penalties for unlawful entry on an enclosed field; section 6 for remaining on such a field after being requested to leave; section 7 for the offender refusing to state his name and address to the person making the request or for giving a false name and address; and section 8 for a person falsely stating that he is the owner or occupier of the enclosed field or an employee of such owner or occupier. It is quite apparent, from recent statistics furnished to me by the Commissioner of Police, that this Act is regarded as having a present and continuing relevance to the prosecutional armoury.

But it is equally apparent that the penalties, which were laid down in 1951—and which have not been upgraded since then—are quite inadequate. They are penalties which could not be described as having any value as either a specific or general deterrent. Therefore, the penalties are increased in some instances by as much as 25 fold. In May 1984 this Government secured amendments to the Police Offences Act to deal with aspects of unlawful entry on land. Heavy penalties were prescribed for the offences established.

The penalties proposed pursuant to this Bill are therefore closely aligned with the magnitude of the penalties laid down pursuant to sections 17a and 17b of the Police Offences Act. It is anticipated that these new substantial penalties will provide the appropriate deterrent value against those who seek to flout the law and conduct themselves in an anti-social manner upon the enclosed lands of others.

In conclusion, there are two other matters which I would draw to the attention of members. First, the principal Act still only applies to unlawful entry on land and does not encompass by itself simple trespass, that is, trespass as it is known to the civil law. It is the Government's intention that such simple civil trespass not become the subject matter of criminal proceedings. Therefore, the sort of conduct proscribed by the Trespassing on Land Act is trespass accompanied by circumstances of aggravation (for example, illegal or immoral conduct). Second, the Government has acted promptly to ensure that these revised penalties will apply to offenders who have caused, in recent times, considerable concern to landowners in the Adelaide Hills. In particular, the Government has in mind the trouble caused to landowners and others during the so called magic mushroom season in autumn. I commend this Bill to honourable members and I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 upgrades the penalty for trespassing to $500 for a first offence and to $1 000 for a subsequent offence. Clause 3 upgrades the penalty for remaining on land after having been requested to leave to $1 000 for a first offence and $2 000 for a subsequent offence. Clause 4 upgrades the penalty for failing to state one's name and address upon request to $1 000. Clause 5 upgrades the penalty for a person falsely stating that he is the owner or occupier of an enclosed field to $1 000.

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

PLANNING ACT AMENDMENT BILL (No. 2) (1985)

Second reading.

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

That this Bill be now read a second time.

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

Leave granted.

Explanation of Bill

The Planning Act, 1982, commenced full operation on 4 November 1982, replacing the planning system that had operated under the repealed Planning and Development Act since 1967. As a result of a number of concerns about details of the system being expressed by industry and community groups, councils and interested individuals, the Labor Government, upon taking office shortly after commencement of the Act, established a Committee to monitor and review the operation of the Planning Act, 1982, its Regulations and associated components of the Real Property Act, 1886. Those appointed to the Committee were:

Mr John Hodgson, Director, Development Management Division, Department of Environment and Planning (Chairman)

Mr Jim Hullick, Secretary-General, Local Government Association of S.A. Inc.

Mr Brian Turner, Planning Consultant and Fellow of the Royal Australian Planning Institute

Mr Michael Bowering, Assistant Crown Solicitor, Attorney-General's Department.

In December 1982 the Committee invited the general public to comment on the operation of the planning system, and by March 1983, the Committee had received 77 formal submissions from Councils, industry and conservation groups and from Government agencies. The Committee reported in October 1983, and in November 1983, the report of the Committee was published and made available for public comment.

The Committee received approximately 70 submissions on its Report. In addition, the Committee has closely monitored the operation of the planning system since its inception in November 1982. This Bill has been prepared as a result of the Committee's deliberations and as a result of identification of a number of other concerns by the Government. It must emphasise that having had the benefit of observing the operation of the Planning Act for nearly two years, the Planning Act Review Committee is of the opinion that the Act is fundamentally sound. While the number of amendments sought in the Bill may appear to conflict with this view, an analysis of the amendments sought clearly indicates that the great majority relate to streamlining in the interests of time saving and administrative efficiency. Only a few of the proposed amendments are of a policy nature.

The more significant of the recommendations are:

(1) Subsection (2) of section 6 of the Act enables the Governor by proclamation to exclude specified areas or types of development from the operation of the Act. As it is more appropriate for the Act to apply universally the Government is of the view that section 6 (2) should be deleted.

(2) Section 7 of the Act requires Crown agencies to give notice of proposed development, to the relevant council, and to the S.A. Planning Commission. The Commission must prepare a report on all proposals and the Minister must submit that report to Parliament. Preparation by the Commission of reports on all proposals represents a signif-

icant and largely unnecessary workload, as most proposals have little impact and are of no planning concern. Accordingly, it is proposed to amend the Act to provide that reports are prepared for Parliament only where an environmental impact statement is called for, or where the proposal has some planning impact which necessitates the giving of directions by the Minister, or where the relevant council objects to the proposal.

(3) Section 36 of the Act provides powers for a planning authority to take civil enforcement proceedings in respect of breaches of the Act. It is proposed to extend those powers to apply to unlawful developments which occurred prior to the Act coming into operation, subject to time limits already specified in section 37 of the Act.

The proposed amendment will then allow enforcement against unlawful development to be dealt with through relatively simple proceedings in the District Court. This ability will not create the potential for court action where such potential does not already exist, as the Acts Interpretation Act allows enforcement action for breaches of a repealed Act to be commenced notwithstanding its repeal. The amendment will simply allow such action through civil action in the District Court rather than through lengthy and costly criminal and injunctive proceedings in the Supreme Court.

(4) All monetary penalties imposed under the Act are paid into the consolidated revenue of the State. It is proposed to provide that monetary penalties be paid into the general revenue of a council where the council initiates proceedings under the Act.

(5) Section 41 of the Act sets out strict criteria limiting the ability of the Minister for Environment and Planning to prepare Supplementary Development Plans applying in the area of a single council. As State Heritage areas are proclaimed under the Heritage Act due to a Statewide interest in the historical value of land, the Bill seeks to give the Minister an unfettered right to prepare supplementary development plans for State Heritage areas declared under the Heritage Act.

(6) Section 41 of the Act requires the Minister to submit all supplementary development plans prepared by councils to the Advisory Committee on Planning both prior to and following public exhibition. To reduce the routine workload of the Advisory Committee and also to reduce delays, it is proposed to allow supplementary development plans which had attracted no significant public objection and which had not been altered significantly following public inspection, to be approved by the Minister without referral to the Advisory Committee on Planning.

(7) Section 41 (13) of the Act requires the Parliamentary Joint Committee on Subordinate Legislation to consider specified types of supplementary development plans prior to authorisation by the Governor. Section 43 of the Act enables the Governor to bring a plan into interim effect during the time it is proceeding through the stages toward authorisation. The Bill proposes to amend section 43 to provide that if Parliament disallows a supplementary development plan following consideration of the plan by the Committee on Subordinate Legislation, interim operation of that plan under section 43 will automatically cease.

(8) The Act allows a council to prepare a supplementary development plan, but requires the Minister to print and publish that plan. The Bill proposes the addition of a subsection (6) to section 44 which will allow the Minister to recover, from the relevant council, costs incurred in printing a plan where the council initiates the Plan.

(9) The Act allows the Minister to call for an environmental impact statement on development proposals being considered by either a council or the S.A. Planning Commission. It is proposed to amend the Act to make the Commission the decision-making authority for any proposal which is the subject of an environmental impact statement.

(10) Section 47 of the Act requires a council to 'have regard' to the development plan when making decisions on development proposals. However, the courts have interpreted the words 'have regard to' to mean merely 'be aware of'. Accordingly, it is proposed to amend the Act to require the Commission and councils to make decisions which not only have regard to the development plan but also which are not at serious variance with the plan.

(11) Section 48 requires a council to take into account any advice by the Minister on development affecting an item of the State Heritage. This provision means that the council may ignore such advice. As State Heritage items are of wider than local interest, it is proposed to amend the Act to provide that a council may consent to a proposal affecting heritage items, and also heritage areas, only when the S.A. Planning Commission agrees. The Commission must make its decision only after having sought and having considered the advice of the Minister responsible for State Heritage. This approach is essentially identical to the approach accepted by Parliament last session in relation to the City of Adelaide Development Control Act, 1976.

(12) Section 49 of the Act allows the Minister to call for an environmental impact statement on a development proposal and subsection (7) provides that a planning authority must have regard to the plan when making decisions on the application. Many environmental impact statements envisage conditions of an ongoing nature, for example, monitoring of imapct on flora and fauna. However, the Courts have consistently regarded ongoing conditions of this kind as invalid. It is proposed, therefore, to amend section 49 to provide that conditions relating to proposals the subject of an environmental impact statement may be of an ongoing nature. Such conditions are, of course, subject to the normal appeal provisions of the Act.

(13) The now repealed Planning and Development Act (section 45b) prohibited creation of additional allotments by land division in the Hills face zone. This prohibition was maintained following repeal of the Planning and Development Act, 1966, by the insertion of section 223*l*o into the Real Property Act, 1886. This section prevents application to the Registrar-General for division of land in the Hills face zone, other than in the circumstances prescribed in that section. However, the location of this provision in the Real Property Act has some undesirable consequences. There is nothing in the Planning Act, 1982, (or the development plan) which prevents a person making application to divide land in the Hills face zone. As a consequence, planning authorities (at present, the Commission) must deal with such applications, and if an application is refused, the applicant may exercise appeal rights. The whole process, however, would appear to be futile given the prohibition in the Real Property Act, 1886. A person could be refused planning approval, appeal, and if successful could petition the Governor to exempt the proposal from the prohibition, thus placing the Governor in a difficult position. A further difficulty arises from the fact that the Real Property Act, 1886, is concerned primarily with land registration, while the Hills face zone prohibition is essentially a planning matter. It seems incongruous that a firm planning policy should be implemented through mechanisms outside the Planning Act, 1982. To overcome these difficulties it is proposed to place the prohibition within the Planning Act. The repeal of the Real Property Act, 1886, provision will also be sought.

(14) Regulations under the Act prescribe time limits within which planning authorities must make decisions. The Regulations state that if the decision is not made within the time limit, the application is deemed to be refused, thereby giving the applicant the right to appeal to the Planning

Appeal Tribunal and gain a final determination on the matter. Firstly, the applicant's proposal is refused approval simply because the planning authority fails to make a decision within the prescribed time. Secondly on appeal, the Tribunal may not be able to determine the matter if the planning authority failed to undertake a mandatory requirement, for example, seek comment from other affected persons. Accordingly, it is proposed to amend the Act to provide that should the planning authority fail to make a decision within the prescribed time, the applicant can seek an order from the Tribunal. The Tribunal will then be able to direct the planning authority to undertake any required steps and make a decision within a set time. The planning authority will also be able to put a case for more time should it be justified in the circumstances. Should the delay be for no good reason the Tribunal will be able to award costs against the council.

(15) The Bill proposes to amend the financial provisions of the Act in section 69 to give greater flexibility in the use of the Planning and Development Fund. Section 69 currently restricts use of the Fund to acquisition and development of land and to related property management matters. It is proposed to amend section 69 to allow the Fund to be used to provide cash grants to councils for reserve development, to fund investigation and research costs associated with reserve acquisition and development.

(16) Section 74 of the Act provides that the Governor may make regulations on the recommendation of the Commission. The Bill proposes to delete the requirement for the recommendation of the Commission and allow the Governor to make regulations solely on the advice of his Cabinet in Executive Council. The requirement to seek the recommendation of the Commission is in conflict with a fundamental philosophy of the Act in that it seeks to leave the making of planning policy in the hands of the Governor with advice from the elected Government. The role of the Commission is to implement Government policy in an impartial manner, away from the influence of political considerations. As the regulations contain significant policy directions, both in terms of the extent of development control and the responsibility for decision making, the amendment seeks to ensure that policy making and implementation of the policy are separated.

The amendments sought in the Bill have been the subject of extensive review and examination over a period of nearly 18 months. Extensive consultation has occurred with local government, the development industry, conservation groups, government agencies and concerned individuals.

On behalf of the Government I wish to express my gratitude to the members of the Planning Act Review Committee, and to all those who made submissions to the Committee and assisted it in its work.

Clauses 1 and 2 are formal. Clause 3 makes a consequential amendment to section 3 of the principal Act. Clause 4 amends section 4 of the principal Act. The division of an allotment is included in the definition of 'development'. This concept embraces division by strata plan. However the Real Property Act, 1886, already controls the issue of strata titles and in any event land can only be divided by strata plan by reference to an existing building which itself would have required planning approval before constructions. Therefore to save developers from the need to obtain unnecessary approvals paragraph *(a)* of this clause removes strata plans from the definition of 'development'.

Clause 5 amends subsection (6) of section 4a so that the Commission may make a declaration under the section in relation to land anywhere in the State instead of in relation only to land outside council areas. Clause 6 removes subsections (2) and (3) from section 6 of the principal Act. Clause 7 amends section 7 of the principal Act. The amendment removes the requirement that a report by the Commission under this section must in all cases be laid before both Houses of Parliament with a requirement that this be done only in the circumstances set out in paragraphs *(a)*, *(b)* and *(c)* of new section 9a.

Clause 8 amends section 10 of the principal Act by adding environmental management, housing and welfare services to the areas of expertise set out in subsection (5) *(b)*. Clause 9 amends section 13 of the principal Act. Paragraph *(a)* extends the power of councils to subdelegate the Commission's powers to the council's officers. Paragraph *(b)* amends the area of disqualification of a person to whom powers are delegated under the section to matters in which he has a personal interest. Clause 10 makes a similar amendment to section 15.

Clause 11 amends section 20 of the principal Act by expanding the areas of expertise from which commissioners of the Tribunal may be appointed. Clause 12 makes an amendment to section 22 that is similar to the amendment made by clause 8 *(b)* to section 10. Clause 13 replaces subsection (2) of section 25 with a provision in the same terms except that if all members of the Tribunal, with the exception of the Judge, are incapacitated or unable to act, the Judge may, with the consent of the parties continue to hear the proceedings alone.

Clause 14 amends section 26 of the principal Act to cater for the situation where a Judge and only one commissioner are hearing proceedings. Clause 15 amends section 27 of the principal Act. The passage removed from subsection (1) by paragraph *(a)* is unnecessary and has restricted the Tribunal where the parties desired the compromise arrived at by them to be incorporated in an order of the Tribunal. New subsection (1a) clarifies the role of the chairman of a conference and new subsection (1b) will enable the chairman to clarify a question of law when necessary.

Clause 16 amends section 30 of the principal Act to streamline procedures under the section. Clause 17 replaces section 35 of the principal Act. In the case of *Briggs and others v. Corporation of the City of Mount Gambier and Michielan* (1982) 30 S.A.S.R. 135 Mr Justice Wells adopted a very restricted interpretation of this provision. The new subsection implements the original intention of the subsection with the object of avoiding the difficulties that His Honour had with the original provision.

Clause 18 amends section 36 of the principal Act. Paragraphs *(a)* and *(b)* make amendments that will allow proceedings under this Part against persons who were in breach of the Planning and Development Act, 1966, within five years before the proceedings take place. The change made by new subsection (6) is to allow an interim order to be made on an *ex parte* application.

Clause 19 makes a consequential amendment to section 37 of the principal Act. Clause 20 adds new subsection (5) to section 39 of the principal Act. The purpose of this amendment is to provide that fines arising from prosecutions brought by councils are paid to the council concerned. Clause 21 makes procedural changes to section 41 of the principal Act.

Clause 22 amends section 42 of the principal Act. Paragraph *(a)* will allow the Minister to amend the Development Plan by including the scheme, or part of the scheme, for the development of West Lakes. Paragraph *(b)* inserts a new subsection that will allow terms used in the Development Plan to be defined by regulation. Clause 23 amends section 43 of the principal Act. The amendment made by paragraph *(a)* will ensure that a plan can be brought into early operation even though the period of public inspection is over. It could be argued that the words 'the delays attendant upon advertising for, receiving and considering public submissions' limit the period during which a plan can be brought in on

an interim basis. New subsections (2) and (3) provide for the commencement and termination of the plan that has come into operation under this section.

Clause 24 makes amendments to section 44 of the principal Act that recognise the enormous size of the Development Plan. It is only necessary that councils make available for public inspection that part of the plan, and those supplementary development plans, that affect the area of the council. New subsection (6) provides that printing costs of a supplementary development plan prepared by a council must be paid by the council.

Clause 25 amends section 47 of the principal Act. Paragraph *(a)* makes the Commission the relevant planning authority where an environmental impact statement has been prepared in relation to a development. The amendments to subsections (3) and (5) make clear what kinds of development are permitted and prohibited by the Development Plan.

Clause 26 replaces section 48 of the principal Act for reasons already explained. Clause 27 makes a number of administrative amendments to section 49 of the principal Act. New subsection (8) makes it clear that a planning authority can, for the purpose of implementing an environmental impact statement, impose conditions on its consent to a development that will operate in the future. Paragraph *(b)* will enable the authority when granting consent to specify the times in the future at which it will be able to vary conditions or impose new conditions. Such a power is necessary if unnecessarily harsh conditions are not to be imposed on developers and the environment is to be protected. An authority may be prepared to impose minimum conditions (which will be to the advantage of the developer) if it knows it can impose more stringent conditions in the light of experience of (say) pollution levels caused by the development. Without this power the authority will be compelled to impose maximum conditions that will be adequate in all possible future situations to protect the environment but that will, in many cases, unnecessarily restrict the developer.

Clause 28 inserts new Division IIIA into Part V of the principal Act for the reasons already given. Clause 29 replaces section 52 of the principal Act with a provision that includes provision for an appeal from a refusal by the Commission to concur in the granting of planning authorisations to a development affecting an item of State Heritage or a State Heritage Area. New subsection (4) allows an applicant to appeal to the Tribunal against delay in the decision making process.

Clause 30 amends section 53 of the principal Act. Subsection (9) of this section provides that a planning authorisation does not operate until appeal rights have expired or all avenues of appeal have been exhausted. Existing subsection (8) allows the Tribunal to extend the time in which an appeal can be made under this section. The result is that a successful applicant for planning approval cannot be sure as to when he can proceed with his development secure in the knowledge that no appeal can be brought against the development. New subsections (5) and (6) require notice to be given, either personally or by post, to persons who made representations to the planning authority under subsection (2). New subsection (8) provides that an appeal by a third party must be made within 21 days of the date of the decision. The Tribunal has no power to extend this time. The effect of these provisions will be to give certainty to a developer where no appeal is instituted within the period of 21 days.

Clause 31 inserts new subsection (2). This subsection makes clear that the Tribunal must have regard to the same matters when deciding an appeal that the planning authority had regard to when deciding the original application. Clause 32 amends section 55 of the principal Act. Paragraph *(a)* excludes an advertisement for the lease of land from the operation of the section. Paragraphs *(b)* and *(c)* include a default penalty of one hundred dollars. The amendment to the definition of 'relevant planning authority' made by paragraph *(d)* will enable the Commission to take action under the section in relation to land in council areas.

Clause 33 adds a subsection to section 57 of the principal Act. The new subsection makes it quite clear that it is the provisions of the Development Plan at the date of the original application for planning approval that are relevant to the consideration of that application. Clause 34 provides for notification on the relevant certificate of title of a proclamation made under section 62. Clause 35 expands the way in which money standing to the credit of the Planning and Development Fund may be used.

Clause 36 replaces section 73 of the principal Act. Built into the new section is provision for the Minister to approve of persons who may advise councils under this section.

Clause 37 amends section 74 of the principal Act.

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

ELECTRICITY TRUST OF SOUTH AUSTRALIA ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 21 February. Page 2734.)

The Hon. J.C. BURDETT: I support the second reading of this Bill which is simply consequential upon the Liquor Licensing Bill passed after some considerable time last night and in the early hours of this morning. This Bill makes consequential amendments regarding the supply of electricity at Leigh Creek and therefore is supported by the Opposition.

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

LICENSING ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 21 February. Page 2735.)

The Hon. J.C. BURDETT: I support the second reading of this Bill which is simply to provide transitional provisions consequential on the passing of the Liquor Licensing Bill. The passing of the Liquor Licensing Bill will make obvious what the new licensing arrangements are. There cannot be any improper or undue manoeuvring of licensees or potential licensees. As the Bill provides the ordinary transitional provisions that are usually in Bills of this kind, I support the second reading.

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

COAST PROTECTION ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 12 March. Page 3078.)

The Hon. PETER DUNN: I support the Bill, which has a great impact on the very fragile lands that surround our coastline in South Australia. There has been considerable comment made in the other place about this matter some of which is worthy of repeating and to which I will add a little more. First, there has been a review of this Act over a period of 12 years. That is a long time, so the legislation

that we are dealing with this afternoon should have all the bugs sorted out of it. Some of those 12 years have been painful ones, because the Coast Protection Act has dealt with an area that is popular with people who like to go to the beach during our hot summers (as I would have liked to have gone during the past week).

There is a plenty of coastline in this State, and I see no reason for not using it to its best advantage. However, in so doing we place enormous pressures on the fragile areas bordering the coastline. Our coastline is subjected to considerable winds, lack of rainfall, and weathering caused by fairly big seas. The combination of these factors causes changes in the coastline. This Bill is necessary to enable those areas to be cared for. The Bill clarifies the position of the Coast Protection Board with respect to its authority to undertake the beach replenishment programme, which involves a small area of the coast basically bordering metropolitan Adelaide. Because of the influx of people to these beaches, and because housing is built to the edge of the beaches resulting in there being no sand hills on their edges to use for natural replenishment, a situation exists where the tides and winds tend to move sand from south to north that then has to be carted back by truck to the beaches whence it came.

This has created considerable problems for people living on the foreshore at either end of the City of Adelaide: some wish it to be done, others do not. This Bill clarifies that and gives the Coast Protection Board the power to ensure that beaches are retained in the manner all of us would like. The Bill also changes the rights and obligations of the West Beach Trust, which handles a portion of this area. The Bill gives the Trust the same powers and obligations given to local government. That is important. I am not familiar with the West Beach Trust, but I understand that it has had its hands tied because it has been unable to act in a manner to allow it to carry out some of its tasks, for example, the development of Marineland, which has been taken over by the Trust. There are also other recreational areas bordering on the coast that come under the Trust.

The Trust found it difficult to borrow money and carry out duties that local government would do. This Bill tidies that up and gives the same rights and obligations of local government to the Trust, so that it can develop this area like any local government that controls a strip of coastline.

The metropolitan coast was the first area to be investigated by the Coast Protection Board. The Act, no doubt, was designed with that in mind. The Board has been dealing with this area for a long time. There is now less conflict with the people at West Beach and along the Adelaide foreshore than there was some years ago. The Coast Protection Act allows the Board to put forward plans for the development of these areas: if that is its object, then it is achieving it rather well.

The Bill also appoints wardens to protect those rather fragile coastal areas. The Board has deemed certain areas to be restricted areas; areas that should not be given the very strong pressure of human actions (motor bikes, four-wheel drive buggies, and other vehicles) or human beings traversing sandhills. Beaches along the coast of South Australia have a very light rainfall and not much soil runs down to the beaches; they tend to be more sandy. When plants establish on the beaches it is difficult for them to live there. Those plants have an important role as they catch and hold sand along the beaches. There is a cyclical build-up of sandhills in the vegetation early in the year that is taken back on to the beach during winter to replenish the sand on the beach. During summer, when there is less rain, the beaches dry out and sand blows from the beach into the vegetation, where it builds up. If one takes that vegetation away the sand continues to blow inland, and becomes rather large white sandhills as we often see in photographs. A prime example of this is the lime-sand deposits south of Port Lincoln that are enormous sandhills with little vegetation and move around at a rapid rate.

The Board is endeavouring to stop people breaking down this vegetation so that the sandhills already stabilised can remain so and the appointment of wardens will help to stop people from indiscriminately breaking down this vegetation, thereby allowing sandhills to move away from the beach where they are most needed. Unfortunately, wardens will not have any more power than a citizen, other than to report an incident to the authority or a policeman, who can then take some action. 'Warden' is a nebulous title and I do not know who will be expected to take this on, but I think that local government will provide the wardens. Wardens will not be terribly effective because of their limited powers, but I approve of the fact that we are trying to do something about this matter.

I recall an incident earlier this year where motor bikes were racing up and down the beach in an area I visited during January. I did not mind that so much because not many people were there, but they then left the beach and proceeded to ride up and down sandhills with light vegetation and were destroying large quantities of that vegetation. I hope that the appointment of the wardens will keep those people restrained.

The Coast Protection Board has already put many miles of fencing in certain areas to stop people from carrying on in such a manner, but people being what they are they tend to either go around the end of the fences or through or over them. Motor bikes are much easier to manipulate than four-wheel drive vehicles in those areas, and they destroy the fences. Wardens will be of some assistance and will be able to report these incidents. I think that an education programme would be much better. I know that education programmes have previously drawn to the attention of the public how important it is not to destroy these areas, but these programmes should be ongoing and require constant vigilance.

It is also important to note—and the Hon. Mr Cameron would be interested in this—that the Coast Protection Board brought down a report some time ago that there should be further development of the sewerage and secondary treatment works at Finger Point in the South East. Even though the Board's report was put to the Government, it did not seem to want to respond. Effluent flowing into the sea at Finger Point is damaging the coastline in the Beachport area. This Bill will slightly strengthen the case for a sewage treatment works in the area, and I hope that some pressure can be put on the Government to protect the situation of raw sewage being pumped into the sea, most of which finishes up back on the beach and pollutes the areas that are very close to a relatively densely populated area. The Bill provides for the board to delegate its powers, which are quite substantial.

Section 21 of the Act provides:

(1) The Board is hereby authorised to execute all works in relation to land constituting or forming part of a coast protection district, as may be necessary or expedient for the purpose of implementing an approved management plan.

(2) The Board is hereby authorised to execute any works that are in the opinion of the Board necessary or expedient for the purpose of repairing or restoring any damage to any portion of the coast resulting from a storm, or from pollution.

That is where Finger Point comes in. The Government is not doing what it has been asked to do by the Coast Protection Board, that is, to clean up the pollution at Finger Point. There are other important jobs, such as to execute works approved by the Board. The Board has the power to acquire land, to enter and remain on land with any assistants, vehicles, machinery or equipment, and it may dig or bore

holes in the land. There are other minor powers, but the powers of entry should not be taken lightly.

The Bill allows the Board to delegate power to any person, although subject to the Minister's consent, thus there is some control over that delegation of powers. However, the Board's powers are quite clear—they are very strong, especially where the Board can enter at any time. If powers are delegated, it is important that care be taken regarding to whom they are delegated, and I draw the Council's attention to that fact. I know that there are few field workers to do the job and it is important that they have the power to enter, survey, observe and research the coastal areas, but these powers should not be handed out willy-nilly. If that happens, the members of the Board will get offside with the public, and we will not achieve our aim.

One of the important provisions is the fact that under the Act the West Beach Trust has the same rights and obligations as has local government. Wardens have been appointed to protect and observe happenings in the areas in which public access is restricted or limited. Offenders would be obliged to comply with any request made by such a person, and that is about the extent of the wardens' powers. This Bill also gives the Board power to remove sand from one area to another, particularly along the Adelaide coast. There is also the right of appeal to the Planning Appeal Tribunal if the Board refuses to approve or carry out prescribed works in a coast protection district. The Bill limits an appeal to two months after the advertisement in the newspaper; it tightens up that period. That will speed up the process, and that is important.

Fines imposed on people who are damaging or destroying the coastline in any way have been increased from $50 to $200 in regard to a prohibited or restricted area. I believe that that is a small fine and perhaps it could be increased, but we do not want to be too Draconian. Quite often people are not aware that they are in a restricted or prohibited area, and therefore the fine is reasonable. I have pleasure in supporting the Bill.

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

STATUTES AMENDMENT AND REPEAL (CROWN LANDS) BILL

Adjourned debate on second reading.

(Continued from 12 March. Page 3082.)

The Hon. PETER DUNN: I support the Bill. It repeals four Acts that have essentially satisfied their original intent—to protect the interests created under tenures issued under these Acts. This Bill was prepared some time ago. The Crown Lands Development Act, which is to be repealed, provided the authority for the Minister of Lands to develop lands for settlement for primary production. It relied on the machinery and operational provisions of the Crown Lands Act to implement the allocation and administration policies of the lands so developed. No development has been undertaken for many years and the Act is no longer required.

The Land Settlement (Development Leases) Act authorised the issue of leases to the Australian Mutual Provident Society and other approved persons for the purpose of promoting land settlement on Crown lands. Large areas of the Upper South-East were developed by the AMP under this scheme and no further development is being or is likely to be undertaken under the provisions of this legislation. All terminating tenures issued under the Act have expired and the area is now held under perpetual leases issued in terms of the Crown Lands act, and thus the Act has served its purpose.

The Agricultural Graduates Land Settlement Act encouraged and assisted the settlement of graduates of Roseworthy Agricultural College. These separate land acquisitions and allocation provisions and arrangements for making advances available are no longer necessary. No amounts advanced under this Act by the State Bank remain outstanding. The only problem is that I was not aware of it when I was a student.

The Livestock (War Service Land Settlement) Act empowered the Minister of Lands to buy, sell and breed livestock and dispose of their products. This power was conferred for the purpose connected with War Service Land Settlement Scheme, that is, to assist settlers to build up their flocks and herds and to utilise the feed and pasture on Crown lands during the development stages. All aspects of development were completed many years ago. The provisions of this Act are no longer required.

The leases that were issued under the provisions of these four Acts will become subject to and enjoy the provision of the Crown Lands Act. Provision is included to authorise the Governor to issue land grants without the reference to Executive Council. The Bill gives the Governor and the Minister the authority to delegate some of their powers and responsibilities. There is now no substantial difference between dedicated lands and reserved lands. The Bill therefore abandons the two tiered system and provides for the creation of reserves by dedication only.

The Bill provides for a minimum annual rental of $25 to apply to new leases issued after the commencement of these provisions. It significantly simplifies the land allocation, leasing and sale systems and the numerous associated administrative arrangements. The Bill will permit the implementation of the agreed shack tenure arrangements, the granting of miscellaneous leases for life and, on the shack owner's death, to the surviving spouse.

The Bill also provides for leases for reserves to be extended by endorsement. It provides the Minister with wider powers to lease and sell land. It repeals the section of the Irrigation Act that requires the Minister to exercise the powers of a district council in irrigation areas that are not within the boundaries of a district council.

What the Bill does not do, however, is repeal the Marginal Lands Act. The Marginal Lands Act provisions, which apply to only about 15 per cent of the area generally classified as marginal lands, are no longer relevant as primary production in South Australia has reached the stage where no further differentiation between perpetual leases issued under that Act and perpetual leases issued under other Acts need apply. It has been generally accepted that any controls deemed necessary over marginal lands should be applied to all such lands through general management laws. The Soil Conservation Act, the Planning Act and the South Australian Heritage Act all provide various land management controls supplementary to those provided in the Crown Lands Act itself and in the leases issued under that Act.

I have consulted with the United Farmers and Stockowners, which supports the Bill, and I have filed some proposed amendments to repeal the Marginal Lands Act. I recommend that honourable members support this Bill.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

[Sitting suspended from 3.58 to 4.52 p.m.]

POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS) BILL (1985)

(Second reading debate adjourned on 13 March. Page 3184.)

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—'Appointment of Police Complaints Authority.'

The Hon. J.C. BURDETT: On behalf of the Hon. Mr Griffin, I move:

Page 3, line 2—Leave out 'five years' and insert 'seven years'.

The amendment relates to the length of qualification of a legal practitioner who is to constitute the Authority. This might seem an idle amendment involving just two years. The qualification for a magistrate is five years as a legal practitioner, for a judge of the District Court it is seven years and for a judge of the Supreme Court it is 10 years. The Opposition believes that the status of a District Court judge is appropriate for a person comprising the Authority. To save time, when the Attorney responds, will he give an undertaking that the Government will consult with the Police Commissioner as to the appointment of a suitable person to be the Police Complaints Authority?

The Hon. C.J. SUMNER: The problem with the amendment is that the Authority, if it decides to prosecute a person, takes the prosecution before a magistrate. It would be anomolous if the prosecuting Authority (the investigating authority) had to be a legal practitioner of seven years standing and the adjudicating Authority being a magistrate had to have only five years standing as a legal practitioner. While the Government recognises the importance of this position and the need for an experienced person, that creates an anomolous position and the Government cannot support the amendment.

On behalf of the Minister of Emergency Services, I give an undertaking that the Government will consult with the Police Commissioner on the appointment of a suitable person to be the Police Complaints Authority. However, I make clear that the ultimate decision must rest with the Government of the day, irrespective of what consultations the Government carries out with either the Police Commissioner, the Police Association or any other body or person with an interest in who is appointed to that position. There is no problem with consultation, but there is no way—and I make it clear and I am sure the honourable member appreciates it—to derogate from the clear prerogative of the Government to make the appointment.

Amendment negatived; clause passed.

Clause 6—'Authority not to engage in other remunerative employment.'

The Hon. J.C. BURDETT: What is the salary range or package contemplated by the Government for the Authority? Will there be enough work for the Authority to be a full-time position? What kind of arrangements are contemplated?

The Hon. C.J. SUMNER: It is expected that the Authority will need to be a full-time person. At one stage early in the drafting there was power of delegation by the Authority, but that has been removed so that much of the questioning that might have to be done as part of an investigation would have to be carried out personally by the Authority. That would increase the work load beyond what might have been envisaged if there had been a power of delegation. Whether or not it will need to be a full-time position is still being assessed by the Government, but it is expected that it will need to be a full-time position.

As to salary level, the Government believes it necessary to have someone in a position of reasonable status. The Authority must be a legal practitioner of at least five years standing, as we have now determined, and that is the criterion used for the appointment of a magistrate. The salary considered would perhaps be a salary somewhere around that of a magistrate; perhaps a few thousand dollars below or above. If it were placed, say, at an EO5 or EO6 position, that would be clearly above a magistrate's salary. An EO3 or EO4 level would be below the salary of a magistrate. That is the range being considered but no final decision has been made. Given that the qualifications for appointment are those of a magistrate, that seems to be a rough starting point. There have been suggestions within the Public Service that the appropriate level would be EO3 or EO4. The Public Service Board was of that view. That may not be considered sufficient to attract the sort of person required.

Clause passed.

Clause 7 passed.

Clause 8—'Removal from office.'

The Hon. J.C. BURDETT: On behalf of the Hon. Mr Griffin, I move:

Page 4, line 2—Leave out all words in this line and insert 'he is imprisoned or convicted of an offence punishable by imprisonment for a term of six months or more'.

Clause 8 (4) sets out the circumstances in which the Authority (and the Authority, of course, is one person, as will have become apparent from what has gone before) shall become vacant. It starts by saying that it shall become vacant if he dies, which is fairly obvious. There are a number of other circumstances set out in the clause relating to his dismissal, one being if he is convicted of an indictable offence. This amendment proposes to leave that provision out and provide in lieu thereof for removal if he is imprisoned or convicted of an offence punishable by imprisonment for a term of six months or more.

The reason for this amendment relates to the question of an offence being indictable or a simple offence is a procedural matter. It is a question of which court is appropriate to deal with a person accused of a particular offence. It does not necessarily indicate the gravity of the offence. For some indictable offences the maximum penalty prescribed by Parliament is relatively low, and there are some simple offences the maximum sentence for which prescribed by the Parliament is relatively high. We had an example of this last week in the new Summary Offences Bill where, for example, the offence of assaulting a police officer is a simple offence, not indictable, but the maximum period of imprisonment (if my memory serves me correctly) is two years.

It seems to me that to use the procedural distinction is not valid if anybody committed an offence the maximum penalty for which was imprisonment for some years. It seems to me that it would then be proper to remove him from his position as the Authority. I am suggesting that the appropriatest of the gravity of the kind of offence that would justify removal or justify his ceasing to be the Authority is not the kind of procedure that is adopted, whether it is a simple or indictable offence, but the gravity with which Parliament viewed the offence when it fixed the maximum penalty. Therefore, the purport of this amendment is to leave out the reference to conviction for an indictable offence and to provide for removal if he is imprisoned at all or convicted of an offence punishable by imprisonment for six months or more. If he is actually imprisoned, he ceases to be the Authority or, if he is convicted of an offence punishable by imprisonment for six months or more, he ceases to be the Authority, in the latter case whether he is imprisoned or not. The purpose of the amendment is to use as the appropriate yardstick for the purpose not the procedure used, whether an indictable offence or a summary offence, but the gravity of the offence as judged by the Parliament in fixing the maximum penalty.

The Hon. C.J. SUMNER: I do not raise any objection to this amendment.

Amendment carried; clause as amended passed.

Clauses 9 to 16 passed.

Clause 17—'Right of persons detained in custody to make complaint to Authority.'

The Hon. I. GILFILLAN: Will the Attorney indicate whether a person being detained will be informed of his rights to make a complaint and will be informed of the means of doing so? Whose duty will it be to give that information? Will the general public be made aware of their rights in those circumstances? Will those rights be publicised?

The Hon. C.J. SUMNER: There will not be any legal obligation in the legislation for a police officer to advise a person that they may make a complaint to the Authority. However, I would think that when the Authority is established it will certainly publicise what it is there for and the sorts of circumstance in which a complaint can be made to it. Whether or not a person makes a complaint does not have anything to do with what evidence might be admissible against him in a court, so I think that there is a distinction between what is provided for in clause 17 of this Bill and what exists where there is actually an arrest and police are gathering evidence, or have evidence in relation to a particular offence for which a person has been arrested.

I think that in those circumstances, as we saw with the Police Offences Act, it is important that the rights of the individual during that detention are spelt out to that individual because it may have implications for the evidence that is presented in court against that person. In this particular case, there is no such effect from a police officer not advising the individual of his rights. I do not believe that there is a case in this Bill to make it a statutory obligation that a police officer must inform everyone who is in detention of this fact.

The Hon. I. Gilfillan: I think that it is fair to say that it is unlikely that the general public will be aware of the details of clause 17.

The Hon. C.J. SUMNER: I do not think that that is true. I think that the general public will be well aware of the Authority. I would be surprised if there was anyone who was not aware of at least the general proposal because over the past four or five months it has received considerable publicity. Obviously the authority will have some role in advising members of the public what it exists for and what their rights are. I do not believe that there is a need for any statutory obligation to be placed on police officers arresting people to advise them of their right to make a complaint to the Police Complaints Authority. I think that people are aware of their right to complain. Certainly, the Minister of Emergency Services believes that they are because he gets those complaints in quite large numbers and has to handle them. I do not really believe that if someone feels aggrieved by the actions of a police officer they will not complain, as they do now. It is just that the Minister will be able to say to them that they can go to the independent authority.

The Hon. I. Gilfillan: Do you see it as the responsibility of the Authority to assure himself that the public is well aware of his existence?

The Hon. C.J. SUMNER: I cannot speak for the Authority. I am not the Minister who will be directly responsible for this Authority, but I imagine that, just as the Ombudsman probably issues some publicity as to what his office does and the Commissioner for Equal Opportunity issues pamphlets and publicity about what that office does and what complaints can be brought to it, the Police Complaints Authority will make known to the public what its role is, what it exists for, what its powers are and for it to issue literature indicating these things.

Clause passed.

Clause 18—'Action upon complaint being made to member of Police Force.'

The Hon. J.C. BURDETT: This clause starts by saying:

(1) Where a complaint to which this Act applies is made to a member of the police force, the member shall, in accordance with any directions of the Commissioner—

(a) refer the complaint, by the most expeditious means available to him, to the internal investigation branch for investigations;.

This means that the ordinary pattern, when a complaint is made, is that the Internal Investigation Branch makes the initial investigation. Subclause (4) states:

Notwithstanding the other provisions of this section, where a complaint made to a member of the police force concerns the conduct of a prescribed officer or employee, the complaint shall not be referred to the internal investigation branch but shall, in accordance with any directions of the Commissioner, be referred to the Authority.

In the definition clause 'prescribed officer or employee' means:

(a) a person appointed to be a special constable under the Police Regulation Act, 1952;

or—

and this will be the ordinary case—

(b) an officer or employee referred to in paragraph *(b)* of the definition of 'member':.

Such a person will usually be a public servant attached to the Police Force. Where a complaint against a prescribed officer is not referred to the Internal Investigation Branch for investigation but goes directly to the authority, will the Attorney explain the reason?

The Hon. C.J. SUMNER: I understand the reason for the honourable member's question. It arises out of a distinction that exists in the Police Department between employees who are public servants and not police officers, and those who are actually members of the Police Force. It was considered appropriate that with respect to complaints against police officers, who have certain additional obligations and powers as a result of being members of the Police Force and who are directly subject to the discipline of the Police Commissioner, the complaints would be referred directly by the Police Commissioner to the Internal Investigation Branch for investigation.

However, with respect to those people who are public servants (that is, the 'prescribed officers' in the Bill) it was felt that their position should be more akin to the position of other public servants in the State Government and that the civil authority—the Police Complaints Authority—should actually deal, in the first instance, with the complaint and decide whether or not it should be referred to the internal investigation section of the Police Department. That was basically the reason, and I think it is justifiable.

It places the Police Complaints Authority, with respect to public servants, more in the same place as the Ombudsman. I also add that public servants working in the Police Department are covered by the Authority. Therefore, the Ombudsman will not have jurisdiction once the Bill and the accompanying Bills are passed. While the Ombudsman is excluded from the Police Department, including the investigation of complaints against public servants in the Police Department, it was felt that the procedure with respect to public servants should be more akin to the procedure adopted by the Ombudsman and that the Authority should be the body that makes the initial decision as to whether to conduct that investigation with respect to the police. Because of the different nature of police obligations and the nature of their direct disciplinary link with the Police Commissioner, it was felt that it was appropriate in those cases for the Police Commissioner to refer any complaint direct to the Internal Investigation Branch.

Clause passed.

Clauses 19 to 22 passed.

Clause 23—'Determination that complaint be investigated by Authority.'

The Hon. J.C. BURDETT: This subclause provides:

(2) The Authority may make a determination under subsection (1)—

(a) after consultation with the Commissioner, in relation to any complaint that he is satisfied . . .

(iii) is in substance about the practices, procedures or policies of the police force;.

This is a very wide power and does not only apply to conduct: it applies to the practices, procedures or policies of the Police Force. It appears to overlap the authority of other bodies, in particular, the Equal Opportunities Tribunal. Will the Attorney-General elaborate on the ambit of this part of the clause?

The Hon. C.J. SUMNER: It may be that this could potentially overlap with some other body, such as the Equal Opportunities Tribunal, although I refer the honourable member to clause 16 which provides:

(5) This Act does not apply to a complaint . . .

(c) made by or on behalf of a member or members of the police force in relation to the employment or terms or conditions of employment of the member or members.

I suppose that that is fairly obvious anyhow. That clause, I suppose, would not preclude a member of the public making a complaint about the policies of the Police Force with respect to sex discrimination, although I would have thought that the argument then would be that the specific legislation dealing with that topic would be the legislation that would be considered to cover the field. I do not imagine that the authority would wish to engage in inquiries or considerations of that kind where there is some other tribunal or authority established to look at those sorts of complaints. It is also clear that there would have to be some incident arising out of the conduct of a police officer which would give rise to the investigation in the first place.

If that conduct has broader implications, if it is part of a policy of the Police Department that the Department lays down, if the police officer acts in a certain way and there is a complaint, the Authority may comment or make recommendations about that policy. I cannot imagine that where there is specific legislation, such as the Equal Opportunities Act, the Authority would want to be involved. Even if it did, it probably would not be valid in any case, because there would be specific legislation dealing with that sort of complaint.

Clause passed.

Clause 24 passed.

Clause 25—'Investigation of complaints by internal investigation branch.'

The Hon. J.C. BURDETT: Will the Attorney explain subclause (4)?

The Hon. C.J. SUMNER: It refers to subclauses (2) and (3); it is designed to preserve the operation of the existing law. In other words, it would not be possible for an investigator carrying out an investigation to say, 'Clause 25 (2) provides that I can conduct this investigation in such manner as I see fit' and therefore ignore all normal rules that might apply to police officers or any other inquiries. In other words, in giving the Authority the power to conduct the inquiry as it thinks fit the Bill does not provide that there is complete *carte blanche* flexibility to break the law or to breach regulations that might exist under the general law.

The Hon. J.C. BURDETT: Putative spouses are included under subclauses (10) and (11). Under the Family Relationships Act, a putative spouse is declared by a court to be a putative spouse on a particular day. It is clearly contemplated in that Act that a person may be a putative spouse on one day but not on another day, so it is possible that there may not be concern about this provision. Why is that provision included? Has it any connection with the 1984 amendments to the Evidence Act dealing with competence and compellability in relation to a putative spouse? Why are putative spouses included? The effect is that the member of the Police Force involved may refuse to furnish information, documents and so on if it would tend to incriminate him or his close relative, and that includes a putative spouse. Will the Attorney-General explain the use of the term 'putative spouse' in relation to the privilege of a member of the Police Force?

The Hon. C.J. SUMNER: It has become reasonably common to include in legislation putative spouses where we are talking about spouses in any context. I take it that the honourable member is not arguing about the substance of subclause (10). That provision was included as a result of negotiations about the Bill with the Police Association, and it may be considered odd that a person has a right to refuse to answer questions that might incriminate a close relative. In fact, that is probably a unique position for police officers under this legislation. If the honourable member really wanted, he (and I) could speculate as to whether that is justifiable: while one might consider the matter of not answering questions on the grounds that it might tend to incriminate a person as a legitimate matter for that particular person, it seems to be quite an extension of the protection that is provided to a person to extend the protection in relation to incrimination to not just the individual but also a close relative of the individual.

The Hon. J.C. Burdett: A spouse, parent or child.

The Hon. C.J. SUMNER: Yes, or putative spouse. Having made that concession at some point, it was considered logical in the light of other legislation to include a putative spouse. 'Putative spouse' is included in the definition of 'close relative' under the Evidence Act, 1984, which deals with the competence and compellability of spouses and which provides (as the honourable member knows) for spouses to be competent and compellable in criminal proceedings against their spouses. It also provides for a court to relieve a spouse of that obligation in certain circumstances. Somehow or other in the discussions the principles under that Act were caught up with the principles of the Police (Complaints and Disciplinary Proceedings) Bill.

While it may be legitimate to provide an exemption to a spouse being compelled to give evidence against a spouse in certain circumstances as specified in the legislation, because of the close relationship between the two, that is at the court stage of proceedings whereas this is only at the investigation stage.

Logically, I find it difficult to see why the protection against self-incrimination applies not just to the individual but to other people such as close relatives of the individual. Obviously, that has found its way into the legislation as a result of negotiations between the Minister in another place and the Police Association, and I guess that it is not something with which we should interfere at this stage. However, I must confess that I find the provision curious.

The Hon. I. GILFILLAN: Not only the answering of questions, but the refusal to furnish information or produce a document or record, certainly appears on reading to be rather extraordinary protection for a member of the Police Force. I understand from the Attorney's explanation that it is as a result of negotiation. We believe that it is a rather curious and extraordinarily protective measure, but I accept that it is the result of negotiation and not what the Government wanted.

The Hon. C.J. Sumner: You can move an amendment.

The Hon. I. GILFILLAN: I dare not move an amendment.

Clause passed.

Clauses 26 and 27 passed.

Clause 28—'Investigation of complaints by Authority.'

The Hon. J.C. BURDETT: Clause 28 (9) provides:

> Where the Attorney-General furnishes to the Authority a certificate certifying that the disclosure of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure of the contents of any documents or records would be contrary to the public interest, by reason of the fact that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet, the Authority is not entitled to require a person to furnish any information concerning the matter, or to produce those documents or records to the Authority.

This would appear to be taken from the Federal police complaints legislation and is in some respects similar to provisions in the Ombudsman Act. If we are to exclude disclosure of deliberations or decisions of the Cabinet or of a committee of the Cabinet, why does the Government not address the whole range of material that is covered by Crown privilege? Why does it not also except legal advice to a Minister and the other matters that are generally covered within the descriptive term, 'Crown privilege'?

The Hon. C.J. SUMNER: I am advised that this is a reasonably normal sort of clause in, as the honourable member has mentioned, the Federal police complaints legislation and that it is in some respects similar to provisions in the Ombudsman Act. The distinction that needs to be drawn is that we are talking about, in effect, investigation into Government actions. We are not talking about litigation outside the Government. For that reason, the exemption on the production of documents is perhaps narrower than might apply in the broader Crown privilege situation because, as I said, it is an Authority established to investigate actions of a Government authority, just as the Ombudsman is. Therefore, in properly investigating those actions, there should be a limit to the exemptions that are granted to people for the production of documents. This is a reasonably normal provision and the full Crown privilege, whatever that is, is really not applicable in these circumstances.

The Hon. I. GILFILLAN: Subclause (19) has the first reference to a certificate of the Commissioner entitling a member to refuse to comply with a requirement to disclose material to the Authority. It mentions clause 48 (3). I have had some concern with the decision by the Commissioner to issue a certificate, so that this so-called restriction on availability or application of confidentiality on information is left solely to the prerogative of the Commissioner. Therefore, I ask the Attorney to answer this question, which would apply to clause 48 (3) as well. Will he explain how and in what circumstances the Commissioner can issue the certificate, and what its effect would be? Will that decision be shared with the Authority? Can the responsible Minister override that? If the Attorney would rather answer this question at a more appropriate clause, I am willing to accommodate that.

The Hon. C.J. SUMNER: The answer is in clause 48 (3), which indicates that the communication of information can be given with the approval of the Commissioner or the approval of the Minister given after consultation with the Commissioner. That clause deals with secrecy and the issuing of certificates, and may cover the honourable member's concern.

The Hon. I. GILFILLAN: I thought that the matter could rest until we were considering clause 48 (3), but if the Attorney wants to follow it through my question is whether the Authority can (I understand that the Minister can) override the Commissioner's decision.

Clause passed.

Clauses 29 to 36 passed.

Clause 37—'Constitution of Police Disciplinary Tribunal.'

The Hon. J.C. BURDETT: This and subsequent clauses deal with the Police Disciplinary Tribunal, which is comprised of one person and which deals with the delicate area of considering disciplinary action against police officers. In view of the importance and delicacy of the matter there would appear to be some argument that the Tribunal be constituted of a judge rather than a magistrate. I am not arguing the matter, but can the Attorney say why a magistrate was preferred to a judge for this position?

The Hon. C.J. SUMNER: Criminal matters of certain kinds would still proceed before the courts in a normal way. The magistrate or Tribunal deals only with matters of discipline. A magistrate presently deals with such matters and it was recommended by the Grieve committee that a magistrate deal with them, and we have had no objection to that. We saw no need to upgrade it to a judge.

I do not want to give an incorrect impression. In fact, the appeal board is headed now by a District Court judge, but there is an appeal from the Tribunal and there was no objection raised by any of the parties to its being a magistrate.

Clause passed.

Clauses 38 to 47 passed.

Clause 48—'Secrecy.'

The Hon. I. GILFILLAN: Apart from the option out of self-incrimination, is there any other way in which a police officer can withhold information from the Authority? Assuming that the answer is 'No' and the Authority has overriding powers to have access to and get information that he is seeking, when the information has been obtained it seems that the Commissioner can in his judgment determine that that information might (and I quote clause 48(3)):

> *(a)* prejudice present or future police investigations or the prosecution of legal proceedings whether in the State or elsewhere;
>
> *(b)* constitute a breach of confidence;
>
> or
>
> *(c)* endanger a person or cause material loss or harm or unreasonable distress to a person,

> then, notwithstanding any other provisions of this Act, no person who is, or has been, a prescribed officer referred to in subsection (1) *(a)* or *(b)*, shall, either directly or indirectly, divulge or communicate any part of the information except with the approval of the Commissioner or the approval of the Minister given after consultation with the Commissioner.

I seek an interpretation whether the Minister will automatically be informed of information that is subject to a certificate. Has the Minister power to override the Commissioner's certificate, if he sees fit to do so?

The Hon. C.J. SUMNER: The correct answer to the question is that clause 28 (19) is merely a mechanical clause to enable the police officer, if he considers that he is about to give information to the Authority that he does not think should be disclosed by the Authority to any other person, to obtain the relevant certificate from the Police Commissioner. Clause 48 (3) makes reasonably clear that we are talking about information that has been disclosed to the Authority by a member of the Police Force. The information that the Authority has or that those prescribed officers have may be disclosed to another person with the approval of the Commissioner or the Minister, given after consultation with the Commissioner.

The Hon. I. GILFILLAN: Who can override the Commissioner?

The Hon. C.J. SUMNER: If the Minister can give approval he has a separate discretion to give it. It is not with the approval of the Commissioner and then with the approval of the Minister; both are not required: it is with the approval of the Commissioner, who may give it, or with the approval of the Minister, who has a separate discretion.

The Hon. I. GILFILLAN: I refer to subsection (4). Does that, in fact, offer almost an exception to this situation?

The Hon. C.J. SUMNER: Yes. Clearly if one has information that has been obtained that may be relevant to disciplinary proceedings then one would need to produce

that information before the court or indeed before the Tribunal.

The Hon. I. Gilfillan: Doesn't that make it public?

The Hon. C.J. SUMNER: Not before the Tribunal: the hearings of the Tribunal are not public.

The Hon. I. Gilfillan: What about before a court?

The Hon. C.J. SUMNER: The normal rules of court would apply and if the prosecution thought that a matter was particularly sensitive then there are grounds for suppression of the relevant evidence from publication.

Clause passed.

Clause 49—'Offences in relation to complaints.'

The Hon. J.C. BURDETT: On behalf of the Hon. K.T. Griffin, I move:

Page 27, after line 8—Insert subclauses as follow:

(4a) Upon convicting a person of an offence against subsection (1), the court may order him to pay to the complainant a reasonable sum for the expenses of or incidental to any investigation made under this Act as a result of the false representation.

(4b) Any amount received by the complainant under subsection (4a) shall be paid by him to the Treasurer in aid of the general revenue of the State.

The amendment provides new subclauses (4a) and (4b). I suggest that, in the first place, this amendment is reasonable and logical. If a person who, by making a false representation, causes a complaint to be made which otherwise would not have been made he should bear the costs that have been brought about by his false representation. This amendment is not unique; there are other areas where a person who causes proceedings to be taken because of a false representation can be obliged to pay the costs of those proceedings. It is simply an order that the court may, but does not have to, make; even if it does find that there is a false representation and that a complaint has been laid that might otherwise not have been laid the discretion still rests with the court.

The Hon. C.J. SUMNER: I do not raise any objection to this amendment.

Amendment carried; clause as amended passed.

Clauses 50 and 51 passed.

Clause 52—'Annual and special reports to Parliament by Authority.'

The Hon. J.C. BURDETT: On behalf of the Hon. K.T. Griffin, I move:

Page 27, after line 46—Insert subclause as follows:

(4a) Where the Authority sets out in a report under this section opinions that are, either expressly or impliedly, critical of a person, the Authority shall not refer to that person by name in the report if to do so might be prejudicial to the interests of that person.

The rationale of this amendment is fairly obvious, that the privilege of Parliament ought not to be abused and that it should not be possible for the report of the Authority to make statements about a person if those statements are prejudicial to the interests of that person, under the cloak of Parliamentary privilege. Certainly, there are cases of some other reports, such as the report of the Commissioner of Consumer Affairs, for example, where a similar protection to that sought to be provided by this amendment does not apply. Certainly there are cases where on occasion people have been unfairly disadvantaged and suffered a sort of double jeopardy through their names being included in a report tabled before Parliament. This amendment seeks only to exclude the names of those persons where to include those names would be prejudicial to the interests of the person involved.

The Hon. C.J. SUMNER: The Government opposes this amendment. I think one has to trust the Authority to some degree in relation to the question of reporting to the Parliament. We trust the Ombudsman in his report to Parliament and we trust the Commissioner of Consumer Affairs in his report to Parliament. Neither of those people in my experience recklessly names people in the Parliament in their reports. I do not believe that any responsible Police Complaints Authority would do that, either. If the honourable member's amendment is passed we could arrive at a situation where if it was read strictly there could be a most serious range of complaints against a particular police officer, such that that officer really deserved some additional mention in the report of the Authority.

However, the Authority could not do that if it were prejudicial to the interests of that person. It may be that, although he might have been disciplined on a number of matters, perhaps very serious matters, or may have been taken before the courts and convicted on a particular matter, the Authority under this clause could be prohibited from naming that person in the report because anything could be prejudicial to him, even if perhaps he had been sentenced to imprisonment. It could be prejudicial to further name him in the Parliament, so we would be effectively precluding the naming of anybody who might have been in breach of police regulations or might have been convicted of an offence. I think that this provision is too broad. It is reasonable to rely on the good sense and discretion of the Authority. I oppose the amendment.

Amendment negatived; clause passed.

New clause 52a—'Minister to review and report to Parliament upon operation of Act.'

The Hon. J.C. BURDETT: On behalf of the Hon. K.T. Griffin, I move:

Page 28, after line 5—Insert new clause as follows:

52a (1) The Minister shall, as soon as practicable after the expiration of two years from the commencement of this Act, cause a review and report to be made upon the operation of the Act.

(2) The Minister shall, as soon as practicable after his receipt of the report, cause a copy of the report to be laid before each House of Parliament.

This is a reasonable provision; it is new, trail blazing legislation. It sets up a new procedure for dealing with complaints against the Police Force. Of course, it has been controversial, including with the Police Force and Police Association, as anyone who has been reading the press for some time will have seen. Eventually, substantial agreement was reached between the Government, the Police Force and Police Association. As has been apparent during the course of the Committee debate, the Attorney-General on several occasions acknowledged that there seemed to have been a compromise struck. For these reasons it seems eminently reasonable that there be a review and report. The amendment proposes that this review be after the expiration of two years so that the legislation has had a reasonable time to operate. It is probably desirable, administratively, that a review be held. It is also desirable to write this into the Bill, so that it has to come out in the light of day again and be laid before both Houses of Parliament. To have a review and the report tabled in both Houses of Parliament is reasonable, and I commend the amendment I moved in the name of the Hon. Mr Griffin.

The Hon. C.J. SUMNER: I think that it is a reasonable proposition. As the honourable member points out, it is new legislation and it will probably be useful to assess how it is working after two years.

New clause inserted.

Remaining clauses (53 and 54) and title passed.

Bill read a third time and passed.

OMBUDSMAN ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.
(Continued from 28 February. Page 3001.)

The Hon. J.C. BURDETT: I support the second reading of this Bill. It is consequential on the Police (Complaints and Disciplinary Proceedings) Bill in so far as it operates in the Ombudsman area.

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

POLICE REGULATION ACT AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 28 February. Page 3001.)

The Hon. J.C. BURDETT: I support the second reading of this Bill. It is consequential on the Police (Complaints and Disciplinary Proceedings) Bill.

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

ADJOURNMENT

At 6.9 p.m. the Council adjourned until Tuesday 19 March at 2.15 p.m.