LEGISLATIVE COUNCIL

Wednesday 15 May 1985

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

PAPER TABLED

The following paper was laid on the table:

By the Minister of Agriculture (Hon. Frank Blevins):

Pursuant to Statute—

Senior Secondary Assessment Board of South Australia—Annual Report 1984.

QUESTIONS

PRESCHOOL EDUCATION

The Hon. M.B. CAMERON: I seek leave to make a short explanation before directing a question to the Attorney-General on the subject of preschools.

Leave granted.

The Hon. M.B. CAMERON: Last evening the Federal Treasurer announced cut backs in Government spending in a number of areas, including the termination of grants to the State for preschools as of December this year. The Treasurer indicated that this action would save the Commonwealth $33 million in a full year and $16.5 million in 1985/86. Funding for preschools has in the past been derived from a combination of State and Commonwealth moneys. By terminating the funds available to the State, an additional burden will be placed on parents who will have to pay higher preschool fees, on the State Government, which will have to expend additional money from its own resources, or on the children who attend preschools, as a result of cut backs necessary to meet the funds available.

In the debate on the Children's Services Bill, the Minister of Health gave guarantees that preschool education services would be maintained, and he quoted the following from a letter from the Premier to Dr Ebbeck of the Kindergarten Union:

> The Government will ensure that the quality and level of preschool education services is maintained within the new structure. Whilst it is clear that there is a need to expand the availability of high quality child care services, action on this will not involve a diminution of preschool educational services. As you will be aware, the Commonwealth Government is the principal provider of funding for child care services, and has made available significantly increased funds for these services. If additional assistance from State sources is seen to be required for child care, the Government will have to consider this in terms of overall priorities and resources, and as an additional commitment beyond resources devoted to preschool services.

At this stage it is important to note that in addition to the $33 million terminated of preschool services, the Government subsidy for its children services programme will be cut by $30 million. This obviously puts at risk both the standard of preschool services and child care services. The Attorney in his second reading explanation of the Children's Services Bill said:

> Expansion of the provision of high quality community child care services is a priority for this Government, and we are co-operating with the Commonwealth Government in a planned development programme. The most effective means of providing much needed support to the staff and management groups in the community child care sector will be addressed in these discussions between the two Governments.

In light of the above does the Attorney-General agree that the Commonwealth Government has ignored any representation made by the State Government on the question of child care services and preschool education? Can the Attorney-General assure the Chamber that fees charged by preschool services will not increase as a result of the Commonwealth cutbacks and that services will be maintained, as was indicated during the debate on the Childrens Services Bill, at least at their present level?

The Hon. C.J. SUMNER: The answer to the first question is 'No'. The answer to the second question is simply that the Government will be studying the statement made last night by the Federal Treasurer which has resulted in a $1.2 billion reduction in Government expenditure, which is something that has been called for by the Hon. Mr Cameron for some considerable time, so I would have thought that he would be happy to congratulate the Federal Government—

The Hon. M.B. Cameron: It depends where you cut it and where you made your promise.

The PRESIDENT: Order!

The Hon. C.J. SUMNER:—on taking this action. The details of those cuts, and the effect on Government programmes, if any, in South Australia obviously still has to be considered by the Premier and Treasurer and when they have been I will provide a report for the honourable member.

FROZEN FOOD COMPANIES

The Hon. J.C. BURDETT: Does the Attorney-General have an answer to the question I asked on 14 March about frozen food companies?

The Hon. C.J. SUMNER: Frozen food companies are subject to the provisions of the Consumer Transactions Act, 1972, in their operations. No frozen food company at present operating in South Australia is acting as a credit provider within the meaning of the Consumer Credit Act, 1972. One company did apply for a credit provider's licence but it did not proceed with the application. The companies presently operating in this field arrange for credit to be supplied to their customer by finance companies which are licensed credit providers.

The Commissioner for Consumer Affairs has suggested that consumers should think very carefully before commiting themselves to any contract for the supply of frozen food—particularly if incentives are offered by way of 'free' gifts or if there are electrical appliances included in the deal. Consumers should shop around and compare prices for appliances and for frozen food. They may find that it is possible to purchase equivalent products at prices considerably lower than those charged by frozen food companies.

Credit, when used wisely, can be a useful means of acquiring goods now, at today's prices, and paying for them over a period. However, there is seldom any justification for borrowing money to pay in advance for future supplies of food. By the time credit charges are added to the cost, this will inevitably prove to be an extremely expensive way to buy food—particularly when compared to buying from butchers and supermarkets as and when required. Also, as with any large payment in advance, there is always the risk that the company which has received the consumers' money will not be around to fulfil the obligations during the whole period of the contract.

COURT REPORTING SERVICES

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

Leave granted.

The Hon. K.T. GRIFFIN: Members should know that the Courts Department provides a service to all the courts and tribunals to record the proceedings before those courts and tribunals and provides a full transcript where necessary. Until recently, that service was provided by a small core of full-time shorthand and stenotype reporters who are public servants, a Government transcription service (that is, the proceedings are taped and the transcripts are typed by Government typists), and by Spark & Cannon Pty Ltd, a private firm which provided the bulk of the service.

In early 1983, the output comprised 48.3 per cent court reporters, Government transcription service 9.6 per cent, and private tape service 42.1 per cent. The private contractor charges only for work done, whereas the Government employees and reporters were on duty for fixed periods not necessarily related to the availability of work. It is acknowledged that the private tape service per page was the least expensive of the reporting methods. When I was Attorney-General, the Public Service Association developed a dispute because the Liberal Government was giving more work to the private contractors and, as a result of that, we identified the minimum requirements for Public Service reporters and established a comprehensive review of the system. That review made a number of recommendations in early 1983 which were designed to move more towards casual reporters in the court reporting service rather than permanent full-time or part-time reporters, to maintain the Government transcription service and to retain the flexible arrangements of the private contractor. There was also a view that there was room for productivity improvements in the Government services.

It has now been suggested to me that the Government has either dispensed with or is winding down its reliance on the private contractor in favour of more Government workers. That would cause considerable concern to me, because it would increase substantially the cost of court reporting and put more persons on the Government payroll. In view of that, my questions are as follows:

1. Has the Government terminated or not renewed the private contractor's arrangement for court reporting, or reduced the volume of work to be undertaken by the private contractor?

2. What arrangements are now in place and what further changes are proposed with respect to court reporting services?

3. What will be the increase in cost of any changes made or proposed to be made by the Government in the court reporting services?

The Hon. C.J. SUMNER: The Government's policy, which was outlined prior to the last election, was to maintain a core of manual court reporters. The previous Government's policy was to run down that core of manual court reporters. Honourable members will recall that there was some industrial disputation about that during the period that the Hon. Mr Griffin was Attorney-General. The present Government gave certain commitments with respect to those reporters, their role and future, and that commitment has been maintained. We believe that there is a case for maintaining a core of manual court reporters and that some training scheme should be available for them. In fact, that was put in place by the Government following the last election. I should say that in addition the Courts Department, in conjunction with the reporters, has been involved in a procedure to improve the productivity of manual reporters and that, during the past 18 months or so, there has been a significant improvement in—

The Hon. K.T. Griffin: Has there been an increase in productivity?

The Hon. C.J. SUMNER: I cannot provide those figures now, beyond saying that there has been a significant increase in the productivity of manual court reporters. As a result of discussions between the Courts Department and the reporters themselves, there has been a voluntary programme involving the employer and the employees in attempting to achieve greater productivity from manual court reporting. As I have said, on the last information that I have, that has been achieved to quite a significant extent.

Recently, a proposition was put to me to increase the Government transcription service on the basis that that would be cheaper than the private contractor that is being used. Although the reintroduction of the training system for the core of manual reporters did result in some additional expenditure to Government, the most recent decision—

The Hon. K.T. Griffin: $1 000?

The Hon. C.J. SUMNER: Yes. The most recent decision with respect to the Government tape service was put to me by the Courts Department and, the honourable member may be interested to know, on the information that I received, it was supported by Treasury. The honourable member, having been in Government, would know that Treasury never supports anything that requires an increased outlay by Government for anything. It was put to me that some savings could be made by the increased use of the Government transcription service in some areas, and that is what has occurred. I do not have the full details of all the statistics relating to that, but that in general outline is the present position.

The Hon. K.T. GRIFFIN: I have a supplementary question, Mr President. Will the Attorney-General provide to me in due course information as to the increase in productivity of the manual court reporters that has occurred since the 1982 State election, as well as details of any increases in costs that have been incurred as a result of the Government's implementation of its commitment to increase the core of Government court reporters, as indicated in the answer to the question.

The Hon. C.J. SUMNER: I can provide that information for the honourable member.

TAB TAKINGS

The Hon. PETER DUNN: Has the Minister of Agriculture, representing the Minister of Recreation and Sport, an answer to the question that I asked on 28 March regarding TAB in the country?

The Hon. FRANK BLEVINS: The answer is as follows:

The off course turnover figures were obtained from the South Australian TAB and are calculated not by commission rates, but by actual turnover. It should be noted that the *News* quoted:

> Overall turnover was up by 12.4 per cent . . . While there has been a drop at that particular agency, figures show that TAB turnover was 12.4 per cent up on the same time last year (this refers to overall turnover).

A comparison of the Streaky Bay agency turnover over the past eight weeks is as follows: A statistical table follows. I seek leave to have it incorporated in *Hansard* without my reading it.

Leave granted.

Streaky Bay Turnover

Week ended	13.2.85	20.2.85	27.2.85	6.3.85	13.3.85	20.3.85	27.3.85	3.4.85
	$	$	$	$	$	$	$	$
Last Year	2 285	2 610	2 851	2 166	7 700	2 800	3 167	2 935
This year	8 444	10 675	16 574	7 588	3 042	1 650	1 283	5 470

The Hon. FRANK BLEVINS: The answer goes on:

It should be noted that the turnover at the agency was only down over a three week period. Possible influences of this could be:

- Attendance of regular TAB patrons at the following race meetings: Lock, 2 March 1985; Ceduna, 9 March 1985; Port Lincoln, 11 March 1985; Port Lincoln, 13 March 1985; Cungena, 16 March 1985; Streaky Bay, 23 March 1985.
- Regular large TAB investor(s) at Streaky Bay may have gone on holidays or been absent for some other reason.
- There may have been technical difficulties with the agency terminal (the terminal was not functioning due to a breakdown on the Friday afternoon and evening of 22 March 1985).
- A combination of the above.

With regard to broadcasts, radio station 5AA is not permitted to increase its power output under the regulations of the Department of Communications, and Streaky Bay does not have a radio station.

LONG SERVICE LEAVE (BUILDING INDUSTRY) ACT AMENDMENT BILL

The Hon. L.H. DAVIS: Has the Attorney-General a reply to a question I asked on 12 March in relation to the Long Service Leave (Building Industry) Act Amendment Bill?

The Hon. C.J. SUMNER: I refer to a question which the honourable member directed to me during the recent debate in Parliament regarding clause 12 of the Long Service Leave (Building Industry) Act Amendment Bill. Clause 12 of the Bill increased the period for which a person can be outside the industry from 18 months to 36 months. The situation in other States and the Australian Capital Territory with, or contemplating, similar legislation is:

Victoria. A two year absence period with a discretion given to the Board.

New South Wales. A four year absence period.

Tasmania. No period of absence currently, but a proposal to introduce an absence period of five years.

Australian Capital Territory. A four year absence period.

Western Australia. No legislation yet but it is proposed that a worker with five years service will have a four year absence period and a worker with less than five years service will have a two year absence period.

APPRENTICES

The Hon. ANNE LEVY: I seek leave to make a brief statement before asking the Attorney-General, representing the Minister of Labour, a question about the group apprenticeship scheme.

Leave granted.

The Hon. ANNE LEVY: I understand that CEP money has been made available to different States to expand the group apprenticeship scheme, and that the Governments of all States have taken on additional apprentices under this programme. I further understand that in New South Wales and Victoria 50 per cent of these additional apprentices taken on by Government departments and statutory authorities were designated to be male apprentices and 50 per cent were designated to be female apprentices. Whether that target of 50 per cent of each sex was actually achieved, I do not know, but that was certainly intended to be the case. Did the South Australian Government also take on additional apprentices under this CEP funding scheme? If so, was there a target for female apprentices among the number? If so, what was it, and what was the actual proportion of females amongst those additional apprentices put on?

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

CONSOLIDATED ACCOUNT

The Hon. R.C. DeGARIS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question in relation to the Consolidated Account.

Leave granted.

The Hon. R.C. DeGARIS: Last year at the end of March the Government papers showed that the Consolidated Account had a surplus of $24 million and that the Government finished the year with a Budget on-stream. This year the March figures show a surplus of $90 million at the end of March—a $66 million improvement on the 1984 figure. If this Budget follows the 1984 Budget, the Consolidated Account could be $30 million to $40 million in surplus at the end of June 1985. If this prediction is fulfilled, will the Government reduce the accumulated deficit of the State, or will it create new payments to meet the recent cuts made by the Federal mini budget.

The Hon. C.J. SUMNER: The Government is pleased with the budgetary position to date. Obviously, the final result of the Budget will not be known until the end of the financial year. Honourable members will recall the quite disastrous situation inherited by the Government when it came to office; that is quite indisputable.

Members interjecting:

The Hon. C.J. SUMNER: All members opposite who examine their consciences will of course readily admit that, as they must on the basis of the facts as they were in 1982. The Hon. Mr DeGaris, of course, has pointed out on a number of occasions that what I have said is correct, that is, that the underlying budgetary situation of the State Government at the end of 1982 was quite disastrous and that action had to be taken to correct that situation. That action has been taken.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: In this financial year to date the Treasurer, I think, believes that the Budget is reasonably on course.

The Hon. L.H. Davis: What did you think of Keating last night? Did you think he was good?

The Hon. C.J. SUMNER: I know that the honourable member applauded the Federal Treasurer's actions, because in almost every speech he has made in this place he talks about the action that should be taken to reduce Government expenditure. I know that the Hon. Mr Davis is overjoyed and that in his next speech (which, no doubt, he will make today about something) whether or not it has any relevance to the topic, he will talk about Government expenditure. The Hon. Mr Davis and the Hon. Mr Lucas talk about Government expenditure in relation to every Bill that is

discussed in this Council, no matter how irrelevant their comments are. I look forward to the honourable member's comments later today; no doubt he will congratulate the Federal Treasurer on taking action to reduce the Budget deficit.

As I said, the State Treasurer is reasonably pleased with the Budget in this financial year to date, but obviously one cannot take that any further at this stage, because the final result will not be known until the end of the financial year. It is not possible to answer the hypothetical question that has been put by the Hon. Mr DeGaris. Obviously, the direct effects on South Australia of the cuts in Federal Government expenditure announced by the Federal Treasurer, Mr Keating, will have to be assessed in South Australia. Furthermore, the results of the Premiers' Conference and Loan Council meetings will have to be known to the State Government before decisions are taken with respect to the 1985-86 Budget.

The Premier has said that he would like to provide some tax relief in the coming financial year depending on the situation with the State Budget at the end of this financial year, the Federal Government cuts that have been made, and the results of negotiations at the Premiers' Conference and the Loan Council. I am not in a position to advise the Council at this stage how the surplus (if there is a surplus at the end of this year) will be dealt with.

The Hon. L.H. Davis: You would find a few hollow logs, wouldn't you?

The Hon. C.J. SUMNER: All the logs were well and truly hollow in 1982. I can assure the honourable member that they were hollow and empty in 1982 when this Government came to office. Therefore, decisions relating to the 1985-86 Budget will be taken in due course. We will consider what surplus, if any, there is in this financial year; the effect of Federal Government decisions (those already announced); decisions of the Premiers' Conference and Loan Council; and the effects—

Members interjecting:

The Hon. C.J. SUMNER: Is that lot on our side? Of course, the extent to which the underlying deficit can be addressed for the use of capital funds for revenue—to what extent that will be affected and dealt with in 1985-86—will have to depend on those factors.

SPECIAL BROADCASTING SERVICE

The Hon. C.M. HILL: I seek leave to make a short explanation before asking the Minister of Ethnic Affairs a question about the Special Broadcasting Service.

Leave granted.

The Hon. C.M. HILL: I am sure that honourable members will be pleased at the recent news that at long last Adelaide is going to be served by the Special Broadcasting Service.

The Hon. Anne Levy: That is not recent news. We knew that two years ago.

The Hon. C.M. HILL: Well, it has been coming for a much longer period than two years, but I don't want to go into all that. That is all history now.

The Hon. Anne Levy: You've only just found out?

The Hon. C.M. HILL: No, I have been keeping very close to this question for five years.

The Hon. Diana Laidlaw: You fought very hard for it.

The Hon. C.M. HILL: Well, at least fought for it.

The Hon. Frank Blevins: Why wouldn't Mr Fraser do it for you?

The Hon. C.M. HILL: Mr Fraser had promised it and would have introduced it into South Australia in the financial year in which his Government was defeated.

The Hon. Frank Blevins: He had seven years to do it.

The Hon. C.M. HILL: Well, of course they have all had their period of time in which they have enjoyed Government to do a lot of things.

The Hon. Frank Blevins: Seven years.

The Hon. C.M. HILL: Do not start throwing back at the Liberals the delay in SBS when we consider the delays over the past three years by your friends and colleagues in Canberra.

The Hon. Anne Levy: He has another four years before—

The PRESIDENT: Order! Would the honourable member return to the question.

The Hon. C.M. HILL: I am trying to do that. With the advent of this service, there is in South Australia amongst the ethnic communities a strong feeling that once the service is transmitted here and has been viewed by a large number of people and enjoyed by a large number of people, steps should be taken for the South Australian ethnic community to be given some opportunity to involve themselves or for this State to involve itself in the production of the programme content. Honourable members I am sure would agree with me when I say that amongst the ethnic communities here we have a great deal of artistic talent. There is considerable expertise in the film-making industry.

The Hon. M.B. Cameron interjecting:

The Hon. C.M. HILL: The Hon. Mr Cameron interjects quietly and asks me if I should mention bagpipes, but I was saying there are amongst the South Australian ethnic community some who are highly skilled in film-making and of course we have the South Australian Film Corporation, which I know we agree is an excellent film-making entity here in this State. It would seem to me with the possibility of improving the employment situation and of South Australians feeling more involved in this service once it is being transmitted, if they could take some part in the production of programmes, films and so forth, that that would be quite proper. It would be a quite proper sharing of the whole facility Australia-wide. Therefore I ask the Minister of Ethnic Affairs whether he would make some contact either with SBS or with his Federal counterpart, the Minister for Communications, to see whether some steps could be taken to endeavour to produce some of that programme material here in South Australia as soon as the transmission comes to Adelaide.

The Hon. C.J. SUMNER: On behalf of the State Government, the Premier and myself in particular on a number of occasions have made the point that funds should be made available from SBS to ensure that there is some local content in the programme that is televised in South Australia through the Special Broadcasting Service. That point has been made and emphasised on a number of occasions. It was also emphasised by me in a submission I put on behalf of the State Government to the Committee of Inquiry into the Special Broadcasting Service that was conducted by a former judge of the Federal Court, Mr Xavier Connor. I gave evidence at that time and impressed upon him the need to have this service in South Australia that is now about to come here, and I also pointed out the importance as seen by the local community of some local content, so in the past those recommendations have been made.

Recently I received a deputation of a number of people from ethnic minority communities representing the Ethnic Communities Council and the United Ethnic Communities and also from public broadcasters in South Australia and people involved in the production of film. They put to me that something should be done to try to ensure that there was a promotion of the local industry to provide a local content for the telecasting of SBS in South Australia. As a result of that, I invited that group to form a committee to come up with some proposals that the Government could consider. That was my recollection about a month or so

ago. I have not heard anything more from that group but I will certainly pursue what action they have taken since they met with me. The Government has taken quite an active role in putting forward the proposition that there should be funds available from SBS for local content to television programming in South Australia. Furthermore, I invited this group of people to get together with a view to coming up with some concrete proposals as to how the skills, talent and expertise that currently exists in the South Australian community in this area might be utilised on the new television channel.

PLAIN ENGLISH IN LEGISLATION

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before directing a question to the Attorney-General on the use of plain English in Government legislation.

Leave granted.

The Hon. R.I. LUCAS: Members of this Chamber other than the lawyers would be well aware of the difficulty of reading and understanding some Government Bills and Acts. If that is the case, then it certainly would be extraordinarily difficult for members of the consuming public, so any proposal to use plain or simple English in legislation would be welcome, not only by members but also by the general public.

The Hon. M.B. Cameron: Or by banning lawyers.

The Hon. R.I. LUCAS: No, I will not go as far as banning lawyers. We need a good mixture of lawyers and non-lawyers. As long as there is room for non-lawyers in this Chamber, somewhere on the backbench, I will be satisfied. I was interested to read of proposals recently by the reforming Victorian Attorney-General, Mr Kennan, to remove legal jargon from Victorian legislation and to use plain English—in his terms, words of one syllable for backbenchers to understand—in Government legislation.

I will refer to some of the changes that the Victorian Attorney-General says he will implement. He describes this as a 'breakthrough' for public understanding (and more power to his arm). He will delete Latin words and phrases from legislation. As a humble backbencher who struggles to understand the meaning of some Latin phrases that creep into some discussions—

The Hon. C.J. Sumner: There is none in our legislation now.

The Hon. R.I. LUCAS: There were previously. He is moving for the use of the decimal system for the numbering of sections and clauses. Anyone who listens to our debates during a Committee stage and hears mention of subparagraph *(b)* to paragraph (B), which the Minister of Agriculture was referring to last evening, would understand what I mean. I would welcome a simplification, if possible. The Victorian Attorney-General says that the first clause of a Bill will be a short statement of the Bill's purpose and that clauses and subclauses will avoid repetition and superfluous phrases. He says that Parliamentary Counsel in Victoria, who is responsible for drafting legislation, will use a scientific guide to readability known as the Flesch reading use index. I am advised that the Flesch test applies a formula to the number of words and syllables in a sentence which is a scientific test of its readability. Mr Kennan went on to say that under that test most of the legislation was harder to read than university textbooks. He gives results of tests applied in Melbourne in 1977 which showed reading scores where the more difficult the passage to read the lower the score. On the Flesch test most Government legislation scored under 10, so it was extraordinarily difficult to understand by anyone. University books and police standing orders were scored 10 to 30; *Age* editorials, 30 to 40; and Bertrand Russell's History of Western Philosophy scored 40 to 50, so compared to Government legislation that history of western philosophy was extraordinarily easy to read and understand. Popular fiction scored 80 to 90 on the Flesch test, according to Mr Kennan. Mr Kennan said that the other proposal was that Parliamentary Counsel would prepare training courses for all members of Parliamentary Counsel in the skills of plain English drafting as he had undertaken. Some of those things may or may not be appropriate in South Australia.

The Hon. Anne Levy: It also makes it non-sexist.

The Hon. R.I. LUCAS: There is no mention of that, but we have attempted to do that in an earlier Bill, which I do not think managed to get through the Parliament. Some of it may or may not be applicable. If this sort of commonsense approach could be achieved, as a backbencher I would be delighted. I am sure that members of the public would be delighted, also, if complex legislation could be made more simple for members of the public and members of Parliament. My two questions are:

1. Is the Attorney-General attracted to the Kennan proposals where they are applicable to the South Australian scene?

2. Will he undertake to look in more detail at Mr Kennan's proposals and bring back a reply as to whether or not he is prepared to introduce similar legislation into the South Australian Parliament?

The Hon. C.J. SUMNER: I am not sure whether Mr Kennan intends introducing legislation. It is not necessary as what Mr Kennan is outlining has already been done in South Australia. South Australian Parliamentary Counsel has a reputation throughout Australia for being one of the clearest draftspersons, using the simplest terms.

The Hon. K.T. Griffin: Blunt and to the point.

The Hon. C.J. SUMNER: There is no doubt about that. The honourable member has only to look at Commonwealth legislation and compare it with South Australian legislation, which on my experience is comparatively simple.

The Hon. Diana Laidlaw: But you're a lawyer.

The Hon. C.J. SUMNER: I was merely saying to honourable members opposite that what Mr Kennan is proposing with respect to simplicity of language in legislation in Victoria is already in operation in South Australia.

The Hon. R.I. Lucas: What about the Flesch test?

The Hon. C.J. SUMNER: I am not aware of the Flesch test.

The Hon. R.I. Lucas: That is one of his proposals, this objective test.

The Hon. C.J. SUMNER: That sounds to me like a trendy idea. The Hon. Mr Blevins has said 'a complete gimmick', but I will let honourable members choose whatever term they wish. Everybody wants simplicity in drafting. If and when Bills come before this Council the Hon. Mr Lucas would stop seeing so many problems, possibilities and situations that might need to be covered by the legislation then it would be much simpler to draft legislation than it is now. For every problem that the Hon. Mr Lucas raises he insists that the Parliamentary Counsel find a solution to overcome it. Once that happens there has to be some complexity in the drafting process.

I agree that there is a need for simplicity in drafting Government legislation. I believe that that has been achieved to a significant extent in South Australia and I invite the honourable member to compare Commonwealth drafting with South Australian drafting. I invite him, also, to compare drafting in the other States with South Australian drafting. I believe that our Parliamentary Counsel has adopted a simplicity of language, as simple as is attainable.

The Hon. R.I. Lucas: What about the system?

The Hon. C.J. SUMNER: That is a minor matter that I can discuss with Parliamentary Counsel. All that does is to make for greater ease of reference, but it does not add much to the drafting.

The Hon. R.I. Lucas: It is easier to find where you are.

The Hon. C.J. SUMNER: It does not add much to the drafting procedure. I am not sure that it would add much in terms of finding where one is in a Bill.

The Hon. R.I. Lucas: It would make it easier for the Minister of Agriculture.

The Hon. C.J. SUMNER: I do not believe that it would. I am happy to discuss the matter with Parliamentary Counsel, but I can say that, in terms of simplified drafting, the Parliamentary Counsel in South Australia, Mr Geoff Hackett-Jones, has conscientiously gone about attempting to draft legislation in the simplest possible language. I think that if the honourable member looks at the Electoral Act that we have just passed and compares it with the previous Act and with the Commonwealth Electoral Act he will see that what Mr Hackett-Jones has attempted to do in drafting that Bill is encapsulate in simple statements what were quite complex terms in previous legislation.

Latin phrases do not appear in South Australian legislation unless it is absolutely unavoidable. Parliamentary Counsel in South Australia drafts legislation without using Latin phrases. For instance, instead of the word *bona fide* he uses 'genuine' and that has been his practice for a considerable time. I agree with simplicity of language in drafting and in all Government documents and in the drafting of contracts. The honourable member will be aware that the Commissioner for Consumer Affairs, for instance, has instituted a gobbledegook award in his annual report.

The Hon. R.I. Lucas: Is he a non-lawyer?

The Hon. C.J. SUMNER: He is a lawyer. That is designed to draw attention to examples of drafting in contracts that are unnecessarily complex. In doing that, I think he performs a public service. Certainly, that is a matter that the Commissioner for Consumer Affairs is interested in, and I believe that law reform agencies should be interested in it, also. As far as this question is concerned, I am attracted by Mr Kennan's proposals because to a large extent they have already been implemented in South Australia; so he is a bit behind the times. One often finds, of course, that Eastern State politicians who are looking for a little bit of kudos in their home State often announce things that were done in South Australia 10 years ago.

The Hon. R.J. Ritson: Or five years ago.

The Hon. C.J. SUMNER: Yes, or five years ago. I remember a Minister of Consumer Affairs recently announcing to me proudly that his was to be the first State in Australia to introduce consumer credit legislation and that that was a real feather in his cap. He was somewhat deflated when I told him that it had been introduced in South Australia in 1972. Still, one cannot blame politicians for wanting to blow their own bags a bit; I suppose that is what happens. I am attracted to Mr Kennan's proposals, which have been substantially implemented in South Australia. I am happy to look at the decimal system for the honourable member. I think that the Flesch tests have no merit whatsoever, and I doubt whether Mr Geoffrey Hackett-Jones will give me a very friendly or sympathetic reply if I put to him that he should draft in accordance with the Flesch tests. I am not prepared to take that challenge. If there is any more information that I can give the honourable member, I will certainly be pleased to do so.

NATURAL GAS PRICES

The Hon. K.L MILNE: I seek leave to make a brief statement before asking the Minister of Agriculture, representing the Minister of Mines and Energy, a question about natural gas prices.

Leave granted.

The Hon. K.L. MILNE: In his address to the Annual General Meeting of the Australian Gas Light Company on 15 April 1985, the Chairman said:

> The Cooper Basin producers had requested a further review of the field price in early January as is their entitlement under the terms of the contract—the producers have now called for the matter to be arbitrated.

The field price for gas to Australian Gas Light is $1.01 per gigajoule until September 1985, whereas the field price of gas to the Pipelines Authority of South Australia is $1.62 until December 1985. Bearing in mind that Australian Gas Light during the previous arbitration of the field price for gas ex Moomba contended that the price of $1.01 per gigajoule was too high, my questions are as follows:

1. Can the Minister assure Parliament that, in the current review of the field price of gas to the Pipelines Authority of South Australia for the years 1986 and 1987, the price to South Australia will not exceed the field price of gas to Australian Gas Light to be fixed by arbitration for the same years, bearing in mind that the gas to South Australia and New South Wales is derived from the same sources and despatched from the same treatment plant at Moomba?

2. Will the Minister give consideration to the conduct of an inquiry into the long term future of gas pricing to South Australia to enable the issues sensitive to the supply of gas to South Australia and New South Wales to be fully debated and possibly referred to a Select Committee or even a Royal Commission because of the extreme importance to the industry and the future of South Australia?

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

NORTHERN ROADS

The Hon. M.B. CAMERON: I seek leave to make a short statement before asking the Minister of Agriculture, representing the Minister of Transport, a question about northern roads.

Leave granted.

The Hon. M.B. CAMERON: This morning I was contacted by Mr Mike Steel of Innamincka Store about a very serious situation that has developed in the north, where a South Australian road has been closed by the policeman at Tibooburra in New South Wales.

The Hon. Frank Blevins: What?

The Hon. M.B. CAMERON: That is right. He has done this because the road has become impassible to traffic and any person going through to Innamincka must report to the policeman at Tibooburra before they leave. He has indicated that the road must not be used. The policeman is acting quite properly because I understand that a number of people have been stranded on the road because it is so severely knocked around. I understand that it has been knocked around by the shifting of an oil rig and some seismic work that was done recently. Of course, it means that people travelling through (remembering that the school holidays have commenced in New South Wales) are being told to divert to Port Augusta. That means that these people do not get to Innamincka and the tourist traffic coming from New South Wales through to Innamincka has come to an absolute halt.

The bad section of road is between a place called Cameron's Corner (which I think is very appropriately named because, as members would know, it is right on top of South Australia) and Murtee Station. The tops of sandhills are

pot-holed to such an extent that they are impassible. Mr Steel has contacted various people and has himself flown down to Moomba to try to get some work done by Delhi Santos to rectify the situation. However, there seems to be some argument about who is responsible and who will pay for the work. The problem is badly affecting business both at the hotel and at the store at Innamincka. I understand that the Government is aware of the situation because I immediately informed the Minister when I heard about it. Is any action going to be taken because, in the words of Mr Steel, it is no use action being taken next week; it really must happen tomorrow?

The Hon. FRANK BLEVINS: There has been a number of inquiries about the condition of this road from people in the area, especially from tourist operators at Innamincka. The Highways Department has been asked to take some urgent action to rectify the condition of this road, especially in the badly affected area of approximately 8 km between Cameron's Corner and Murtee Station. There has been some heavy traffic of seismic rigs in the area that have caused the road to break up.

As members may realise, roads in this area are particularly fragile, and combinations of adverse weather conditions and heavy traffic can cause fast and quite serious deterioration. In this instance, the clay and rubble of the road surface has broken down and large holes have developed full of bulldust. The simple solution of grading the road is not appropriate as the holes need substantial filling to provide an acceptable track.

By tomorrow some trucks of suitable filling material and a loader will be in the area, and work to reinstate the road should take approximately two days. Highways Department officers will be contacting the Tilbooburra police, who have recently declared the road closed because of its condition. They will also be contacting tourist operators in the area to advise them on the road's condition.

Reports of stranded vehicles on the road will be investigated and assistance provided to any in need. With school holidays upon us, we are aware of the need to keep our outback road system open for tourism, mining development and, of course, permanent residents in the area.

REPLIES TO QUESTIONS

The Hon. FRANK BLEVINS: I seek leave to incorporate in *Hansard* without my reading them three answers to questions asked by the Hon. Mr Cameron previously during the session.

Leave granted.

MOTOR VEHICLE DEFECT SYSTEM

In reply to the **Hon. M.B. CAMERON** (21 February).

The Hon. FRANK BLEVINS: It is correct that a one defect notice system operates in South Australia. However, this does not mean that all infringements, whether they are relatd to so-called minor or major defects, are treated the same way. The so-called minor defects are those in which the repair work can be checked readily by a police officer, whereas major defects are those where the repair work needs to be inspected by a trained and experienced person. Both minor and major defects are safety related and the motor vehicle should not be permitted to travel on the road, other than to a place of repair, after the fault has been detected.

Motor vehicles with minor defects only are required to be presented for clearance at a nominated police station after the necessary repairs have been effected. There is no charge for the clearance of this type of defect notice. Those vehicles with major defects must be presented for clearnace to an inspector of the Vehicle Engineering Branch of the Division of Road Safety. The vehicles are then subjected to a comprehensive examination and a fee of $20 is charged for this examination and the clearance of the defect notice.

No real benefits can be seen in having different coloured defect notices and, in the interests of road safety, a system which would allow unroadworthy vehicles with defects such as no horn, a noisy exhaust, failed lights, etc., to travel on the road could not be entertained. The motor vehicle defect system, which is aimed at removing unroadworthy vehicles from the road, is being constantly monitored. Changes to improve the system will be introduced if research shows them to be warranted.

WATER QUALITY

In reply to the **Hon. M.B. CAMERON** (12 March).

The Hon. FRANK BLEVINS: The Minister of Water Resources has advised that all the salt mitigation projects which were under construction when this Government took office in November 1982 have been commissioned and are operating satisfactorily. These projects, which were initiated in the River Murray Salinity Control Programme, October 1978, are the Noora Drainage Disposal Scheme and the Rufus River Groundwater Interception Scheme.

Schemes such as the Cobdogla Irrigation Rehabilitation Scheme are not regarded primarily as salinity control projects. Their most important benefit is they provide increased agricultural yields through better irrigation practices. Such schemes will only proceed if they are cost effective and under this criteria funds were provided to complete the fifth and final stage of the Chaffey irrigation project. However, the Cobdogla Scheme is not cost effective, and it is not proposed to proceed with it at this time.

PETROL SNIFFING

In reply to the **Hon. M.B. CAMERON** (20 February).

The Hon. FRANK BLEVINS: The honourable member asked whether the Government will be assisting with food and other costs associated with a proposed programme for petrol sniffing youth to be conducted on Wardang Island. As I mentioned previously, I have called a meeting to co-ordinate the various programmes to combat petrol sniffing and particularly programmes out of the Pitjantjatjara lands for the medical assessment and treatment of chronic petrol sniffers. The Aboriginal Health Organisation will co-ordinate a programme in Adelaide for chronic petrol sniffers who are referred to the programme by a doctor. Due to the need to have easy access to medical testing facilities this programme will be conducted in Adelaide.

I would like to emphasise that overseas and Australian experience suggests that if a programme to combat petrol sniffing is to be successful, the single most important ingredient is a very high level of family/community involvement and commitment. For this reason the Government has allocated $46 000 to Aboriginal communities in the North West to design and implement their own youth programmes. This, I believe, is the most appropriate way to try to change the pressures which cause or lead to youth programmes outside of their community will significantly change their behaviour is questionable.

I understand that the member for Goyder and the Federal member for Wakefield have expressed some concerns about the proposed programme for petrol sniffing youth at Wardang Island. I share many of these concerns and question the appropriateness of trying to deal with the problem in this way. Certainly, the proposal raises a number of important

questions which must be resolved before consideration is given to committing Government funds. Further, the Government would want to know the view of the Pitjantjatjara Council on the proposed programme before allocating funds. It is critical that the Government is not seen to be supporting the removal of large numbers of Aboriginal youth from their families and communities against the wishes of their families and their community leaders.

No Government funds have been allocated for food and other costs associated with the Wardang Island proposal at this stage. The Government will only consider a request for funds provided that satisfactory solutions to the problems that I have referred to are found and the proposed programme has the full support of the Pitjantjatjara Council and the Point Pearce Community Council.

I understand that the proposed rehabilitation programme did not receive the approval of the Point Pearce Council and plans are proceeding with the metropolitan based programme. This involves chronic sniffers being transferred to Adelaide for specialist treatment.

HOCKEY STADIUM

The Hon. R.I. LUCAS: I ask whether the Minister of Agriculture, representing the Minister of Recreation and Sport, has an answer to the question I asked on 28 March about the proposed hockey stadium?

The Hon. FRANK BLEVINS: I seek leave to have the reply inserted in *Hansard* without my readng it.

Leave granted.

Reply to Question

Pak-Poy and Kneebone Pty Ltd were employed as consultants. The terms of reference were: To carry out an investigation into the levels at the existing site and a soil survey to predict construction problems; and to identify the areas for easement. The cost of the consultancy was $2 000. The report was received by the Department of Recreation and Sport on Friday 22 March 1985. Mr Pat Pak-Poy is Chairman of the headquarters subcommittee of the South Australian Hockey Joint Council.

The ACTING PRESIDENT (Hon. C.M. Hill): Call on the Orders of the Day.

PLANNING ACT REGULATIONS: LAND DIVISION

Order of the Day, Private Business, No. 1: The Hon. G.L. Bruce to move:

That regulations under the Planning Act, 1982, concerning land division, made on 14 February 1985, and laid on the table of this Council on 19 February 1985, be disallowed.

The Hon. G.L. BRUCE: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

REAL PROPERTY ACT REGULATIONS: LAND DIVISION

Order of the Day, Private Business, No. 2: The Hon. G.L. Bruce to move:

That regulations under the Real Property Act, 1886, concerning land division, made on 14 February 1985, and laid on the table of this Council on 19 February 1985, be disallowed.

The Hon. G.L. BRUCE: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

WINDSOR GARDENS TRAFFIC PROHIBITION

The Hon. M.B. CAMERON (Leader of the Opposition): I move:

That regulations under the Road Traffic Act, 1961, concerning traffic prohibition (Windsor Gardens), made on 10 May 1984, and laid on the table of this Council on 2 August 1984, be disallowed.

The purpose of this motion is not necessarily in the long run to overturn the regulations but to ensure that the Parliament retains control of these regulations until the traffic and road closure situation in Windsor Gardens is finally resolved. I understand that an agreement has been reached between some of the parties concerned, which will be satisfactory to some of the parties. It is a very complex situation, in which the local council has been kept properly informed.

The council has been having negotiations and discussions with the Road Traffic Board and the Government. I understand that moves are afoot to rectify certain problems that perhaps caused the necessity for the road closures in the first place. I understand that the Government will very promptly reinstate these regulations, and I accept that. That is by mutual understanding between the Government and me, and I have no problem with that. I trust that this matter will be finally resolved in the near future, that traffic lights will be installed where they are needed, and that further alterations to the road closures will take place where needed so that the situation is finally resolved to the satisfaction of the majority of the residents in the Windsor Gardens area.

The Hon. G.L. BRUCE: In rising to oppose the motion, I indicate that when the voices are called we will not seek a division on the matter. This matter was thoroughly investigated by the Subordinate Legislation Committee. A huge amount of evidence was given. Arising out of all that, the Subordinate Legislation Committee decided and recommended to Parliament that these regulations be allowed. Subsequently, the Hon. Mr Cameron, on representation from people in the area, moved that they be disallowed, and notice of that motion has been on the Notice Paper for many months now.

The effect of this is to give people in different localities false hopes. They think that they will reverse the situation, which is not true. Out there, the bulk of the changes that have taken place will stay. Negotiations are going on with the Enfield council and the Highways Department to try to get an outlet to North East Road with traffic lights.

The Minister and the residents are aware of the situation. This notice of disallowance by the Hon. Mr Cameron tends to give false hopes to some people. If the Hon. Mr Cameron gets his way and this disallowance is carried, the regulations will be placed straight back again. So, it will be in place virtually immediately, as I understand it.

Motion carried.

REST HOMES

Adjourned debate on motion of Hon. J.C. Burdett:

That in the opinion of this Council, rest homes have an important role to play in the provision of aged care and, as the provision of aged care is of growing concern in the community, the rest

homes deserve the maximum possible support by both the State and Federal Governments.

which the Minister of Health had moved to amend by striking out all words after 'have' and inserting:

a role to play in the provision of aged care.

(Continued from 20 March. Page 3369.)

The Hon. L.H. DAVIS: In resuming this adjourned debate on the motion, it is important to note what the Minister of Health thinks on this important issue. The motion as he has sought to amend it would be a nonsense statement. He has backed right down from the motion, which seeks simply to recognise the case that rest homes have made so clearly in South Australia in recent months: a case for increased support from both the State and Federal Governments. It is important to recapitulate on the status of and financial assistance received by rest homes in South Australia.

There are some 400 beds in 19 rest homes in metropolitan Adelaide. This compares with some 7 000 nursing home beds, 4 000 of which are under the aegis of the Private Nursing Homes Association. Although rest homes have fewer beds than nursing homes, it is important to recognise that they provide a very real and needed service for people who are generally aged, unable to look after themselves and in need of some care, albeit not as intense as that provided by other aged care accommodation areas. The Hon. Dr Cornwall tended to demean the role of rest homes in South Australia during the debate. He said:

Some rest home proprietors try to provide a service that is more appropriately provided in a nursing home or hostel. Unfortunately, it is already also becoming increasingly clear that some rest home proprietors are more interested in the financial rewards than the care of their residents and their lack of co-operation in providing audited financial data makes one wonder what their true motives are.

That is a disgraceful, undisguised attack on the integrity of rest home proprietors in this State. The report of the task force into private rest homes in South Australia undertaken by the Ageing Project for the South Australian Health Commission, and tabled only last November, made quite clear that on the available financial data no rest home in South Australia was achieving a rate of return commensurate with that which was available from the current Commonwealth bond rate, which was only 12 per cent. It is clear from my study of the situation that there is no gold mine in rest homes. The Minister certainly cannot justify his disgraceful attack on the financial propriety of rest home operators. During the debate he again attacked rest homes when he said:

I might say in passing that the public posturing and the threats of closure and dumping of residents on the doorsteps of our major hospitals brought very little credit to the rest home industry.

The fact is that the rest home industry in South Australia is in difficult circumstances. I will cite in more detail later some cases which underline that point. The task force admitted that there was not one person in a rest home who should not have been in a rest home. Page 18 of the report indicates that of those people who are currently in rest homes—and we are talking about some 400 beds—no-one was assessed as being suitable for living in his or her private house.

To the contrary, the study admitted that some 26.4 per cent of residents were considered to require a higher level of care (in a nursing home, psychiatric hostel or other hostel) than they were receiving in a rest home. In other words, more than one in four persons in rest homes should really be receiving a higher form of care. Why are they in rest homes? One answer is that there is an acknowledged shortage of beds in nursing homes. Another answer is the financial cost of going into another institution. Charitable organisations, whether religious or otherwise, in many cases require key money; they require more money than people presently in nursing homes can afford.

It is worth reiterating that the cost of rest home accommodation is a very basic cost, indeed. Almost without exception the weekly cost for residents in a rest home is the basic pension plus any supplementary assistance that is available and that, generally, is just a little more than $200 a fortnight. Contrast that with the cost of care which the task force admits many of these people should receive in psychiatric, hostel or nursing home accommodation and which the community, the Government and, ultimately, the taxpayer will fund.

Therefore, the task force answered the Hon. Dr Cornwall's allegation that the rest homes were ripping off the system. It shoud be clearly understood that the proprietors of rest homes generally operate as a family unit, often working up to 18 hours a day, seven days a week. I spoke to two rest home managers who had resigned in January. They said that they were burnt out after working 120 hours a week and that they could not take it any more. Another manager/owner of a rest home had had only two breaks in eight years; one was for her pregnancy and the other was when she went into hospital for the birth. That is the sort of break that many rest home proprietors have; they work extraordinarily long hours for very little financial return.

Yet the Hon. Dr Cornwall has had the gall to accuse the Rest Home Association of using residents as cannon fodder in its campaign for a $4 a day care subsidy. The Hon. Dr Cornwall makes extraordinary allegations in this Chamber. We are used to them and have become familiar with his stock in trade. When he is in a corner he strikes out. However, he cannot justify that statement under any circumstances because the fact is that, of all the institutions looking after aged persons, rest homes are the only institutions that receive no financial assistance whatsoever. Indeed, if aged parents or relatives live at home, they receive financial assistance. Rest homes exist today in their present form for the following reasons: there is a general lack of alternative accommodation; charitable organisations and alternative accommodation which is appropriate for aged persons may require key money—a donation to enter; there may be certain behavioural difficulties associated with these people who end up in rest homes which make them not acceptable to these other organisations; and many beds are taken up in nursing homes by residents who arguably could well live in a rest home. It is interesting that the Hon. Dr Cornwall has not made a point of that.

I do not wish to denigrate nursing homes because, quite clearly, in this ageing society of ours they have an important role to play. I have already made the point that it is hard to establish the number of vacant nursing home beds. I have received very little evidence to suggest that there are beds readily available in nursing homes. Therefore, we have this discrimination against residents in rest homes because they receive no financial assistance or incentive at a Government level, and receive few concessions for essential services such as electricity, gas, Telecom, and so on.

Quite obviously, as has already been admitted by the task force, with 26 per cent of people in rest homes (more than 100 people) who should perhaps be receiving a higher level of care in a nursing home or a psychiatric hostel, the staff of rest homes are very fully stretched looking after and caring for those people. I stress that I have talked to the majority of rest home proprietors in South Australia and I know that they cater for diabetics, epileptics, people suffering senile dementia, the frail aged, and people who suffer mild retardation or who have been discharged from mental institutions. Many of these people require very constant attention.

Only last week I heard that one rest home was caring for a patient who had broken a femur and who fell and also

broke an arm. The rest home staff were attempting to care for that person until they managed to arrange for the delightful but obviously quite sick 86-year-old woman to go to Hampstead to be properly cared for.

I can say publicly without fear of contradiction that anyone who has had anything to do with the rest homes in metropolitan Adelaide could not help but be impressed by the dedication and the enormous hard work and caring for the residents. It distresses me to think that the Minister of Health thinks so little of rest homes that the only words he has to say about them are words of criticism.

As I said, the task force inquiring into private rest homes raised the question of domiciliary care and stated that perhaps some of the burdens of rest homes in relation to looking after people who are not appropriately housed in those homes at present could be lifted by the provision of domiciliary care services. In his contribution to the motion moved by the Hon. Mr Burdett on 27 February this year, the Hon. Dr Cornwall said:

> It was agreed that an approach be made to the Federal Government with a view to securing the payment of domiciliary nursing care benefits for rest home residents who were professionally assessed by Domiciliary Care Services as being eligible. An approach was made to the Federal Minister for Community Services, Senator Don Grimes, on this matter on 15 January 1985: as yet there has been no response.
>
> It was agreed that rest home owners should be advised that it was the Government's view that they should provide only basic accommodation requirements and should not endeavour to supply services of a health or welfare nature.

I have received a copy of a letter dated 2 May 1985 from Professor Gary Andrews, Chairman of the South Australian Health Commission, to Mrs Stoppel, the President of the Rest Homes Association of South Australia in relation to domiciliary nursing care benefits. It was stated:

> You will recall that the Minister of Health wrote to the Federal Minister of Community Services requesting extension of the domiciliary nursing care benefit to eligible residents of rest homes. In an initial written response Senator Grimes advised that he was not prepared to extend eligibility for the benefit in isolation to wider, related considerations.
>
> However, Dr Cornwall made further representations whilst in Canberra to discuss the Home and Community Care Programme and Senator Grimes has indicated that he will reconsider the matter following consideration of the report of a study by his Department of private hostels, etc. for the aged. The Commission's executive panel has approved in principle a policy on the provision of domiciliary equipment and services to persons residing in private rest homes. A copy of this policy is attached for your information. The Director of the Ageing Project has been instructed to prepare guidelines for the Domiciliary Care Services for consideration by executive panel. The Commission is still investigating the feasibility of a further review of the viability of rest homes and the cost structure of the industry.

That letter is encouraging. It does not necessarily commit the Government to the course of action that the rest home proprietors would consider appropriate; however, I think that at leas it is a start, and I hope that the Minister can keep up the pressure, because it is fundamental to the argument that has been advanced so ably by the Hon. Mr Burdett that, if rest homes do not receive assistance, the Government (either Federal or State) and the community (that is, the taxpayers—you and I) will ultimately pay a lot more for caring for these people who are currently in rest homes. As I have said, rest homes receive nothing. What they are asking for is simply a subsidy of $4 a day. That is little enough—it is $30 a week. I would have thought that that was a very small price to pay when the other option might well involve $200 a day for residence in a public institution.

The task force, which reported on 30 November 1984, in reviewing private rest homes has already admitted that 26 per cent of people in private rest homes (that is, more than 100 people) would qualify for nursing home care or psychiatric hostel accommodation. Of course, nursing homes attract a subsidy of $43 a day. That underlines the strength of the argument advanced by the rest homes in particular. In a general sense it underlines the merit of the argument underlying the Hon. John Burdett's motion.

Finally, there is no doubt that rest homes in South Australia are facing a crisis. In the past two or three months I have seen clear evidence that rest homes have been sold simply because the proprietor cannot afford to maintain them because they have been in breach of fire or safety regulations so that the proprietor has been forced to spend thousands of dollars. They have not had that money: they have not been earning that money. The task force has admitted that no-one in this industry is making big dollars, whatever the Hon. Dr Cornwall may think. Therefore, there has been a rapid turnover in rest homes in South Australia in recent times. Quite frankly, the situation distresses me and I am disappointed that the Hon. Dr Cornwall has taken this matter so lightly. I support the original motion proposed by the Hon. John Burdett.

The Hon. R.J. RITSON: I, too, oppose the amendment and support the original motion, which was moved to give some sort of support and moral uplift to the rather oppressed nursing home proprietors and their patients. Proprietors are under threat because the present State Government is ignoring the problem and slowing down the issue, muddying the waters and clouding the arguments with what could be described in a short phrase that you, Mr President, would rule unparliamentary, so I will call it bulldust. In order to discuss this problem one must refer to the three parts of an integral system (namely, hospitals, nursing homes and rest homes) because the patients about whom we are talking are mobile through these three parts of the integral system. The system as a whole is under pressure, and what we are talking about now is the tip of the iceberg.

Patients in rest homes enter those institutions, theoretically at least, as people who are capable of some independent living but who need domestic type oversight and hostel type accommodation. They are not meant to be people who require constant nursing or extensive medical treatment. Unfortunately, there is something called the calendar, and it rolls on. At that time of life, each month and year that passes in a person's life brings illness and further debility. So, inevitably these people in rest homes progress to a state of debilitated health where they require constant nursing and medical attention.

In theory at least they should then be moved on to an institution properly equipped and funded to give this additional care, but this is where the trouble strikes, because the nursing home beds are just not there. In spite of the fact that the Hon. Dr Cornwall says they are there, they are not there, and we will come back to that in a moment.

Those beds not being there, those unfortunate people who have served the community all their life and are now in the twilight of their life have to suffer increasing illness in an institution that was never designed to care for them and was never funded to care for them. The people running these institutions are looking after amputees who may indeed have come in as a reasonably mobile diabetic but then developed peripheral vascular disease. They may have gone to hospital, had an amputation and been returned to the rest home as it was the only place available. As my colleague the Hon. Mr Davis pointed out, these institutions also have to cope with people whose mental and intellectual functions deteriorate often to the point where they would certainly qualify for organic dementia care at one of the public psychiatric hospitals, but again they cannot be placed so they remain in the rest home.

The progression through the system of course can come from the other direction. The public teaching hospitals under

increasing pressure from Medicare are pressured to discharge their patients as early as possible to make the public hospital bed available for someone else two years down the waiting list. This means discharging the patient perhaps before he is independent of nursing, even though the surgery is complete. So, he will be placed in a rest home for accommodation, further blocking places in that rest home that might otherwise be available to rest home patients whose health has deteriorated. What does the Government do about this? Well, first of all let us have a look at what the Hon. Dr Cornwall thinks of the nursing home problem, because the nursing home problem is pivotal to this whole argument.

The Hon. Dr Cornwall spent most of the last session last year crowing from the roof tops that South Australia was better supplied with nursing home beds than any other State. He said that repeatedly, loudly and ignorantly, because within a few weeks of some of those statements, the Senate tabled a Select Committee report which had a great deal of statistical material in it and yes, indeed, South Australia was well placed with nursing home beds when expressed as beds per unit of population, but when that is expressed as beds per population unit of people over 65, we were number five on the list of States. We were one of the worst States in terms of the availability of nursing home beds to people over that age. However, the Hon. Dr Cornwall preferred to display the other statistic which supported the belief he wanted to hold, whether it was the truth or not.

The fact in South Australia is that the public hospitals, under pressure from Medicare, are discharging patients as early as possible. They are trying very hard to place them in nursing homes for convalescence. The rest home patients are deteriorating in those rest homes and cannot be placed into the nursing homes because of the pressures, even though as has been admitted by the Government's task force, there is a very significant number of severely disabled people in rest homes who require nursing home care.

What of the financial aspect, because quite obviously it is more expensive to care for patients who need constant nursing and regular medical care than it is simply to keep housed and fed and clean people who are reasonably independent? Perhaps the nursing homes could function in the role which they were designed to fulfil at the sort of fee levels they were charged if they were not asked to be responsible for this significant number of more severely disabled people who cannot get into those rest home beds which the Hon. Dr Cornwall says are empty and scattered freely across the country.

When a patient is considered for transfer to a nursing home, the procedure is that a medical officer examines that patient and is required to fill out a certificate pursuant to Federal legislation stating that the person is in such a state of health that he can only be looked after properly in that nursing home. One would think that once that certificate had been filled out the Commonwealth nursing home benefits would be available to the patient, because they are benefits to a patient, not an institution or a company. One would think that the moment the medical officer concerned complied with the Federal legislation and certified that that patient needed the nursing home care, that that patient would get the nursing home benefit, but not so. The patient cannot get that benefit, in spite of the medical certificate, until a place is found for him in the nursing home. As I said, the place is not there.

It is a catch 22 situation. The Government is having a free ride and, from what we read, the Federal mini budget has slashed more from the nursing homes. So the rest homes remain trying to care for people who are certified by medical practitioners in conformity with the Federal legislation as requiring the additional care, as qualifying for a category which would attract the additional benefit if they could be placed. They are not placed and the rest homes say to the Governments, both State and Federal, 'Hey, we are looking after these people for the pension. We are saving you the additional expense that would be incurred if they were looked after properly in the rest home beds that are not there. How about giving a bit of that benefit to the patient in our institution to help pay the physiotherapist that the doctor has called in, the special nurse, etc?', the sort of stuff that goes on in the nursing home beds that are not there. They are in a terrible bind. I fear some of the people running these homes may go to the wall, and all they get is abuse because they have the gall to be run by self-employed people who hope that the profit derived from running this institution will come somewhere near the rather grand salaries earned by the people working for non-profit aged accommodation institutions.

I was quite upset by a comment made by Professor Gary Andrews. He usually does not weigh into politics publicly, but the Health Commission, I think rather defensively, attempting to please their Minister, made some comments that the rest home proprietors had not disclosed all the details of the financial status, profit and loss etc., of their institutions.

He had the gall to say, if he is reported correctly in the *News*, that the public can draw their own conclusions. In other words, he was inviting the public to assume that these people were somehow hiding some fortune under the ledger and had ulterior motives for seeking to ensure the survival of the institution that was caring for their patients. In fact, the task force gave the rest home proprietors some three days notice to have their books ready for inspection. I am darned if I can get an appointment with my accountant under three days, let alone get him to do all the work necessary to satisfy a body like the Health Commission, yet Professor Andrews thought it was appropriate for him, doubtless in order to please his Minister, to weigh in publicly with that oblique political statement. I was disappointed with that statement coming from a man who otherwise has conducted himself publicly with great propriety.

The Federal Government having cut further funds to nursing homes with its consequent flow-on effect to rest homes is running around boasting about an alternative. I will talk about that alternative, which is said to remove the need for this sort of aged care because the Federal Government will now keep people in their homes instead of hostels and nursing homes through this marvellous scheme called Home and Community Care Scheme (HACCS). During the lead-up to the Federal election in December an announcement was made that $300 million was to be spent to help the disabled and the sick who otherwise might have gone to rest homes and nursing homes to keep them out of such institutions and in their own homes.

That looked pretty good when Bob Hawke was buying votes and defrauding the public by getting himself elected, but that is another story. It looked pretty good—$300 million. However, when one inquired into the matter one found that it was already being spent under different sorts of existing grants and that most of it was taken from those existing grants and placed in a new portfolio, given a new title with a new administration thereby absorbing a lot more money that might have gone to the sick and aged, anyway.

When I raised this matter in this Council with the Minister, Dr Cornwall, and asked him how much of that $300 million was actually new money and how much of it was disguised existing expenditure he agreed that the amount of new money was only $10 million and that South Australia's share of that money was about $750 000. I asked him how much of that money would be used in administration and he was unable to tell me. However, he did give (and it is recorded in *Hansard*) a fairly florid description of some

administrative difficulties experienced between State and Commonwealth Governments in setting this up. What we got out of Mr Hawke's $300 million boast was about $750 000 for South Australia minus the administrative costs, whatever they may be, and an admission from Dr Cornwall that the scheme had been over-sold (and I quote 'over-sold') during the Federal election campaign and that it was not the most generous of schemes.

Of course, it is a marvellous fulcrum for argument and Mr Grimes, the Federal Minister concerned, uses it quite freely. The McBride Hospital has a submission in to be accepted as a nursing home. Mr Grimes, by way of correspondence, pointed out that those beds will not be needed because we have this HACC Scheme. He is doing that all over the nation. He is promising the same dollar hundreds of times over. Every time somebody wants another nursing home bed in South Australia (this State that is fifth in rank in terms of effective nursing home bed accommodation and not first as Dr Cornwall said—fifth, four other States better than us), every time somebody tries to remedy that situation, Mr Grimes will be disallowing that application on the ground that there is this marvellous HAAC Scheme available. I suspect that he will be refusing tens of millions of dollars of assistance to South Australia in this area, using the marvellous excuse that he has given us $750 000, some of which will be consumed in the administrative changeover.

I grieve for those sick people in those rest homes. I grieve for those amputees, those people with organic dementias who will never get into the nursing home that does not exist. I will grieve even more for them if the rest home collapses because the Government will not grant people in those rest homes the nursing home benefit that they qualify for medically until they are physically shifted to the other institution. The grant should go to the care and it should be dedicated to the care of the particular patient according to a particular condition. An amputee who needs physiotherapy and other paramedical support, or a demented person who needs constant nursing supervision, once he is certified as qualifying for the nursing home benefit, should get it even if he is still in a rest home because of the non-existent nursing home beds that Dr Cornwall is so ignorantly proud of.

Other matters, and much more detail about rest homes, have been brought to the attention of the Council by my colleagues, the Hon. Mr Davis and the Hon. Mr Burdett, so I will not prolong the debate. This involves a matter of principle. It is Governments of both State and Federal Labor-orientation with their heads in the sand that are snowing the argument and denying the aged of this State proper nursing and medical care and who are using phoney statistics to justify that and phoney schemes like the HACC Scheme to promise and repromise the same dollar many times over and who pretend that it is many times as many dollars, when it is not. I grieve for the situation but can do nothing from the Opposition benches except say that the Governments involved, both State and Federal, should be ashamed of themselves in relation to this matter. I support Mr Burdett's motion.

The Hon. J. C. BURDETT: I thank honourable members for their contributions to this debate. I oppose the Government's amendment, which allows the State Government to duck out from under with regard to its responsibility to patients in rest home care. The State Government has a responsibility in relation to this matter. The motion that I moved is perfectly moderate and reasonable, that in the opinion of this Council rest homes have an important role to play in the provision of aged care and that as the provision of aged care is of growing concern in the community rest homes deserve the maximum possible support from both State and Federal Governments. The amendment that the Minister has moved makes the motion a nonsense and that is what I suspect it was intended to do. If the amendment is carried the amended motion will read:

That in the opinion of this Council rest homes have a role to play in the provision of aged care.

So what? That really does not mean anything. To sum up, the traditional position of rest homes in the past has been not to provide nursing care but to provide for people who merely need rest.

As has been said several times during this debate, South Australia has among the lowest (the Hon. Dr Ritson said fifth) provision of nursing home beds per head of aged population in Australia. That is contrary to what the Minister has tried to say previously on several occasions. I support maintaining people in their own homes or with relations and providing support for them where this is possible. However, the current provisions to give them support in this regard are inadequate. As the Hon. Dr Ritson said, the HAAC scheme proposed by the Federal Government at the present time is totally inadequate.

The amount of money proposed is not enough; it is just a nonsense. It really makes this kind of scheme completely nothing and it pulls the wool over people's eyes in letting them think that it will provide for them. In any event, even if people are maintained in their own homes (and it is important that they have that option if they want to stay there), there comes a time when people need to go into institutional care. There are simply not enough nursing home beds in South Australia. Of course, what has happened is that people needing nursing care go into rest homes because there is nowhere else for them to go. There is no question about that.

I have had numerous letters to support this, including correspondence from the Walkerville Local Board of Health which states that it understands that a ratio of five nursing home beds per thousand population is the rule generally applied and which points out that it has not been applied in its case. There is no doubt that not enough nursing home beds are available. At the present time, if one has an aged relative requiring nursing home care, one cannot find him or her a bed. That is not possible because there is a waiting list. If one requires the completely impossible and expects an aged couple who require nursing home care to go into a nursing home together and share a room, there is just no way in the world that that will happen.

The point which has been stated several times, but which needs to be reiterated, is that rest homes receive absolutely no financial assistance whatsoever—none at all; more importantly, neither do the residents who live in rest homes. My concern is certainly for patient care, and it is certainly for the residents; it is not for the rest homes themselves, although they are small businesses which are entitled to consideration. It is important to note that the residents in rest homes receive absolutely no Government assistance—either State or Federal—whatever. The private nursing homes with the Government assistance that they receive (as outlined by the Hon. Mr Davis), if they arrange their affairs correctly, may do fairly well, and the residents may be well looked after without a hardship being imposed on the proprietors of the rest homes. Many of the nursing homes are private-for-profit nursing homes and are not in the public or voluntary sector. I repeat: my concern relates to the question of patient care.

To say the least, the further outlook in regard to nursing home beds in South Australia is bleak. It is fairly obvious that, because of the HAAC scheme and because of the Commonwealth Government having said that that is the answer and that there will be no further nursing home beds, there will not be any more. That will exacerbate the situation

in regard to rest homes. There are still fewer nursing home beds in comparison with the need, and the pressure on rest homes will be greater. As I have said, it is perfectly clear that the situation in regard to nursing homes in South Australia is bleak, even though we are only fifth in the Commonwealth.

Last Sunday I attended the opening of the Southern Cross Homes new nursing home at Largs Bay. That organisation had consulted with the Commonwealth Government in regard to the erection of the nursing home, which was erected at a capital cost of $8 million. It had been promised $4 million capital subsidy from the Commonwealth Government. The subsidy has not arrived, the nursing home has been built and Southern Cross Homes has paid its money or has arranged it through finance. It cannot obtain that $4 million. It has made very urgent representations to the Commonwealth Government as recently as a fortnight ago, and it invited Senator Foreman, who on behalf of Senator Grimes opened the nursing home, to say that the money would be forthcoming. Unfortunately, that was not said. With the large group of people at the opening and with the expectation that the money promised would be available, it was not said that it would be forthcoming as promised.

This kind of situation, even where money has been promised and is not forthcoming, indicates the pressure on rest homes, because nursing homes are not adequately funded or assisted by the Commonwealth Government and, therefore, the pressure on rest homes will be even greater. They should receive at least the interim measure that they have asked for, that is, the $4 per day which is provided where people are cared for in their own homes by relatives. As I outlined when I moved the motion, the cruel situation is that, where people have been cared for by a relative, the relative gets the $4 a day. However, when they can no longer cope and the aged person has to go into rest home care because he or she can not get into a nursing home, the $4 a day is removed. That really is disgraceful.

I refer to the Minister's speech to the motion on 27 February 1985, as follows:

> However, let me make perfectly clear that we are not prepared to give rest homes a blank cheque, nor are we to be blackmailed by threats of closure and dumping of patients.

The rest homes have never asked for a blank cheque at all. They have asked for $4 a day—not a blank cheque—as an interim measure prior to their affairs being looked into. They have never asked for a blank cheque; they have asked for justice on behalf of their residents. There has been no question of blackmail—that is a ridiculous sort of statement.

Finally, as I have said, I trust that the Australian Democrats are aware of some of this. In order to give this moderate motion any sort of credence whatever, it should be passed in its original form because in the amended form (if the Government amendment is accepted) it becomes a nonsense and an insult to the rest homes and to the residents who reside therein. For these reasons, I commend to the Council my original motion.

The PRESIDENT: The question is that the words proposed to be struck out stand part of the motion.

The Council divided on the question:

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

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

Pair—Aye—The Hon. Diana Laidlaw. No—The Hon. J.R. Cornwall.

Majority of 3 for the Ayes.

Question thus passed; motion carried.

ENERGY

Adjourned debate on the motion of Hon. K.L. Milne.

1. That a Select Committee be appointed to inquire into and report upon—
   - *(a)* the current contractual agreements for the pricing of Cooper Basin gas sold to South Australia and New South Wales;
   - *(b)* the desirability of establishing a single price formula giving rise to the same well head price for gas sold ex Moomba to South Australia and New South Wales;
   - *(c)* the role for Government action in the event of large price increases which are relevant to economic stability and growth in the State:
   - *(d)* the determination of a price formula that adequately protects the Electricity Trust of South Australia, the South Australian Gas Company and other major gas consuming industries, present and future;
   - *(e)* the Cooper Basin (Ratification) Act, 1975, which covers the endorsement of the rights of the producers to enter into sales contracts and to report on the continuing obligations of the Government to preserve the agreements for the sale of natural gas endorsed by the Act;
   - *(f)* the impact of Commonwealth powers over gas supplies and sales, natural gas being a petroleum product;
   - *(g)* alternative sources of energy and methods of conserving energy; and
   - *(h)* any other related matters.
2. That in the event of a Select Committee being appointed, it consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and that Standing Order No. 389 be so far suspended as to enable the Chairman of the Select Committee to have a deliberative vote only.
3. That this Council permits the Select Committee to authorise the disclosure or publication, as it thinks fit, of any evidence presented to the committee prior to such evidence being reported to the Council.

(Continued from 8 May. Page 3959.)

The Hon. L.H. DAVIS: I appreciate the concern that the Hon. Mr Milne has expressed on more than one occasion about the sensitivity and importance—

The Hon. C.J. Sumner: Why didn't you speak on this before instead of leaving it to the last day?

The Hon. L.H. DAVIS: We have been waiting for the Government to make a contribution: it has not said anything. I should have thought that the Government would respond. I appreciate the Hon. Mr Milne's concern regarding the sensitivity and importance of the matter—of Cooper Basin oil and gas and the pricing of gas, in particular, for the South Australian and New South Wales markets. The present position is that prices for South Australia are set under the provisions of the gas sales contract which was entered into in 1975. The Pipelines Authority of South Australia—a statutory authority—acts on behalf of the South Australian Government in negotiations with the producers. If agreement is not reached between the two parties it is established that the matter should be settled by arbitration.

Honourable members will recollect that in 1982, when the Liberal Government was in power, agreement could not be reached when the contract came up for renegotiation, so an arbitrator was appointed by Justice Roma Mitchell of the Supreme Court. He was Mr Lucas, a retired judge of the Supreme Court of Queensland. The intention was that the decision Mr Lucas made would be retrospective to 1 January 1982, but when he made his decision on 9 September 1982 he resolved that the price of gas should increase by 80 per cent to $1.10 per gigajoule.

Not surprisingly, that caused some consternation, not only for the Government of the day but also for the people who consume gas, including SAGASCO, the Electricity Trust

of South Australia and Adelaide Brighton Cement. So, the Pipelines Authority of South Australia instituted a challenge in the Supreme Court to try to overcome the problem, although it was able to object to the determination of Mr Lucas only by claiming that there had been an error on a point of law. So, subsequently, negotiations took place between all the parties to the agreement.

Finally, it was resolved that the price increase from 1 January 1982 to 9 September 1982—the date of Mr Lucas's decision—would be not 80 per cent, but 40 per cent; for the calendar year 1983 the price would be held at $1.10 per gigajoule; for the calendar year 1984 the price would be $1.33 per gigajoule; and for the calendar year 1985 it would be $1.62 per gigajoule. It was also agreed that as part of this bargain the producers would undertake to spend at least $55 million on gas exploration because, at that time, there was still a real fear that South Australian future gas supplies were not assured, although contracts had been undertaken to provide gas through to the year 2006 for the New South Wales market.

As I mentioned, these major consumers—SAGASCO, ETSA, Adelaide-Brighton Cement (which was the largest private user) and others—benefited from that bargaining and the producers, led by Santos (the largest of them), and several others that formed part of the Cooper Basin consortium supplying the gas, took a lesser price in the short term in the public interest. I think that that point should be publicly conceded.

There is no question that the arrangements in relation to the Sydney contracts are far superior to those which exist for South Australia. As I mentioned, the contract provides for the supply of gas to Sydney through to the year 2006. In the event of an agreement not being reached between the producers of gas in South Australia and Australian Gas Light (which holds the Sydney contracts), there is provision for an arbitrator nominated by each side to make a decision. The price determined will stand for three years from the time that the award is made. There is no question that that is a more satisfactory arrangement than the one that presently operates in respect of South Australian gas prices.

It should be said publicly that when the Liberal Government was in power it envisaged the possibility of the Sydney price being lower than that in South Australia, although there was no evidence of it at the time. I think that the Liberal Party initiated arrangements to impose an overriding royalty on Sydney gas in order to equalise the price. That point should be of interest to the Hon. Mr Milne. The Labor Government in this State has not publicly admitted to seeking an equalisation of gas prices between the Adelaide and Sydney markets. I would be interested to know whether the Government intends to respond to that suggestion.

Of course, many comments have been made about the price of gas to the South Australian market. Much of the argument has been fallacious. It is important to keep the matter of the increased price in perspective in terms of what it actually means for the consumer. The arbitrated price of $1.10 from the beginning of 1982 to $1.62 from the beginning of 1985 represents an increase of 13 per cent to 14 per cent per year. Put in perspective, that is not an enormous increase but is certainly above inflation rates which, in the past two years, have dropped below double digits.

However, gas prices increased by about 20 per cent from $1.33 in 1984 to $1.62 in 1985. When calculated as a cost to be passed on to the consumer by ETSA, this should account for an increase of only 4 per cent in the tariff. That point has not sufficiently been spelt out. I can quite understand the Hon. Mr Milne's concern about the so-called large increases at the wellhead which may be seen to flow directly through to the final price for the consumer, whether one is talking about ETSA, SAGASCO or Adelaide-Brighton Cement. Notwithstanding that there has been a 20 per cent increase in the contracted price of gas, from $1.33 per gigajoule in 1984 to $1.62 per gigajoule in 1985, that should really have meant only a 4 per cent increase in the actual tariff imposed by ETSA on consumers.

The fact that the increase has been more than that has been the subject of complaint by the Leader of the Opposition in another place. The fact is that the Government has used ETSA as a milking machine for the Treasury.

While commending the Hon. Mr Milne for his positive approach to this matter, I want at the same time to point out that another point of view should be put. I briefly raise those matters with him now.

First, we are talking about a huge investment of funds in an area where few people believed that oil and gas could be found. Of course, we should centre our attention on Santos Limited, which was formed in 1954 to explore the Cooper Basin area, and on pioneers such as Mr John Bonython, who had the initiative, courage and strength to go forward and float a company, South Australian/Northern Territory Oil Search (which forms the acronym Santos).

That company spent at least a decade searching for oil and gas before the first discovery was made. It is history now that gas has been supplied to the Adelaide market for well over a decade, and last year the $1.5 billion liquids scheme came to fruition. If someone had invested $10 000 in Santos shares in 1975 they would now be a millionnaire. That is the sort of growth that Santos has had. It is important for us to recognise that Santos is now one of the largest 10 companies in terms of market capitalisation in Australia today.

The Hon. K.L. Milne: That is because the Government helped them.

The Hon. L.H. DAVIS: No. I want to put this in perspective. It is important that we put these facts down, so that we can talk about them realistically. In 1975, Santos made a profit of a mere $500 000. Indeed, it made a loss the following year. However, in the 1984 calendar year it made a profit of $71 million on gross sales of $287 million. Santos now employs 1 200 people, whereas only three years ago it employed 600 people. It spent some $80 million on exploration in the Cooper Basin in 1984 alone, whereas four years earlier it spent only $10 million.

Therefore, the growth of the company has been quite phenomenal. Its contribution, both in direct and indirect terms, to employment and prosperity in South Australia has been extraordinarily significant. No-one would begrudge that fact. Yet, if one looks at the total return on assets employed by Santos—and the Hon. Mr Milne as a former accountant would regard that as a proper measuring stick—one can see that it is only 6.3 per cent—not a huge return. Australians continually fail to understand the significance and relationship between profits and jobs—that there is a relationship between them.

The Hon. K.L. Milne: Profits and capital.

The Hon. L.H. DAVIS: Yes, profits and capital, and the fact that one should earn a proper return on capital invested. Of course, profit is the launching pad for prosperity, and Santos, with this enormous profit and cash flow, has been able to expand, as has been reflected in its exploration expenditure and the take-over in recent times of other companies such as Reef Oil and Alliance Oil Development, which were both explorers and producers in the Cooper Basin area.

Just to underline that point still further, I emphasise that in 1984 Santos participated in the drilling of 92 exploration and appraisal wells, an increase of more than 100 per cent over what was undertaken in 1983. Of these 92 wells, 60, or nearly two-thirds, were drilled in South Australia. Indeed, Santos undertook about 37 per cent of all drilling activity

in Australia last year. Santos's share of the cost of this exploration increased from about $36 million in 1983 to $75 million in 1984. In that 12 months Santos made 15 oil discoveries and eight gas discoveries.

Santos's success rate in oil and gas can be cited: 23 of the 48 wildcat wells drilled in 1984, or about 50 per cent, resulted in oil and gas discovery—an incredible success rate. Santos anticipates that in 1985 it will drill 90 exploration and appraisal wells: 60 per cent of the wells will be for oil exploration and 25 per cent will be wildcat gas wells. That is the level of spending being undertaken in exploration by Santos Limited. In its recently released 1984 annual report Santos, in relation to the natural gas price negotiations, states (page 25):

> The Cooper Basin producers are negotiating with the South Australian Government for a suitable long term price and supply arrangement to replace the existing contract arrangements. It is expected that a new contract will be finalised during 1985. As these arrangements were not finalised by 31 December 1984 the producers have offered 200 million gigajoules of sales gas to Pipelines Authority of South Australia for sale after 1987 in accordance with the existing Pipelines Authority of South Australia futures requirements agreement. The price for gas sold in 1985 will be $1.62 per gigajoule (in accordance with the 1982 price settlement).

I have already raised that matter in my earlier coverage of the existing gas price agreement. The Australian Gas Light Company purchased 82 million gigajoules for the New South Wales market. The Santos report further states:

> The price paid for gas sold to AGL rose from $1.01067 to $1.01304 per gigajoule on 20 September 1984.

That is a much lower figure than the price paid by South Australian consumers. It is further stated:

> Negotiations for a new price to apply for the next three years have commenced.

The words 'have commenced' should be underlined. Further:

> On 20 September 1984 Santos notified AGL that sufficient reserves were available to supply an enlarged schedule of annual contract quantities to 2006. To date, AGL has not indicated its acceptance of this notice.

As an aside (because we are really talking about gas prices in relation to the motion) I believe it should be noted that the crude oil and condensate that comes from the Stony Point liquids refinery is priced as follows. First, the crude oil is taken by Australian Refineries under the Australian Government crude oil allocation scheme at the import parity price and then the condensate production, LPG production, is undertaken at a negotiated price. For instance, 42 per cent of condensate production was exported to the United States of America, New Zealand and other countries. Santos has commented publicly on pricing in its recently released 1984 annual report.

Further, concern has been expressed about Government taxation. Under the heading 'Chairman's overview' (page 6) it is stated:

> The secondary taxation area has become considerably more complex, with resource rent tax new oil levy and intermediate oil levy being introduced during the year. Santos is concerned that the thrust of most of these initiatives is the expansion of Government revenue. Australia's interests would be better served by policies which were aimed at encouraging exploration and development in order to maintain the present level of crude oil self sufficiency and to provide balance of trade benefits accruing from crude oil exports.

Of course, that is a timely point. There is a fine balance between encouraging oil and gas explorers in what is a very high-risk and costly business and hitting them on the head with excessive tax demands from Federal and State Governments.

The Hon. Mr Milne should be commended for his continuing interest in this matter, but I should indicate at this point that I cannot accept his motion in its present form, because I believe that there are existing mechanisms that cater for the pricing of gas in South Australia and New South Wales.

Certainly, I accept that substantial concern can be expressed that the pricing of gas on the New South Wales market is greatly different from that levied on the South Australian consumers of gas. However, negotiations are presently under way. I indicated previously in my contribution that at least the Liberal Government had seriously considered imposing a royalty arrangement over and above that which had been negotiated so that the price of gas to the New South Wales market would be effectively the same as the price of gas to the South Australian market. As I have said, the Labor Government apparently has not taken up that point, which was under active consideration by the Tonkin Government. In respect of—

The Hon. K.L. Milne: We probably don't know whether or not they have, do we?

The Hon. L.H. DAVIS: Well, we do not, but I am sure that the Hon. Mr Milne would agree with me that only the Liberal Party Opposition has seen fit to respond to this very important motion. However, there are existing mechanisms by which gas pricing for the South Australian and New South Wales markets is kept under review. I have already outlined to the Council how gas pricing is negotiated between the Pipelines Authority and the producers.

There are mechanisms for arbitration in the event of disputes. Negotiations are presently in train, because 1985 is the last year of the current agreement. We have already seen from the Santos annual report for 1984 that negotiations are presently in train between Australian Gas Light (representing New South Wales consumers) and the producers to determine a price for the New South Wales market.

The Hon. K.L. Milne: Is it still true that Australian Gas Light can appeal against their arbitration but we can't appeal for some reason—or has that been fixed up?

The Hon. L.H. DAVIS: That is something about which I am not absolutely sure, I must confess. In any event, I believe that there is on both sides of the Council a concern and awareness of the importance of energy in future planning, and the Hon. Roger Goldsworthy, when he was Minister of Mines and Energy, was very active in establishing committees to review future trends in energy and the likely levels of demand, in looking at the needs for an additional power station and in reviewing the pricing arrangements pertaining to South Australian gas supplies from the Cooper Basin.

The present Government has formed an advisory committee also to review South Australian energy needs and in fact there was a brochure published in July 1983 which reviews the long term electricity demand forecast from 1983 through to 1986. There is a Future Energy Action Committee established under the chairmanship of Mr E.D.J. Stewart which reports to Government on such matters as natural gas supply in South Australia, coalfield selection for the next major power station, renewable energy options, long term coal utilisation opportunities in South Australia, and so on. I think we should be assured that the importance of energy is well recognised by both major Parties and certainly by the Australian Democrats. This is evidenced by the motion before us today. However, I do not think it is appropriate to form a Select Committee to inquire and report on the gas pricing arrangements between producers and consumers in South Australia and New South Wales. I really think that is a matter of overkill.

As I have indicated to the Chamber, I feel that whilst the Hon. Mr Milne should be commended for putting this motion on the Notice Paper, it should not be supported because there is already discussion taking place between the producers and the parties representing consumers in New South Wales and South Australia with respect to the new contracts. There are arbitral arrangements that are in place certainly in South Australia and I suspect also in New South Wales, and I do not think a Select Committee is really going

to learn anything that we do not already know in respect to what are admittedly very complex arrangements.

The Hon. K.L. Milne: Would you reconsider that if things go wrong and the producers are in a position to squeeze out South Australia and not New South Wales?

The Hon. L.H. DAVIS: Well, the Hon. Mr Milne raises a valid point. He says by way of interjection—and I take that as a legitimate interjection—what would happen if the producers were unreasonable in their demands? Of course then it is possible to go to arbitration. It may be possible again to have further hard bargaining as was the case in 1982 and an agreed position arrived at. Quite clearly it would be a matter of concern if the price of gas to South Australian consumers was to rise an excessive amount. I would find it difficult to accept if it was to rise excessively to the point where it would undermine our competitive position in South Australia, because quite clearly the cost of fuel, the cost of power, is an important determinant.

The Hon. K.L. Milne: It might affect us but it might not affect New South Wales.

The Hon. L.H. DAVIS: That is right. So as I have said, Mr Milne has a point in the sense that there is an imbalance in respect to the price of gas charged on the South Australian market and the New South Wales market. I believe market forces ultimately will prove to be a determinant. The prices will gradually come into line either through the negotiations that are currently taking place or alternatively through the South Australian Government having the courage to impose a royalty over and above the agreed price on the New South Wales consumers, if that is seen to be a way of redressing the imbalance which currently exists. Certainly I would indicate to the Hon. Mr Milne that if there was a serious breakdown in negotiations and if subsequent arbitration proved to result in what was generally agreed by everyone concerned, whether they were parties directly involved with the agreement or the public at large, to be an inappropriate price, then certainly I think it would be appropriate for the matter to be brought back to Parliament and discussed further.

The Hon. R.I. LUCAS secured the adjournment of the debate.

PLANNING REGULATIONS

Adjourned debate on motion of the Hon. I Gilfillan:

That Regulations under the Planning Act, 1982, concerning Development Control, made on 15 November 1984, and laid on the Table of this Council on 4 December 1984, be disallowed.

(Continued from 20 March. Page 3368.)

The Hon. I. GILFILLAN: I have sadly come to the conclusion that the support for the disallowance is not numerically sufficient in this Chamber for the motion to be carried. In speaking to conclude the debate, I would like to make some comment about what I see is the current situation. The purpose of clause *(f)* of Regulation 38 is to determine a development which does not comply with any conditions under which it would be permitted, and where the extent of failure to comply with such conditions is, in the reasonable opinion of the council, of a minor nature. There is no particular objection to that being excluded from public advertisement and third party appeal. It is a tidy-up provision to get rid of nuisance delays in minor matters and, assuming proper administration, this measure could be supported.

However, clause *(g)*, which is quite lengthy and goes through nine subclauses, details a lot of activities which are consent use and should never be excluded from the right of third party appeal. Unfortunately, virtually all the activities that fit within these categories will now go ahead virtually unannounced. There is no obligation for any announcement of them, so the people who can be vitally affected by them will have no knowledge that these developments are in train until they see them going up. These include shops and banks, petrol filling stations, warehouses, stores, offices, consulting rooms, shops in various zones, motor show rooms, used car lots, auction rooms, light industry, motor repair stations, general industry and the last, which is the most concerning of all, is any kind of development within 'local centre'.

This 'local centre' includes, facilities dealing with welfare including creches, any recreational activities, clubs, schools, shops, offices and entertainment, many of which have conflicting servicing requirements. The actual size, significance and placing of any of these particular units in the whole centre can often be critical to the impact and acceptance of a development by the community that it is meant to serve. To exempt all of these things from the obligation of being publicly announced and open to third party appeal is irresponsible and a tragic reversal of the main thrust of planning legislation and intention in South Australia.

Where these kinds of developments are subject to consent in the zones, it is presumed that they are so because their definition, especially the lack of notion of scale of development, is inadequate, and that certain proposals falling within them may have adverse effects. The effect is virtually to preclude notification for all conforming business, retail, commercial industrial development proposals. Therefore discussion on merits of design, scale, density, etc., are stifled and the planning authorities deprived of their most immediate and concerned sources of information. The last provision covers all developments in centre zones and is the real sting. As the development plan is now structured centre zones are a catch-all for a vast range of mutually antagonistic kinds of land use, some examples of which I gave earlier.

It can be expected that conflicts of the greatest desperation and highest stakes will arise between them, whether they are commercial rivals or not. It makes no sense to me to: *(a)* hide development in such circumstances from those affected; *(b)* remove a low key forum for debate; *(c)* postpone the emergence of conflict until money is spent on bricks and mortar; or, *(d)* force redress away from the argument on the planning merits towards arguments based on rights, equity, money and other grounds that will perhaps enable an aggrieved person to get up in a higher court.

I am aware of the reputed reasons for expediency—the Port Adelaide, Edwardstown and Murray Bridge K Marts. I do not believe that these instances, despite the potential inconvenience to the Government, Coles and others warrants the sweeping changes involved and I strongly deplore them. It is important that the attitude of the Minister be considered here. His argument is that the public has had its chance to comment at the exhibition of the development plan. That is rubbish, because anyone who really cares about the little people having a chance to have their say would realise that public availability of access and understanding of the development plan is very restricted. Two months of public exhibition is quite inadequate and in too many cases the plans are complicated and incomprehensible.

A lot of this decision making has been based on zones that are 15 years old. This is now applied under different Acts, rights and circumstances. There have been a multitude of changes to the Act and the regulations, which shows what chaos there is. Unfortunately, this regulation negates much of what was the exciting vision of proper planning legislation in South Australia, a lot of it based on some extremely good work done by Stuart Hart. It is moving diametrically away from the recommendations and wishes of Mr Hart

and those he consulted. It seems as if it is part of a tidying up just for the sake of the convenience of people who are involved in controlling both the Act and the decision making.

I am further disturbed by a Department for Environment and Planning letter dated 6 May 1985, which was written to Mr C.T. LePage, District Clerk, District Council of Angaston. The third paragraph, which talks about the Planning Act, 1982, shopping development, supplementary development plan, amendment to the development control regulations, states:

> The amendment to the Seventh Schedule to the Development Control Regulations is to make all applications for shopping development greater than 450 square metres in all areas of the State, other than an area within a shopping, business or town centre zone as designated in the Development Plan, subject to the determination of the South Australian Planning Commission.

This is dragging decision making into the centralised procedure and away from local government and away from the whole emphasis I felt was so valuable in the way that we were approaching development planning in South Australia, that is, to involve as many people as possible, particularly those to be concerned with it, in a decision-making acceptance of plans before they are put into place. I think that it is cruel to institute a regulation that will virtually deprive the people who will be most concerned with a development of any right to appeal against that development. I see no justification for that.

I am particularly concerned when I note that the motive for it was to facilitate or avoid repetition of the economic cost of delay in certain major developments where two heavyweight participants were fighting out a battle on the issue in the court and in other areas. It is with deep regret that I see that my motion of disallowance appears not to have support. I think it is a tragic irony that the Bill before us amending the Planning Act is attempting to facilitate third party appeals yet at the same time the same Government has virtually stamped out the real opportunity and access by ordinary citizens in this State to make a third party appeal.

I do not understand how the hyprocrisy evolved, but it strikes me as a lurch to lurch policy—we lurch in to one thing because a shopping centre has been held up at Edwardstown, we get a decision in the Rimington case in the Supreme Court and another Supreme Court judgment that offers some restriction on the way appeals can be proceeded with, so another sudden piece of legislation appears adding to the multitude of pieces of legislation that have zigzagged through the political history of planning legislation in this State. I am sorry that it appears that this disallowance motion will not get up. I hope that the Government, in its wisdom, and in calmer moments, will reconsider the matter.

The Council divided on the motion:

Ayes (2)—The Hons I. Gilfillan (teller), and K.L. Milne.

Noes (18)—The Hons Frank Blevins, G.L. Bruce (teller), J.C. Burdett, M.B. Cameron, B.A. Chatterton, C.W. Creedon, L.H. Davis, R.C. DeGaris, Peter Dunn, M.S. Feleppa, K.T. Griffin, C.M. Hill, Diana Laidlaw, Anne Levy, R.I. Lucas, R.J. Ritson, C.J. Sumner, and Barbara Wiese.

Majority of 16 for the Noes.

Motion thus negatived.

CITY OF ADELAIDE DEVELOPMENT CONTROL ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

It amends the City of Adelaide Development Control Act, 1976 (the City Act). The Act provides for a scheme of development control in the City of Adelaide administered by the Corporation of the City of Adelaide and the City of Adelaide Planning Commission. The system established by the Act is separate from the development control system applying throughout the rest of the State. The Bill provides for a number of amendments to the Act to enable the council and the Commission to administer development control in the city more effectively.

A number of amendments seek to clarify or strengthen existing provisions in the Act. There is presently some doubt whether at law the council and the Commission can deal with an application for development if the development has been commenced or completed before the application is made. The Bill amends the Act to make it clear that all development, whether proposed, commenced or completed, may be considered by the council or the Commission. The Bill provides for a substantial increase in penalties for undertaking development contrary to the Act.

The Bill amends the Act to clarify the sorts of conditions which may be attached to a planning approval. The Bill provides that the council is authorised to attach conditions which require the future restoration of land. The new provision does not require restoration within the period of two years prescribed by existing section 25a.

The Bill amends the Act to provide that the Crown (excluding Ministers of the Crown and prescribed instrumentalities and agencies of the Crown) is bound by the Act. The new section provides that a Minister or a prescribed instrumentality or agency of the Crown wishing to undertake development must first advise the City of Adelaide Planning Commission and consider any submissions it wishes to make before proceeding with the development. This amendment brings the City Act into line with the Plannning Act, 1982.

The Bill amends the Act to provide that the council or the Commission may vary or revoke a decision that is the subject of an appeal under the Act at a compulsory conference held prior to the hearing of the appeal. This will enable the council or Commission to change the original decision in order to implement a compromise worked out at a conference. The Bill amends the Act to overcome difficulties which have been encountered in effectively exercising powers of entry conferred on the council by section 40 of the Act.

The Bill repeals section 42 of the Act. This section is similar to section 56(1) *(a)* of the Planning Act, 1982. In so far as it purports to protect the right to continue to use land, the section is redundant. The term 'Development' means a change in the use of land but not a continuation of an existing use. The Act, therefore, does not attempt to control the continuation of existing use of land. However, judicial interpretation of this section has expanded its meaning so that it now protects landowners who wish to change the use of their land by extending an existing use of the land. The Government and the council are concerned that such expansion can be undertaken without any control.

The Bill amends the Act to incorporate a number of new provisions which are based on provisions in the Planning Act, 1982. These include civil enforcement proceedings, land management agreements and control of advertisements. Provisions based on the Planning Act, 1982, will provide useful methods of enforcing planning controls.

The Bill also provides that environmental impact statement procedures may apply to development of major social, economic or environmental importance in the city. Since the commencement of the Planning Act, 1982, environmental impact statement procedures apply throughout the State except in the City of Adelaide. It is considered desirable that similar provisions also apply to the city. It is anticipated

that this provision will only be used in circumstances where proposed developments are the major importance to the State. Experience in administration of the Planning Act, 1982, has demonstrated that a parallel provision in that Act has been used only once since commencement of the Act. I seek leave to have the detailed explanation of the clauses of the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 amends section 3 of the principal Act. Clause 4 inserts a definition of 'environmental impact statement' into section 4 of the principal Act. Clause 5 repeals section 5 of the principal Act and replaces it with two new sections. New section 4a explains the concept of change of use of land for the purposes of the Act and is in the same form as section 4a of the Planning Act, 1982. New section 5 is the new provision relating to the Crown.

Clause 6 replaces sections 23 and 24 of the principal Act. Subsections (1) and (2) of section 23 are in a form similar to that of section 46 (1) and (2) of the Planning Act, 1982. The remaining subsections of existing section 23, being enforcement provisions, are redundant in view of the insertion of enforcement provisions by a later clause of the Bill. New section 24 replaces the substance of existing section 24 with minor changes.

Clause 7 makes consequential amendments. Clause 8 replaces subsection (2) of section 25 with a provision that elaborates on the substance of the existing provision and increases to 12 months the period within which restoration may be required without the consent of the Commission. Clause 9 replaces section 25a with a provision that spells out the kinds of conditions requiring restoration of the land that may be imposed by the council.

Clause 10 makes consequential amendments. Clause 11 inserts new Part IVA into the principal Act. This Part makes provisions similar to those of sections 50 and 51 of the Planning Act, 1982, and also provides for the preparation of environmental impact statements. Clause 12 makes a consequential amendment to section 28 of the principal Act.

Clause 13 amends section 29 of the principal Act so that the council or the Commission may vary a previous decision to give effect to an agreement reached at a conference of parties held under that section. Clause 14 inserts new Part VA into the principal Act. This Part provides for civil enforcement proceedings and follows closely Division II of Part III of the Planning Act, 1982.

Clause 15 inserts new sections 39d and 39e into the principal Act, section 39d provides for land management agreements and section 39e provides for the removal of certain advertisements. These provisions are similar to sections 61 and 55 of the Planning Act, 1982, respectively. Clause 16 replaces section 40 of the principal Act with a more detailed provision. Clause 17 replaces section 42 of the principal Act with a provision similar to section 57 of the Planning Act, 1982.

The Hon. C.M. HILL: I have had an opportunity to peruse an advance copy of the Bill and a copy of the Minister's explanation which he has just given to the Council. As we are extremely busy in what will probably be the last two days of the session, I respond immediately to the measure. The Bill amends the City of Adelaide Development Control Act. I think honourable members should be aware that this was a special Act of Parliament in the overall planning area dealing with planning control within the City of Adelaide. As honourable members know, that special Act provides that that control shall be in the hands of the Corporation of the City of Adelaide as well as the City of Adelaide Planning Commission.

Legislation different to ordinary planning legislation which controls planning throughout the balance of South Australia is necessary because, of course, there is a unique situation within the City of Adelaide: there is development that one does not find elsewhere in South Australia; there is dense office and commercial development both of a small and very large nature; there are factories, both large and small; and there is residential development that is not found to the same extent in other parts of the State. By that, I mean that many of the building allotments in the city are very small, and there is a denseness in our residential establishment that is not found elsewhere. Of course, the City of Adelaide is the heart of the metropolis—indeed, one might say the heartland of the whole State. That brings other planning features such as transport control and other matters of servicing into importance.

It is proper that a special Act should control our development in this city. We have other features that require proper planning, such as our cultural facilities, and one could go on and on stressing the need for a special Act and for special consideration for some of the principles involved in planning for the City of Adelaide, which do not necessarily apply to planning in other parts of the State.

Some of the measures that the Minister has just explained as being part of the Bill were recommended by the Liberal Government of 1979-82. It has taken the period since the present Government came to office for them to be presented to Parliament in this legislative form. Of those measures, and some of the others which the Minister just explained in detail and which I do not propose to reiterate, some are rather of a non-controversial nature and will assist the planning process within the City of Adelaide.

Only two matters in the Bill concern me: one is the question of the repeal of section 42 of the existing Act, and the alternative approach that the Government suggests in this measure to control over the general question of existing use. Section 42, which is being repealed, is straightforward. It provides:

> Nothing in this Act shall be construed as preventing the continued use of any land within the municipality for the purposes for which the land was being lawfully used on the appointed day.

The problem that has arisen is that the judicial interpretation of that question of existing use has meant that, whereas existing use is not questioned, problems arise when proposals to extend existing use come about. In the City of Adelaide, there are areas of very dense housing and housing on small allotments; there are established businesses amongst housing regions; and there are problems that sometimes arise even when proposals are put forward to extend housing use. These problems sometimes involve traffic congestion, parking problems and the nearness of such housing extension to existing factories. Where we have this great mix of residential development and commercial and industrial establishment, invariably problems arise when owners propose to extend existing use.

The question that the Government has faced up to is whether or not these extensions of existing use should be subject to some control. Prior to this legislation, the City of Adelaide and the Commission have not been able to control such extensions. From inquiries that I have made, both in North Adelaide and in the square mile of the City of Adelaide, I find that there is a very strong feeling amongst people generally that there is a need for adequate controls in situations, as I have explained.

I stress that the Bill does not interfere with existing use but simply provides that, when expansion is proposed to extend existing use, some control is necessary to ascertain

whether such proposals to extend that existing use are suitable, from the point of view not only of the proponent or the applicant but also of the environment in which that property is situated. Because of this need for adequate control, I do not oppose in these circumstances within the City of Adelaide this provision in the Bill.

The second point to which I refer concerns the question of signboards and billboards, which the Bill proposes to control in a retrospective way. Clause 14, which deals with agreements relating to preservation or development of land, clearly states that the council may require any signboard to be removed or obliterated, and advertising hoardings generally to be removed if, in the opinion of the council, that is desirable from the point of view that the sign detracts from the amenity of that locality.

I do not object to that kind of control being exercised in relation to new applications, but it is going too far when the council is given power to step in and take action against any existing sign. We might well have a billboard in the City of Adelaide which has been up for 20 years and which might be quite a landmark in some respects. Yet, other opinions could claim that it was garish or undesirable because it was too colourful and unsuitable for the environment, and so forth. This Bill gives the council the right, despite the fact that such a board had been erected for so many years, to order its removal.

The Hon. Peter Dunn: The Shell sign that has been there for many years.

The Hon. C.M. HILL: The honourable member raises an interesting question. For many years there were council controls along the North Terrace frontage, prohibiting signs of that kind. There were controls prohibiting retail business being carried on from the frontages of the buildings that line the southern boundary of North Terrace. Over the years, those controls have been relaxed somewhat. However, I stress that we are dealing with a difficult question because it is all a matter of opinion.

If one goes into Hindley Street, for example, and takes the view that everything that is too bright and garish should be removed because it is not a good thing to have such an atmosphere there, that would be one opinion; but, many other people would feel that particularly bright signs are all part of the character of Hindley Street. So, one could go on and on arguing one side or other of this case. I am prepared to allow such debate to take place when an applicant seeks to obtain consent to erect such a board. However, the council's being able to step in in a retrospective way is an unreasonable power.

I will be moving an amendment so that the clause reads that the controls that the Government seeks will only apply as far as new signs or hoardings are concerned. From the point of view of the ratepayers in the city I think that that is a much fairer approach to that question. Apart from that, I support the second reading of the Bill and will debate the question of sign boards further at the appropriate time in Committee.

Bill read a second time.

In Committee.

Clauses 1 to 13 passed.

Progress reported; Committee to sit again.

INSTITUTE OF MEDICAL AND VETERINARY SCIENCE ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

The main purpose of this Bill is to permit the Institute of Medical and Veterinary Science to form a company, which would have as its principal objective the management of the commercial aspects of the Institute. In addition, the Bill will allow part-time employees to enter the State Superannuation Fund, thus providing IMVS employees with conditions similar to other State Government employees.

The provision of laboratory services for the diagnosis and management of patients is a fundamental objective of the Institute of Medical and Veterinary Science. The Institute's role in research and teaching is also well understood and clearly identified. However, the Institute has a number of capabilities and functions in other areas which are not so well identified.

The Institute is perhaps the largest medical diagnostic laboratory complex in Australia. It is different from most diagnostic laboratories in that it not only provides laboratory services to public hospitals but is also a major supplier of diagnostic services to the private medical practice. It is integrated into the University of Adelaide Medical School complex with respect to teaching and research in the areas of pathology. Because of the size and range of activities it undertakes, the Institute has had to develop a number of facilities, systems and devices to enable it to provide these services. Some of these have a commercial value and have either been given, copied or sold to other organisations.

Until now there has been relatively little emphasis on the commercial role of the Institute and financial returns have been absorbed into general revenue. However, the recent emphasis on biotechnology by the Federal Department of Science and Technology, the State Ministry of Technology and the Department of State Development have caused the Institute to review this aspect of its role. For the purposes of this Bill the commercial role of the Institute does not include the routine medical diagnostic services provided for patient care.

The Institute already is involved in the manufacture of several biomedical products. However, it is considered that there is a significant market potential for more commercially viable products supported by the present manufacturing capacity of the Institute. Such products could include the various chemical diagnostic test kits, an example being a faecal blood test developed at the Institute and which now appears to have significant national and international applications in the early diagnosis of cancer of the gastrointestinal tract. Special function software for micro-computers in laboratories has been developed at the Institute and has been used in many States within Australia.

Educational systems based on high quality microscope slides could also be developed. There is, of course, a very real potential to develop completely new products using the highly trained and skilled staff of the Institute. The capability for the development of test systems involving recombinant DNA work already exists at the Institute. Indeed, the Institute is already a party to a biotechnology grant awarded to the Flinders University in this area for the development of specific monoclonal antibody based tests.

The Institute is also in receipt of a further grant with the University of Adelaide Department of Biochemistry which is based on recombinant DNA work involving novel technologies developed in Adelaide. The recent development of a Q fever vaccine by the Institute—a world first—has brought benefit to the State by the elimination of Q fever from SAMCOR, with significant savings from workers compensation and improved productivity. This vaccine is to be marketed by the Commonwealth Serum Laboratories nationally and internationally. The Institute will not benefit further from this development, but may have if there had been a different climate to research and development at the commencement of the project.

Over recent years there has been a dramatic change in the climate with respect to biotechnology developments. Recently in Australia, both Federal and State Governments have been actively promoting technology and officers of the Institute have held discussions with the Federal Departments of Trade, Science and Technology and the State Ministry of Technology. These discussions have offered encouragement to the Institute to pursue the commercialisation of its scientific developments and, in particular, to achieve this through a company.

Arising out of a symposium organised by the Ministry of Technology at which the Federal Minister of Science and Technology was the guest speaker, it was made clear that the principal issue with respect to financial support of research and development in institutions was that it should be linked to marketing to enable the full potential of such developments to be pursued through to commercial viability of the product. There would be advantages for the Institute in having a company to support research. Such advantages would be:

- the proper identification and budgeting of research and development for new tests and procedures;
- better accountability for these developments;
- the development of incentives for staff to be involved in developments;
- the reduction of the deficit of the Institute on the State by more appropriate funding of research and development;
- the direct and indirect possible employment benefits within the State;
- linking research and development of biotechnology to commercial markets.

The present commercial operation of the Institute would provide a small, but self-supporting base for a company to develop from. In addition to the ability to attract biotechnology grants, the company would also be able to actively improve present product manufacture and its marketing. It is not envisaged that such a company would, by itself, develop into a large and separately staffed organisation. Like other companies operating out of Government departments and statutory authorities, it would contract with the Institute for some aspects of its operation and could also contract outside of the Institute for some aspects of its management and marketing.

The requirement for the company accounts to be audited annually by the Auditor-General (clause 5) and for an annual report to be presented to Parliament as part of the IMVS Annual Report (clause 7) will permit the ordered and controlled development of the commercial aspects of biotechnology at the IMVS. These developments are not seen to be in conflict with private pathology laboratories in South Australia which are not involved in this form of research and development. Indeed, they may wish to use some of these developments for their own services. It is believed that these proposals will assist industrial development and, therefore, employment within South Australia. This expectation is in line with experience in other centres where this form of technological activity is recognised as having a high economic multiplier effect. I commend the Bill to the Council. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal. Clause 3 inserts the necessary functions for the Institute to take commercial advantage of its existing activities. Paragraph *(b)* inserts provisions that will enable the Institute to operate through the instrumentality of a company and paragraph *(c)* makes a consequential amendment to the delegation provision. Clause 4 makes an amendment that will enable part-time employees of the Institute to join the State superannuation scheme.

Clause 5 replaces section 21 with a provision that requires the auditing of the accounts of a company established by the Institute. Clause 6 amends section 23 of the principal Act so that money generated by the commercial operations of the Institute may be used directly to finance the Institute's functions without first having to be appropriated by Parliament. Clause 7 amends section 31 of the principal Act to include the operations of a company formed by the Institute in the Institute's annual report.

The Hon. R.I. LUCAS: I am pleased to support the second reading of this Bill and to expedite its passage through the Parliament. As the Minister has indicated, the primary purpose of the Bill is to enable the IMVS to form a company, which would have as its principal objective the management of the commercial aspects of the Institute. It is certainly clear that in the 1970s and the 1980s many Government departments and statutory authorities throughout Australia have been forming similar companies to help market any new technologies or inventions that might result from their particular brand of research. It is also true that the universities have been at the forefront in recent times of forming such companies to help market the results of the pure and applied research that is undertaken within those tertiary institutions.

As I listened to the second reading explanation, I recalled that certainly the University of Adelaide has at least three companies of which I am aware that help market the commercial aspects of research in various departments. Certainly, the IVF team in Melbourne has formed itself into a company and is seeking to market its technologies, particularly in the United States. Perhaps the Hon. Dr Ritson who, I understand, will speak later, will be able to flesh out the detail. Nevertheless, this is a further example of the trend in the 1980s for results of research by Government or semi-government institutions to be marketed commercially by companies formed for that purpose. I certainly support that as a general principle.

The Minister indicated about half a dozen good advantages from the formation of the company. I will not go over each of them again but will refer to one or two. Certainly, the Minister referred to the incentives for staff to be involved in developments. I believe that that is an important advantage of the formation of a company, that is, to maximise the advantages of research. I believe it gives staff incentive if they can see the end of their research, the commercial aspects and possibly some advantage accruing to them by way of a form of financial inducement. More importantly, I hope that they would see advantage coming back to the institution by way of increased funding through the sale of the technology in which they have been involved.

That leads to the next advantage—the reduction of the deficit of the State because of more appropriate funding for research and development. Those two advantages obviously go hand in hand. Obviously, if the company is successful in the market place and can sell the technologies that are being developed by the professional staff at the Institute not only the staff but also the Institute will prosper. The days of stringent cut-backs in finances, which we have seen recently from both State and Federal Governments of all political persuasions, mean that it is important for the Institute to find alternative means of funding or at least of part funding. I certainly support this initiative and the formation of the company.

I want to refer to one other aspect of the Bill. I was pleased to note that an amendment to section 21 of the

principal Act provides that the Parliament will be kept informed of the progress of the company in relation to marketing the results of technologies. Certainly, amendments to section 31 of the principal Act will ensure that the Parliament is informed of the activities of the company in this area. I believe that the company will encourage further research and development of a high quality, particularly in the biotechnology area, referred to by the Minister, at the IMVS. For the reasons that I indicated previously, I am happy to support the second reading.

The Hon. R.J. RITSON: I join with my colleague in supporting this Bill. I will deal with it with my usual brevity. Unfortunately, the Minister through great pressure of work has been called momentarily from the Chamber, but I am sure he will hear me in spirit or perhaps on one of the loud speakers. The whole question of the scientific output of public institutions, whether universities or other public scientific institutions, indicates that they have been rather poor cousins to the great commercial scientific, pharmaceutical and industrial complexes of the Western world economy. I think it is fair to say that the entire original research output of the university system is a drop in the ocean compared with the output of the commercial scientific systems. There are many examples of this deficiency.

The Minister in the second reading explanation gave some examples of a discovery that is now marketed by the Commonwealth Serum Laboratories with no financial benefit to the Institute. I recall that in the 1950s when I was a resident in a university college a guest speaker addressed the students one evening: he brought with him gadgetry to demonstrate his new invention, called dry drawing or zerography. He was employed by the Defence Standards Laboratory and he had developed a technique of copying. In fact, he had discovered photocopying. In the event, I think he was rewarded by his employer, the Government, with a little incentive grant of several hundred pounds, but obviously the Government then scratched its head and wondered what to do with this invention. It was sold to the Rank organisation, which is now Rank Xerox. So, the name given to the process by the original inventor is now a world famous name in the field of photocopying. The name of the inventor is lost to me at the moment and the potential gain to the people of Australia is also lost because the rights to that process I am sure were sold for what would be a pittance compared with its true value.

This Bill, together with the proposal for universities to move into the marketing of their discoveries, is therefore a great step forward. It has of course nothing to do with the service role of the Institute, that is, the providing of diagnostic and investigative services. The Institute has always rendered those services at the appropriate arbitrated medical benefits fee for the general public and, depending on the state of play of medical politics in Australia from decade to decade, it has rendered those services for no fee to the patients of the public hospitals. Indeed, it never started life as a competitor with private pathologists. It was the major source of these diagnostic services and small private pathologists many years ago dealt with that part of pathology which did not require high technology and expensive plant and equipment, and sent all the rest of their stuff to the Institute. So as time has gone by, what has happened is that the private pathologists have upgraded their techniques, plant and equipment and increasingly competed with the previously established Institute of Medical and Veterinary Science. Separate from that service which the Institute performs competitively in the market place it should have an opportunity of marketing scientific discoveries and of securing rights over them in the same way as any private non-government scientific or industrial company could.

I have one hope and a little anxiety which was aroused by some comment that the Hon. Mr Lucas made that perhaps income which flows eventually from any successful commercialisation of a scientific discovery will help fund deficits. I hope that there would not be any question of income from scientific discoveries being milked to fund deficits in other areas of the Institute's function. If any university or Government scientific institution is ever going to get a level of activity in excellence in output approaching the very large multi-national companies, any income from the marketing of its scientific work should really be ploughed back—it should become input into further research in the same way as for example a pharmaceutical company would put a substantial proportion of its revenue back.

In the case of a pharmaceutical company, for instance, the company might have experiments running on dozens of different chemicals, different variants of drugs attempting to modify side effects of one or the other. Then when it makes a discovery, it would patent it, promote it vigorously and, in the initial phases of promotion, it is usually quite expensive because its aim in the first instance is to recover its development costs and in the second instance to put further money into ongoing research into further products and any money left over from that pricing and marketing structure is then profit. That is sound business practice and if there is to be marketing of discoveries, patenting of discoveries by the Institute, then I would be disturbed if it were not done on a business-like basis. In other words, if it were set up to conduct this business, it should do it as other businesses do and allocate the appropriate amount of its cash flow to further market orientated research projects and not allow the Government of the day, be it Labor or Liberal, to milk that enterprise in order to subsidise deficits, whether they be deficits caused by either inefficient administration or unavoidable public service. Having said that and expressed that anxiety. I have much pleasure in supporting the second reading.

The Hon. Frank Blevins: Is that the definition of a Labor deficit or a Liberal deficit?

The Hon. R.J. RITSON: I made no partisan comment at all. You must have misheard me.

The Hon. Frank Blevins: I thought you were describing a Labor deficit or a Liberal deficit.

The Hon. R.J. RITSON: No, I said, whether a Labor Government or a Liberal Government. In any case, I have much pleasure in supporting the second reading of the Bill and we will expedite its passage.

The Hon. FRANK BLEVINS: I thank the Hon. Mr Lucas and the Hon. Dr Ritson for the support they have given to the second reading and also the Oppostion in general for the assistance it has given the Government in the speedy passage of this Bill. The remarks that both members made I am sure will be taken into consideration by the Minister who is in charge of this area.

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

LIFTS AND CRANES BILL

Adjourned debate on second reading.

(Continued from 14 May. Page 4239.)

The Hon. R.J. RITSON: We on this side of the Council do not oppose this Bill, which deals with safety regulations that control the construction, erection, modification, maintenance and operation of cranes, hoists and lifts and in so doing repeals the previous Act. We see this essentially as a machinery Bill in both senses of the word. The general thrust of this Bill is to shift some of the responsibility for

the physical examination and certification of this machinery, which work is necessary to ensure that it is safe to operate, from the Department to the industries that are using the equipment so that, in effect, those industries will arrange of their own volition to have engineers inspect and write the respective certificates.

The Bill is not deregulatory in any sense. The Government does not lose control over the safety standards. The number of regulations remains the same. I suspect that, largely as a result of a big increase in the number of devices that require inspections and certification, and an increase in the variety of those devices, it is becoming an increasing burden on the Government for the Department physically to do all of the inspecting and certification required. I am convinced that adequate control will be exercised over the safety of this equipment by the Government, but that some of this control will be vicarious through being farmed out to private engineers who will have a statutory duty to provide certificates for Government records. The Government does retain its inspectorial power so that there is no erosion of safety, only a practical and non-political shift in the manner and technique of dealing with the safety problem. For that reason, we undertake to expedite the progress of this Bill and have it passed without delay.

The Hon. FRANK BLEVINS (Minister of Agriculture): I thank the Hon. Dr Ritson, who has responded on behalf of the Opposition, for his co-operation in getting this machinery measure through promptly.

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

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

UNLEADED PETROL BILL

Adjourned debate on second reading.
(Continued from 9 May. Page 4107.)

The Hon. M.B. CAMERON (Leader of the Opposition): This Bill is designed to facilitate the introduction of unleaded petrol in South Australia. It lays down certain conditions under which it will slowly come into use in South Australia. Some concerns are associated with its introduction. It is surprising that the State which produces the majority of lead in Australia, and perhaps even the world (although I am not certain about that), is now considering a Bill that will eliminate the use of lead in petrol. I am not sure, and I do not think anyone has ever been sure, whether this move is really necessary, because there are only a few areas in Sydney where this has been a problem. However, that argument has long since disappeared and we now have a situation where we have unleaded petrol; from now on motor vehicles must be designed to use only unleaded petrol.

There will be an interim period during which the majority of cars will be using leaded petrol. I understand that in the initial stages only 15 per cent of cars will be able to use unleaded petrol, but this will gradually change as new cars are produced and the new regulations relating to vehicles are enforced. Therefore, during the interim period, from the point of view of a petrol retailer, unleaded petrol will make up a minor part of the retailer's sales. As I have said, some problems are associated with this measure. The first problem that has been brought to my attention relates to small country towns where there is only one pump. If resellers are required to provide both grades of petrol, in many cases it will necessitate the installation of a second pump.

The Hon. Anne Levy: Don't they have super and standard at the moment?

The Hon. M.B. CAMERON: No, many do not. It is not economical for them to provide two pumps. I am informed that it will cost them up to $15 000 for an additional facility for about 15 per cent of their sales (at least in the initial stages). That creates a problem. I understand that in New South Wales this has been addressed and that during the two year interim period it will be possible for people to apply for dispensation from this rule if they use below 240 000 litres of petrol per year. That does not mean that they automatically receive dispensation, but they can apply for it and a decision will then be made. However, after two years it will be mandatory for them to change over to unleaded petrol. I have on file an amendment dealing with this situation.

To give some indication of the areas affected by this provision, I have been provided with a list of townships in country areas where there is only one facility, and they include Renmark South, Stockport, Kyneton, Yacka, Blyth, Tarcoola, Mount Bryan, Whyte Yarcowie, Venus Bay, and Arno Bay. Some of those towns are in rather remote areas, and there are certainly no extra facilities available. I have provided only a short list; there are other places that will have a similar problem.

The second problem that has been brought to my attention relates to the provision which makes it mandatory for people selling petrol to not sell unleaded petrol for a price equal to or less than leaded petrol. That will apply particularly to super petrol, because standard petrol is almost, if it is not already, a thing of the past. This creates a problem in discounting situations whereby, if a reseller receives a rebate on leaded petrol, the retailer next door is then forced into a discount situation with leaded petrol. If the reseller is not also receiving a rebate on the unleaded petrol that he is selling, he will have to go into a loss situation with the unleaded petrol to keep the prices equal to or less than that of the leaded petrol. I understand that in Western Australia this has already occurred in two or three situations. To date, the oil companies have responded promptly to an approach by the Automobile Chamber of Commerce and a discount or rebate on both grades has been provided to the retailer. However, that is not necessarily the case.

It is the retailer, not the wholesaler, who suffers the loss. It is the retailer who cops the blame and is forced to sell at the lower rate for both grades when he might be receiving a rebate on only one or his neighbour might be receiving a rebate on only one grade. The neighbour who is not receiving a rebate will have to sell both grades at a discount when at that time it might well be that he has to discount only one grade. Therefore, it creates a problem. I am not sure that we are not over killing in this situation by ensuring that unleaded petrol must be sold at equal to or less than the price of leaded petrol. Whether or not they like it, slowly but surely the sales of petrol will change.

Every time a car that can use only unleaded petrol is sold, the person concerned can buy only unleaded petrol for it, so it will be an automatic changeover without this provision that interferes with the market forces and the price for which a person sells petrol. Even if one is in a situation of buying petrol and there is an inequality of price, if one has the type of car that uses only unleaded petrol one has to buy that petrol, anyway: it will not make any difference.

Over the next two to five years, or whatever the period is—I imagine that it will be up to five years—there will be a slow change. During that change, sales will increase automatically; there is no choice for people who purchase new motor cars. The fear is that they may be forced to pay more for unleaded petrol than for leaded petrol. Market forces will fix that to some extent—it is not as much a fear. I will

test the feeling of the Council by moving amendments to delete those just to overcome the problem that will arise.

The Hon. C.J. Sumner interjecting:

The Hon. M.B. CAMERON: I have been told that it potentially is. The Minister can indicate that at the time.

The Hon. C.J. Sumner: Exemptions can be given.

The Hon. M.B. CAMERON: I am talking about the situation where there is a discount war on one grade of petrol only so that the person concerned can be selling one at a discount but not getting a discount on the second grade, or a next door neighbour can be forced to sell both at a discount. We have no price control.

The Hon. C.J. Sumner: The oil companies have said that they will accept that.

The Hon. M.B. CAMERON: I would be interested to get some indication from the Attorney as to how he would regard that situation if it arises. There should be some clear statement as to the attitude of the Government if that situation occurs, where people are being forced into a discount situation—not necessarily the person giving the rebate, but other people in the vicinity—on both grades because they cannot sell one. They have to sell them at equal to or less than that price, so one can have both grades being sold at a loss.

That could be a disastrous situation for retailers of petrol, particularly those who are not getting rebates from any one oil company. Perhaps the Attorney can address that in his reply, but at present I am inclined to delete those sections, because that situation will cure itself, as I indicated when the Attorney was not here. Gradually, as people buy cars that can use only unleaded petrol, the consumption of unleaded petrol will have to rise automatically because they cannot use any other grade in their vehicles.

The Opposition supports the Bill, but is looking very carefully at the situations where problems may occur in the industry. I indicated also—and I gather that the Attorney would have looked at my amendment—that there are some situations in country areas where there is only one outlet selling only one grade. Where that occurs the persons concerned can be reduced to no sales of petrol if they are not prepared to put in a second pump, which, at up to $15 000, can be quite a heavy financial burden for a small country store. I repeat that, in case the Attorney did not hear what I said.

The Hon. Anne Levy interjecting:

The Hon. M.B. CAMERON: It is up to the Attorney to give an exemption, but I am indicating a level that has already been accepted in New South Wales, at which there should be the right to apply for exemption. The Hon. Ms Levy rightly points out that there is an exemption clause, but I want to get some indication also as to what the Attorney's attitude will be to applications for an exemption under that clause. The Opposition supports the Bill, with the indication that it would appreciate some information on the Attorney's attitude to these two situations.

The Hon. PETER DUNN: Having looked at this Bill a while ago, I think that we have successfully cracked this nut with a very heavy hammer indeed. I am aware that the world today is asking that there be unleaded petrol throughout the world in five to 10 years. I suppose that there are some very good medical reasons to justify that, but here in Australia we do not have the car densities that are obviously in the European countries and in America. Therefore, we do not use as much petrol and we do not have that problem. Perhaps Sydney and Melbourne may have a small rise in their lead contents, but I am a little doubtful. The argument of having leaded and unleaded petrol has waxed and waned for years. The argument against leaded petrol is one of health and the fact that it will not put into the atmosphere quantities of lead that we all know are reasonably poisonous to human beings and to other animal tissues.

However, the amounts that are put into the atmosphere, as I explained before, are very low. The advantages of leaded petrol in this case and, in particular, in Australia far outweigh those for the use of unleaded petrol. The reasons are fairly simple. Anybody who understands the internal combustion engine will realise that leaded petrol was designed in the first instance to stop uneven burning of that fuel, so by the addition of a small amount of lead tetraethyl the petrol became a much more even burning product; it aided combustion markedly and we had a smoother running engine.

Apart from that, the fact that it is lead, which is a fairly slippery substance, means that it acts as an internal lubricant in the engine. So, it has been proven fairly significantly across the world that engines that have leaded petrol tend to have fewer problems with the parts that slide over one another; in particular, the valve stems have less scoring, and the engines tend to last somewhat longer. Advances in engine technology, though, have probably overcome the advantages of using unleaded petrol that were obvious 20 or 30 years ago. Some advances may have been made in the past few years that will overcome the unleaded petrol problem, but at this stage I do not believe that those modern technologies are here in Australia. So, we can expect to see problems within those engines.

I can demonstrate that by the fact that I use an engine in my aeroplane that has been able to use high lead and low lead fuels, which are freely available throughout South Australia for aircraft. When that engine runs on low lead petrol I have had problems with it, but when it has been running on fully leaded petrol I have had very little problem with it, apart from a build up of lead on the spark plugs. So, there is a good case to be put for having leaded petrol.

The other case is that we in South Australia produce such a huge quantity of the world's lead from Port Pirie smelters, from Broken Hill. I suppose that it is a world trend, but here we are endeavouring to put Port Pirie and Broken Hill out of business. Honourable members will find that a very large proportion—something like 80 per cent—of the lead goes into making lead tetraethyl. The product is processed in America and added to fuel all over the world, so that is a disadvantage to this Bill. We are encouraging that by doing it.

However, I understand that it is an Australia-wide trend and that we have to fall into line with it. That being the case, the rest of the problems are to do with the Bill. The Hon. Mr Cameron pointed out that a number of towns in South Australia only have one pump and will sell super fuel only. It is wise to have included in the Bill a provision that allows those people, if they do not sell an overall quantity, to sell super petrol or one of those grades of fuel. After listening to the towns that the Hon. Mr Cameron read out, I noticed that all of them were only a short distance from other towns that would have two fuel pumps where consumers could buy leaded and unleaded fuel.

The Hon. M.B. CAMERON: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

DISTINGUISHED VISITORS

The PRESIDENT: I notice in our gallery members of the visiting Singaporean Parliamentary delegation and I extend to them a very cordial welcome on behalf of all honourable members. I invite Mr Wong, the Minister of State for Home Affairs and Community Development and leader of the delegation, to take a seat on the floor of the Council and I ask the Attorney-General and the Leader of

the Opposition to escort him to a seat on the right-hand side of the President. We appreciate the delegation's visit to our State and hope that they have a happy stay with us.

Mr Wong was escorted by the Hon. Mr Sumner and the Hon. Mr Cameron to a seat on the floor of the Council.

UNLEADED PETROL BILL

Second reading debate resumed.

The Hon. PETER DUNN: I, too, welcome those members from the Singapore Parliament and hope that they enjoy their stay in South Australia. Before the interruption I was speaking of leaded petrol and the fact that it was available in single pumps in small towns throughout the State. I think that that problem can be cured fairly quickly. However, a problem arises in the farming community where farmers will be required to have two tanks for the storage of leaded and unleaded fuel when they purchase a new vehicle. Will unleaded and leaded petrol be available in 200 litre drums? Most farmers today only have one tank for the storage of fuel and for a short period they will be required to hold both types of fuel on their property. This Bill contains some very draconian penalties. Clause 3 provides:

'unleaded petrol' means petrol that does not contain more than—

(a) 0.013 grams of lead;

or

(b) 0.0013 grams of phosphorus,

per litre

If a person sells fuel outside those specifications the fine is $10 000. Clause 5 provides:

(1) A person shall not introduce leaded petrol into the petrol tank of a motor vehicle designed to use unleaded petrol.

Penalty: $10 000.

These penalties for infringements that can happen by accident are very severe. I am aware that the Bill contains a provision which allows a way out, and I think that that is rightly so. I can see a problem of a person accidentally, or perhaps even knowingly, putting leaded petrol into an unleaded tank because they are stranded. Under the Bill it will be difficult to defend such an infringement. All penalties contained in the Bill are in the order of $10 000, and are most severe. A retailer will be fined $10 000 if one of his employees, by chance, wrongly fills a tank.

I understand that the design of vehicles and the filling system will be such that it will be difficult to put leaded fuel into a tank that contains unleaded fuel. Therefore, it will require a conscious effort to do that. However, the penalty is still $10 000, and I find that penalty extraordinary for an employee who accidentally puts leaded fuel into a tank designed for unleaded fuel. The Bill contains a further provision which gives an authorised officer very strong powers. Clause 11 provides that an authorised officer can inspect premises from which petrol is sold; take samples of petrol from various containers; stop a vehicle, open the tank in which the fuel is carried, and extract from it, amongst other things, a sample to determine whether or not it has leaded fuel in it. In fact, if that happened and unintentionally further back on the road that person had had his tank filled with leaded petrol, he would have difficulty in proving that he did not deliberately do it.

These regulations are extremely draconian. What are we doing? We are really only adding leaded fuel to unleaded fuel. This will cause a breakdown in the catalytic converter on vehicles running on unleaded fuel so that when leaded fuel is introduced into the converter it will break down. Replacement of the converter will cost somewhere in the order of $200 to $400. If it breaks down, the car emits nitrous oxide and other pollutants which cause smog, but that is in the city. I rarely see smog where I live. Therefore, a large section of the community does not require a fine of $10 000 to be in place because they probably never come to the city in a car. My children used to drive a car a certain distance to catch the school bus to go to school.

That car has never been registered because it is driven on private property, but under this Bill an authorised officer can check the tank and, should leaded fuel be found in or around the vehicle, if it is a vehicle that uses unleaded fuel, I would be liable to a fine of $10 000. That is plainly severe. In 10 or 15 years only unleaded petrol will be used, but there will be grey areas before this change. At present a lot of leaded petrol and little unleaded fuel is used but in nine or 10 years a lot of unleaded petrol and little leaded petrol will be used. These huge penalties to be imposed on the community at large will present problems. I believe they are draconian: they should be reduced. The offences are not significant enough to attract that sort of penalty. We could have done without this Bill, but it is before us now and so I will support it.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Progress reported; Committee to sit again.

ANZ EXECUTORS AND TRUSTEE COMPANY (SOUTH AUSTRALIA) LIMITED BILL

Adjourned debate on second reading.

(Continued from 7 May. Page 3904.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill, which grants statutory recognition to the ANZ Executors and Trustee Company (South Australia) Limited to enable it to carry on the business of executors and trustees in South Australia. The Bill is really the last part of the saga of the takeover of Executor Trustee and Agency Company of South Australia Limited, which was a publicly listed company subject to special executor companies legislation and in respect of which the State Bank was successful, with Govt support, in acquiring at least the majority of shares. A takeover was sanctioned by amending legislation earlier in this session.

Although there has been considerable debate about the takeover saga in relation to Executor Trustee and Agency Company, it would not hurt to reflect on the sequence of events that caused the ANZ Bank to withdraw from its takeover battle with the State Bank for Executor Trustee and Agency Company of South Australia Limited. In 1978 the then ALP Government introduced legislation to give statutory recognition to limitations on the shareholding then contained in the articles of association of the company. The company was the subject of a special Act of Parliament even at that stage to enable it to carry on business in this State, and its articles had provided for a limit on the amount of shares that any one shareholder could hold.

However, in 1978 under the threat of potential takeover by what was then described as a company raider, the ALP Government introduced legislation to give greater weight to the articles of association and the limit on shareholding. The limit on shareholding was placed in the articles initially and then strengthened by statutory provisions to ensure that there was a broad spread of shareholding in this trustee company, not that it was necessarily owned by South Australians (although it was a South Australian company), so that no one person, company or group would have control of a very substantial portfolio of investments including substantial holdings of funds of trusts and beneficiaries.

It was recognised at that time that any one person gaining control of Executor Company would be able to exercise considerable influence in the market place in respect of other companies because of the diverse share portfolio held by Executor Company. In 1980 the Liberal Government introduced further legislation to strengthen those provisions, again recognising that it was necessary to endeavour to keep the shareholding of the company broadly based because the trustee company was in a peculiar position in that it held substantial trust funds and ought not to be in the control of any one person or group and thus become the vehicle through which such person or company would be able to use the funds of the trustee company and the beneficaries of various trust for his or its own purpose. In 1978 the then Minister of Health and Leader of the Government in the Legislative Council in introducing a Bill to strengthen the articles of the company said:

> The Bill is designed to frustrate apprehended moves to take over the Executor Trustee and Agency Company of South Australia by two gentlemen popularly described as company raiders. The Government believes that intervention by Parliament in this matter is urgently necessary in the public interest. If the attempt to take over should prove successful, there will be a real danger of the raiders exercising their controlling interest to strip the company of its assets. This would gravely impair the stability of the company and place the administration of many trust estates in jeopardy.

It is important to note that while the second reading explanation of this Bill states that the 1978 legislation was designed to keep control in South Australia, there was no reference in the second reading explanation of 1978 to that being the objective of the Government of the day. So it is fallacious to argue that retrospectively this was the objective of the then Labor Government. It certainly was not referred to when the Liberal Government introduced its legislation in 1980 to strengthen the capacity of Executor Company to resist the corporate raiders in the same spirit as the Labor Government introduced its legislation in 1978.

In the early 1980s it was known that one Brierley had been endeavouring to acquire a range of interests in Executor Trustee and Agency Company of South Australia and had not in fact registered any share transfers and so was acting through proxies in controlling more than 1.67 per cent of shares which the articles and the 1978 Statute allowed to be in the control of any one person. As a result of both the 1978 legislation and the 1980 amending legislation, the Corporate Affairs Commission was authorised to take certain action to forfeit shares in the name or held on behalf of Brierley or his associates or related companies and to sell them and to account to Brierley for those interests. Since 1983 the ANZ Bank through its subsidiary, ANZ Executor and Trustee South Australia Limited I think it was, had had discussions with the Government and the Corporate Affairs Commission about the acquisition of those shares by the ANZ to assist in resolving a particular problem which the Government and Executor Company faced at that time.

It is relevant to remember that the ANZ relieved the Victorian Government from a very difficult problem by acquiring all relevant interests in Trustee Executor and Agency Company in Victoria after it got into serious financial difficulties. Then when the ANZ Bank made a public offer with at least the recognition by the present Government of its negotiations prior to the end of 1984, it made an offer of $7 a share. This was after discussions between the Corporate Affairs Commission and the Government, as I say commencing in October 1983. Then the State Bank offered $8 a share which was subsequently matched by the ANZ Banking Group and subsequently the ANZ increased its offer to $8.75. The Government indicated its support of the State Bank offer of $8 a share and said it would only amend the Executor Company legislation to give control to the State Bank and no other corporation.

As it transpires, the Government did in fact tell the State Bank not to increase its offer of $8 because the Government would amend the relevant Act to give control only to the State Bank and at that point there was criticism by the Liberal Opposition of that decision because the State Bank, after all, was meant to be independent and was claimed to be independent at the time we enacted the merger legislation in 1984. However, the Government's direction to the State Bank did not reflect that principle of independence. As it turned out, the State Bank did subsequently increase its offer to $8.75 and the State Government said that it would only amend the Executor Company legislation to allow the State Bank to gain control. The part B statement filed by the Executor Company claims that a letter was sent by the Premier to the Board of the Executor Company in the following terms:

> I confirm that it is Government policy to retain equity and Board control of your company in South Australia. The Government will be prepared to bring forward changes to the legislation only to the extent that it permits such control to go to another South Australian owned and controlled organisation, otherwise the legn will remain as it is. The proposal of the ANZ Executors and Trustee Co Limited does not meet the requirements of our policy in this area. I also confirm that the Government considers that this matter should be resolved as quickly as possible and at any rate before Parliament meets early in February. This resolution could be achieved either by the success of the State Bank proposal or of a proposal by another South Australian owned and controlled organisation or by the withdrawal of takeover proposals. In the absence of such a resolution we would not intend to proceed with legislation.

In consequence of that letter, the directors, acting obviously in the interests of the shareholders (which was their responsiblity under the Companies Code), took the decision to recommend acceptance of the State Bank offer. So, the Parliament was presented with a *fait accompli* when legislation was introduced prior to Easter to lift the 1.67 per cent limit on shareholding only in respect of the State Bank. There are important matters of principle involved in this that have been explored during the debate on the Executor Companies amending Bill which I do not propose to debate now. Suffice it to say that the ANZ Bank through its subsidiary, being faced with that *fait accompli,* withdrew from the takeover battle for the Executor Company and as a result of negotiations with the Government has been accepted by the Government as a suitable organisation to carry on the business of an Executor and Trustee Company in South Australia.

When the Bill was introduced in the House of Assembly there was a provision in the Bill which was not common to the legislation of other trustee companies in this State but, as a result of some reference being made to that by the other companies, the Government did take the opportunity in the House of Assembly to amend the Bill to remove that provision. So, the Bill that we have before us now reflects the same terms and conditions upon which the other trustee companies carry on business in South Australia.

There may well of course be some argument for a general executor trustee and agency Bill to deal with the admission to that status and to business in South Australia by any companies meeting certain criteria, but my own preference is to deal with each one on its merits and to assess the viability and reputation and prospects of each company which seeks to carry on the business of an executor and trustee in this State, because the responsibility that such a company exercises is a heavy one. It puts the company in effect in charge of the administration of deceased estates in particular, but also of estates of persons for whom a manager may have been appointed under either the Mental Health Act or the Aged and Infirm Persons Property Act.

That means the company which exercises those powers has a very large amount of trust assets invested with it and under its care and control. So, the highest level of responsiblity is required in the administration of those estates and the highest level of integrity required of companies seeking to carry on that business. It is for those reasons that I think each company seeking to carry on that business must in fact be required to justify its capability and be authorised by specific legislation to carry on that business.

There is no reason to doubt that the wholly owned subsidiary of the ANZ Bank does not meet those criteria. The Liberal Party believed that the ANZ Bank as a reputable financial institution was an appropriate body to be entrusted with trust funds. It must obviously meet very strict criteria under the Federal Government's banking legislation, so we do without any hesitation support not only the second reading of this Bill but also the concept of the company being authorised to carry on business in South Australia.

The Hon. L.H. DAVIS: The Hon. Trevor Griffin has traversed the history that is the background of the Bill before us. In dealing with the Executor Trustee and Agency Act Amendment Bill in recent times in this Council there was a full opportunity to discuss the rather remarkable events leading up to the takeover of Executor Trustee and Agency Company by the State Bank of South Australia. The Hon. Trevor Griffin has again reminded us that the State Government intervened in the market place effectively to compel the takeover of Executor Trustee to go in one direction, namely, to the offer from the State Bank of $8 a share notwithstanding that the ANZ Bank had already made a higher offer of $8.75 a share.

That, of course, typifies the Government's lack of understanding of finance and commerce and I suspect that it was only some heavy-handed action behind the scenes that allowed the State Bank subsequently to match the ANZ Bank's bid of $8.75 at least then giving the appearance that all had been fair and above board in the market place. However, the second prize in that contest is a Bill styled the 'ANZ Executors and Trustee Company (South Australia) Limited Bill' that we are debating tonight.

I think it would not be inappropriate to ask the Attorney-General during the Committee stage whether any other respectable financial institution (bank or not) would be in a position to establish a trustee company in South Australia if it wished to, because quite clearly, as I have said before, the second prize for the ANZ for losing out to the State Bank in the contest for Executor Trustee Company is to have the very rapid agreement from the Government to allow it to establish its own trustee executor and agency company. The Attorney will no doubt wriggle on that question and be very coy about it, saying that that is a hypothetical question and not appropriate to be answered at this stage.

However, I would like to think that the Government can at least be candid on this point and indicate whether or not any bank or other financial institution in Australia which has the same status as the ANZ Banking Group is in a position to receive favourable consideration if it wishes to establish an executor and trustee company in South Australia in addition to the existing private executor and trustee companies, namely: Executor Trustee, now under the control of the State Bank; Elders Trustee; Bagot's Trustee; and Farmers' Trustee, the last two being effectively under the one umbrella of Southern Farmers.

It is a relief to see that there is now someone on the Government benches at long last to listen to this important debate. We all know that the Public Trustee also has an important role to play in trustee and executor business in South Australia. I seek leave to have material of a statistical nature relating to administration of deceased estates in Australia and South Australia inserted in *Hansard* without my reading it.

Leave granted.

ADMINISTRATION OF DECEASED ESTATES

Year ended June 30	Total Australia Grants of Probate	Administered by Trustee Companies	%
1980	50 914	3 730	7.3
1981	51 117	3 273	6.4
1982	53 715	3 332	6.2
1983	49 632	3 445	6.9
1984	49 730	3 226	6.5

	Total S.A. Grants of Probate	Administered by S.A. Trustee Companies	%
1980	5 368	1 570	29.2
1981	5 565	1 402	25.2
1982	5 537	1 409	25.4
1983	5 334	1 396	26.2
1984	5 103	1 231	24.1

	Total Victorian Grants of Probate	Administered by Vic. Trustee Companies	%
1981	15 538	564	3.6
1982	16 012	519	3.2
1983	15 340	531	3.5
1984		Not available	

	Total New South Wales Grants of Probate	Administered by N.S.W. Trustee Companies	%
1981	19 471	261	1.3
1982	20 894	266	1.3
1983	18 518	242	1.3
1984		Not available	

The Hon. L.H. DAVIS: I have sought leave to incorporate this material because it underlines—

The Hon. C.J. Sumner: Have you a copy for me?

The Hon. L.H. DAVIS: Later, if you like.

The Hon. C.J. Sumner: That is the convention.

The Hon. L.H. DAVIS: That is dishonest; the Attorney has never practised that convention.

The Hon. C.J. Sumner: That is not true. How am I expected to reply?

The Hon. L.H. DAVIS: I have a high regard for the Attorney-General, but every now and then he pulls a cheap stunt like this and I do not appreciate that. He never extends that courtesy to members of the Opposition.

The Hon. C.J. Sumner: It is extended to you every time.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. Sumner: And you get them straight away.

The ACTING PRESIDENT (Hon. C.W. Creedon): Order!

The Hon. L.H. DAVIS: Thank you for protecting me from the Attorney-General, Mr Acting President. This table indicates the extraordinary amount of business undertaken by trustee companies in South Australia. It is interesting to see that of the 5 103 grants of probate in South Australia in the year to 30 June 1984 some 1 231 were administered by trustee companies—that is, 24 per cent of estates were administered by the private sector trustee companies in South Australia. That figure is in sharp contrast to the administration of estates in Victoria and New South Wales. In Victoria in the year to 30 June 1983 only 3.5 per cent of total grants of probate were administered by trustee companies and in New South Wales the figure to 30 June

1983 was even lower, with only 1.3 per cent of grants of probate being administered by New South Wales trustee companies.

This suggests that there has been a hangover from the days when death duties were in vogue in South Australia. They were abolished, as the Attorney-General would only too well remember, by the Liberal Party as from 1 January 1980. That had the effect of simplifying the administration of deceased estates. It also suggests that trustee companies are more fashionable in South Australia and regarded as the appropriate vehicle for the administration of deceased estates in this State. In Victoria and New South Wales the legal profession has a greater share of the administration of estates.

It would therefore seem that there is plenty of business available for trustee companies in South Australia although, as I mentioned earlier when the Attorney was not present in the Chamber, I would be pleased to hear a response as to whether or not he would entertain the entry of another financial institution into the trustee and executor business in South Australia notwithstanding that it might not have bid for the Executor Trustee and Agency Company. The financial services sector in South Australia has undergone rapid change. In the recent debate on the Executor Trustee and Agency Bill I alluded to the fact that whereas banks had traditionally performed banking services only in Australia, they had in the past two decades had extended their services to provide finance through finance companies. That has now gone further.

For instance, we now see that the Westpac Banking Corporation is seeking a life assurance licence; we know that the National Australia Bank and the ANZ Bank apparently are also seeking to enter the field of life assurance; we know that the ANZ Bank is moving into the trustee business through the passage of this legislation (indeed, the ANZ Bank already has an interest in the trustee business through taking over the ailing Trustee and Executor Agency Company in Victoria); finally, we see that some of the banks have already taken an interest in stockbroking firms. Life assurance offices (such as the AMP and National Mutual) have moved into providing a full range of financial services, with an interest in banks, and so on. It is a very rapid and rather fascinating development which follows hard on the heels of continued deregulation of the capital markets in Australia.

I reserve judgment on the impact of this deregulation and of the possible conflicts that may arise following the emergence of large financial institutions with fingers in various pies, namely, banking, insurance, broking, and trustee business. Quite clearly, it will be important for them to compartmentalise their businesses so that they will minimise conflicts which may arise. I have no great difficulties with the Bill. The Hon. Trevor Griffin alluded to one variation which exists in this legislation as against the other piece of legislation which establishes the existing private trustee companies.

I note that one clause relates to common funds. The Attorney-General would be well aware of the fact that in recent times the NCSC presented a paper on prescribed interest provisions of the companies legislation, and the fact that trustee companies are empowered by respective trustee company legislation to establish common funds. This legislation provides for the newly formed ANZ Banking Group to establish a common fund. The primary purpose in having a common fund is to allow funds to be pooled from various sources and to be invested in larger units, therefore effecting a higher rate of return. However, South Australia, Western Australia, and Tasmania have granted exemptions from the prescribed interest provisions of companies legislation with respect to common funds of trustee companies. That is not a matter for the immediate attention of this Parliament, but nevertheless it highlights the fact that in recent times trustee companies have become more venturesome in the services that they offer and in the range of investments that they offer.

Indeed, the failure of the Trustee and Executor Agency Company of Victoria was due simply to the fact that it was far too venturesome in the financial services that it offered. Indeed, there was a sad lack of management with regard to those investments. However, I have every confidence in the management and the soundness and finance of the existing trustee companies at least in the private sector in South Australia, and the Public Trustee here also has a fine reputation. I have no doubt that the ANZ Bank, with its considerable expertise as the largest private sector bank in Australasia, will be more than able to set up a very competitive and well-managed trustee company in this State. I have much pleasure in supporting the second reading.

The Hon. C.J. SUMNER (Attorney-General): I will not traverse all the arguments relating to this issue; the matters were discussed during debate some four or five weeks ago in relation to amendments to the Executor Trustee and Agency Bill to lift the restriction on shareholdings, which had been placed in that legislation in 1978. Suffice it to say that the Government believes that its action has secured an important institution for South Australia. It did that by paying the proper market price. The actions of honourable members opposite would have ensured that the ET & A Company was lost to South Australia. The Government has been very proud of its actions with respect to the financial institutions in this State in improving their competitiveness and their activity in the financial sectors of South Australia. Part of that competitiveness, in the Government's view, involved having a comprehensive range of services for the State Bank, including a trustee company.

The Government makes absolutely no apologies for the action it took. It believes that that action was in the interests of South Australia and consistent with actions taken on previous occasions by both Liberal and Labor Governments. I do not wish to canvass that matter again, except to say that it is ironical that the private sector was not able to maintain a bank in South Australia.

The Hon. K.T. Griffin: You lost that in 1979.

The Hon. C.J. SUMNER: That is not true.

The Hon. K.T. Griffin: It was done like a dog's breakfast when we came to office.

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Honourable members opposite must be very sensitive. I said that the private sector was unable to maintain a bank with headquarters in South Australia following the demise of the Bank of Adelaide. That is a fact of life in South Australia. I also said that it was ironical that the only bank that remained with substantial business and with its head office in this State was the State banking or the community banking organisations.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: No. I said it is ironical that the private sector was unable to maintain a bank in South Australia. Therefore, in that context I believe the Government's action in trying to ensure that the State Bank had a broad range of services was perfectly justifiable in the interests of this State as a whole. I certainly make no apologies for the action taken by the Government. In fact, I am proud that we took that decisive action to ensure that the State Bank had that range of financial services and that we secured the ET & A Company for the State Bank at a reasonable market price.

With respect to any future applications, I can only say that they will be looked at on their merits. There is no particular policy at this stage. If the honourable member

wishes to suggest that there may be others interested, certainly they could be examined. At this stage there is no particular policy. Each one would need to be examined on an individual basis. No general policy has been established. Following the bid by ANZ to obtain the Executor Trustee Company in South Australia, and following the Government's action in ensuring the retention of ET & A as a South Australian company owned by a South Australian bank, it was felt that it was reasonable to promote this legislation to enable a subsidiary of the ANZ to operate as a trustee company in South Australia.

The Hon. L.H. Davis: That was the second prize.

The Hon. C.J. SUMNER: It is not a matter of adjudicating on prizes. I believe that the action that the Government took was completely justifiable in the interests of South Australians: I am happy to debate that anywhere with the honourable member because there is no cause for criticism of the Government in this area in the light of the history of the restrictions on shareholdings that were placed on the ET & A under successive Governments and at the request of the board of the ET & A. I thank honourable members for their support for this Bill.

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

PLANNING ACT AMENDMENT BILL (No. 3), 1985

Adjourned debate on second reading.

(Continued from 14 May. Page 4242.)

The Hon. K.T. GRIFFIN: The Bill is short and is designed to deal with the question of third party appeals under the Planning Act. It amends section 53 of the Planning Act, 1982, in so far as that Planning Act deals with questions of leave. The scheme of section 53 of the principal Act is that first a notice of an application for a planning authorisation has to be given in accordance with the regulations. Secondly, where a notice of an application is given, any person who desires to do so may make representations to the relevant planning authority in relation to the granting or the refusal of the application. Thirdly, the planning authority to which the application is made is to forward to the applicant a copy of the representations made in relation to his or her application and allow him or her an opportunity to respond in writing to those representations. The response has to be made within 10 days after the copy of the representations is forwarded to the applicant.

Fourthly, the planning authority, when it decides the application in relation to which representations have been made under the section, gives the persons by whom the representations were made notice of the decision. Fifthly, a person who is entitled to be given notice of a decision and who is aggrieved by the decision of the planning authority may, subject to a later subsection, appeal to the Planning Tribunal against the decision. That appeal is to be instituted within 14 days after notice of the decision to which the appeal relates is given or such longer period as may be allowed by the Planning Tribunal.

Section 53 (10) provides that, except by leave of the Planning Tribunal, an appeal is not to be pursued beyond the stage at which the conference of parties to the appeal required under this Act has been concluded. Under the Act there is a requirement for a compulsory conference of parties to endeavour to identify the issues and where possible to narrow those issues that may be in dispute. An application for leave to continue an appeal is to be made within seven days after the conclusion of that compulsory conference. If it is not made within that period or if leave is not granted, the appeal is to be deemed to be dismissed.

The application for leave to continue an appeal under section 53 is to be dealt with by the Tribunal as expeditiously as possible. So, there is a third party appeal mechanism within the Planning Act and certain parties who are aggrieved by a decision of the planning authority may be granted leave to appeal and to pursue it beyond the stage of a compulsory conference.

The amendment seeks to remove those parts of section 53 that relate to continuance of a third party appeal only on leave being granted by the Planning Tribunal. The Department says that the difficulty that is being experienced at present is that the application for leave is being treated as though it were the argument about the appeal on its merits, so that it is not just a matter of establishing a *prima facie* case upon which leave should then be granted on one or more grounds: it is, in fact, the hearing of the matter on its merits. That has resulted in very extended periods of hearing before the Planning Tribunal and is particularly time consuming.

The Government's Bill seeks to remove the requirement for leave, to go straight to the third party appeal, and to allow it to be heard on its merits. The Liberal Opposition has been satisfied that that is a reasonable proposition. If it means that the argument for leave is no longer required and the matter is resolved on its merits before the Tribunal on one occasion, rather than going through the motions of seeking leave to appeal but arguing the merits, we are happy to support the proposal. In the planning area, the whole question of third party appeals is difficult.

On the one hand, those who do not have a claim of substance to oppose a particular authorisation or development should not be facilitated in an exercise designed to frustrate development. On the other hand, many claims which, in themselves, might not be regarded as being in the wider public interest, but which are certainly in the interests of a community group, are quite genuine claims which should be able to continue. Therefore, the dilemma is between providing appropriate mechanisms for resolution of reasonable objections to planning authorisations and development to ensure that development is not unnecessarily stifled or delayed and ensuring that there are no frivolous and vexatious third party appeals taken merely to delay reasonable development.

It is always a dilemma, but anything that can be done to deregulate the planning process and speed it up can only be in the interests of the community at large—not just the developers, but members of the community who might be affected by or involved in particular developments. The mechanism for seeking leave, being at least reasonable in principle, has not worked in practice. It is for that reason—on the indication that it does not work in practice—that the Liberal Opposition is prepared to see it removed to allow the third party appeal in the circumstances envisaged by section 53 to be heard on its merits without the intervention of the granting of leave. On that basis I support the second reading.

The Hon. I. GILFILLAN: I spoke earlier, on my motion in relation to the disallowance of regulation 38, about the conflict between this measure and the same Government introducing regulations which virtually eliminated a large percentage of opportunity for third party appeals. Comparing the result of that move with the intention of this move is hard to reconcile. This Bill is a very effective measure to counteract what has been recognised as a restraint in access to appeal resulting from the Rimington case and a land valuation judgment in the Supreme Court. Therefore, third parties who would have expected to have a right of appeal as a result of that case have virtually lost that right. Leave to continue an appeal by a third party appellant would depend on that person showing that his appeal possesses an

importance which extends beyond that which would be attributed to it by the parties immediately concerned, and it must be a matter of general and public importance.

I do not believe that that was the intention of the Government, nor is it the proper intention of the Bill. Therefore, that judgment has certainly been restrictive. Instead of making a moderate effort to allow the appeals tribunal reasonable discretion to accept proper appeals and to deal with them properly, but at the same time having some restriction on all appellants so that the tribunal is not snowed under with a great host of appeals to be followed through all the formal procedures, the Government has virtually opened the floodgates and put in a legal aperient. There will virtually be no block now for any third party appellant to take up the time of the tribunal for as long as he can reasonably afford to keep it engaged in the hearing of his appeal. During the Committee stage it is my intention to move an amendment. I believe that the removal of subsections (10), (11) and (12) are undesirable. I will move that they be left in place and that the following subsection be inserted:

An application for leave to continue an appeal under this section shall be granted by the tribunal if it is satisfied that the appellant has a reasonable prospect of sustaining one or more of the grounds of the appeal.

Therefore, the tribunal will be freed from the restraint of Supreme Court judgments, that it has to be justified by the grounds of public interest and the subjective judgment of the merits of the case, yet it will still retain the power to dismiss appeals that are of a bothersome nature and, I hope, will be able to get rid of actions that are based on economic sabotage motives by major competitors, perhaps in the case of shopping developments—and I think we may be seeing some examples of that in Adelaide right now.

I believe that the tribunal, with my intended amendment in place, would have power to dismiss an appeal on those grounds. In changing section 53 the basic inconsistency of philosophy when compared to the amendment to regulation 38 which would cut out community participation consent decisions and, indeed, decisions which could have been the subject of reasonable controversy in centre zones and similar (and I described this in my earlier remarks on regulation 38.) While some rein on unfettered ability of representers (the technical word for the objectors) to undermine the settled policies of zoning implicit in the loss of permitted and prohibited kinds of development is reasonable (because those policies have usually had a law airing already) it is not on to facilitate appeals on the old basis.

Before November 1982, under the Planning and Development Act, a very large range of potentially controversial developments, such as shopping centres, commercial, industrial and business zones, was cut out from such testing. For example, I understand that Fullarton Road, where there is considerable and substantial office development proceeding, is one of the prescribed areas now covered by regulation 38 and will not be subject to third party appeal. With the removal of the tests in subsections (10), (11) and (12) and section 53, an appeal must run to its limit before it can be settled, whether or not an objector has a meritorious case. This tends to give objectors more power to upset a presumably considered opinion that he should have a right to.

One suspects that State Government authorities will begin to use the appeal procedure more than they have in the past to undermine independent decisions by councils (for example, in respect of land division matters), especially as the power of the State through the Director of Planning and the SPA was much weakened by the advent of the Planning Act. Maybe we are having some reaction to that. As I mentioned earlier, there is a move for shopping developments over 400 square metres to be returned to the direct control of the SPA, bypassing local government, such as in the continuing role of the State Government in the development control at Victor Harbor. There is a need for a statement of philosophy to be consistently applied throughout the Planning Act and regulations in relation to community involvement. Such a statement was made in relation to the State Government and local government split up of powers when the Planning Act went through and following much discussion with the LGA and councils. No such process has been carried on in relation to public participation. It is sad to see that the excellent paper prepared by Stuart Hart has been observed in what has been this rather spontaneous emergence of *ad hoc* legislation.

I intend to support the second reading for two reasons, first, because it will give us a chance to move an amendment in Committee (which I hope will be acceptable and which will provide the best opportunity to deal with the results of the Rimington case). I hope that I am not signalling shots too soon but if as is always possible, my amendment is not successful, on balance (and it is a somewhat tenuous balance) I would probably prefer that the Bill pass in its present form rather than the current situation involving the restraints of the Rimington case continuing.

I am most distressed, because it seems to me that the two arms of government acting through the Minister of Environment and Planning are going in different directions. I do not know who splits in the end, but the unfortunate consequence is that there will be chaos and the public will wonder where they are being led in relation to planning and development and third party appeal. This Bill, well intentioned though it may be, is really no help to the Tribunal in controlling the appeals that come before it. I urge the Council to give my amendment earnest consideration in Committee.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Third party appeals.'

The Hon. I. GILFILLAN: I move:

Page 1, lines 17 to 20—Leave out paragraphs *(a)* and *(b)* and insert 'by inserting after subsection (11) the following subsection:

(11a) An application for leave to continue an appeal under this section shall be granted by the Tribunal if it is satisfied that the appellant has a reasonable prospect of sustaining one or more of the grounds of the appeal.'

This amendment has the effect of retaining subsections (10), (11) and (12). I outlined the reasons for this amendment in the second reading stage. It will give the Appeal Tribunal the right that I believe it should have to exercise control over third party appeals. Those matters will take up a considerable amount of the Tribunal's time and will incur considerable expense. The Tribunal must retain some control in that respect. However, recent judgments have, in effect, given the Tribunal too much control so that it has become over-restrictive.

I have been advised that this amendment will override any restriction on the Tribunal as a result of the Supreme Court judgment; it will allow the Tribunal to make its judgment as to whether an appellant has a reasonable prospect of sustaining one or more of the grounds of appeal in any context so that the Tribunal would be free to accept any ground of appeal put before it, making a judgment as to whether the appellant could be successful. The amendment will solve the problem that the Government has seen, but it will not leave the Tribunal open without any form of restriction on any type of appeal brought forward by any third person from any motive. That is an unfair impact for the Tribunal to have to deal with, but it would be the result if the Bill was not amended.

The Hon. C.J. SUMNER: The Government opposes this amendment. The problem is that the Tribunal must, in

effect, have a pre-hearing to determine whether there is a reasonable prospect of sustaining one or more of the grounds of appeal before leave to appeal is granted. The Government really cannot see that that is justified. I do not see that there is any case for restricting third party appeals. The object of the Bill is to overcome the problems of restrictions on third party appeals that have occurred as a result of decisions of the Land Valuation Division of the Supreme Court.

This would place a further restriction on those appeals and I believe it would mean that the Tribunal would have to assess properly before deciding whether to grant leave. It could not do it off the top of its head. There would have to be a proper analysis of the situation so that the Tribunal could conclude that there was a reasonable prospect of one or more of the grounds of appeal being sustained before granting leave to continue the appeal. The Government does not believe that that is justified. It cuts across the intention of the clause. It may be that the Tribunal would deal with the matters as one, but depending on the practice of the Tribunal this proposition could lead to two hearings instead of one.

The Hon. I. GILFILLAN: I read with some interest a letter from the Minister of Environment and Planning to the Hon. Gordon Bruce in relation to amendments to the development control regulations under the Planning Act in which the Minister states:

> In addition, it has been suggested that, instead of removing third party appeal rights, the Government should seek to streamline the appeal process. While it is agreed that the appeal process should be as streamlined as possible, and amendments to the Act currently before Parliament contain some measures aimed at such streamlining, whatever appeal procedure is adopted some delays are inevitable in any appeal process. For this reason, the Government believes that both courses should be adopted, that of providing appeal rights in appropriate circumstances and attempting to make appeals as streamlined as possible.

I assume the 'streamlining as possible' is to get them dealt with fairly and properly and as quickly as possible. The vital consequence of this Bill means that any appellant can have access to the Tribunal and can have it fully engaged indefinitely as long as the legal process and the process of the Tribunal can be kept engaged, with the Tribunal having no power to dismiss the appeal. It has to go right through its whole process. With my amendment, I certainly imagine that the Tribunal could and should at times perhaps use one member to hear the argument for perhaps one side, to make its own judgment on whether or not—as I am saying here—one or more of the grounds could be sustained, and then to make that judgment at that stage and in many cases prevent following through this whole, long, tedious and very expensive procedure. I do not agree with the Attorney's argument that this is going to prove cumbersome and more time consuming. I think the Tribunal will have the power to make a pre-judgment and actually restrict the number of hearings that would have to be carried right through.

The Hon. C.J. Sumner: It would have to have a hearing in order to determine it.

The Hon. I. GILFILLAN: Yes, it would.

The Hon. C.J. Sumner: Why have two hearings instead of one?

The Hon. I. GILFILLAN: No, it might have one short one instead of one particularly long one.

The Hon. C.J. Sumner: You won't be able to determine whether there are reasonable grounds without a proper hearing.

The Hon. I. GILFILLAN: I think there were 1 400 appeals last year. The current effect of this Bill is that all those 1 400 appellants, with a little urging, will be able to take it up to the Tribunal and keep the Tribunal fully engaged as long as the resources of the appellant can keep it going. It is going to quite unnecessarily spawn a vast bureaucracy.

The Hon. C.J. SUMNER: I think the honourable member is acting under a misconception. There were only some few (six or so) appellants refused leave in the last 12 months, so you are only talking about six cases that you are allowing to go direct to continue their appeal without the pre-hearing assessment as to whether leave should be granted. I would have thought that the problems of having the hearing before the hearing in order to determine whether or not the appellant had a reasonable prospect of sustaining one or more of the grounds of the appeal would be more cumbersome than allowing appeals to go direct and being heard by the Tribunal.

I think that is the reality of the matter. Perhaps the honourable member is not aware that the clause that he has drafted would require the Tribunal to be satisfied that the appellant had a reasonable prospect of sustaining one or more of the grounds of the appeal. The only way of determining that is to have a hearing on that topic and that hearing may well be as long or almost as long as the subsequent appeal. That is the reality of the matter and, given that you are dealing with only six (or you were in the last 12 months) of those people who were refused appeal, surely it is better to let them go and be dealt with on their merits when they get there.

The Hon. I. GILFILLAN: I agree with that. There is no complaint about that. When access to the Appeals Tribunal is known to be open and facilitated, I would anticipate a lot more of the 1 400 third party complainants will trot along this track and will be encouraged to do so. I do not imagine it is going to remain at six. The Tribunal may—and I do not know of any legal restriction on it—appoint someone to implement a vetting procedure for it, to give an opinion before it actually sits formally. Has the Tribunal been consulted and involved in the evolution of this Bill and has there been an extensive opinion given to the Minister from the Tribunal on the effects of the current Bill?

The Hon. C.J. SUMNER: One Tribunal member supports this and in fact requested it. The Acting Chairman of the Tribunal at the time, Judge Grubb, in fact requested this amendment that the Government has put forward. That is the information I have from the officers of the Department of Environment and Planning.

The Hon. K.T. GRIFFIN: The Opposition does not support the amendment. We see some difficulties with it, much along the lines of those outlined by the Attorney-General. I have already made our position clear in respect of the Bill itself. I see some difficulty in retaining the concept of leave because of the problem of in fact having what is meant to be a preliminary hearing actually being a hearing on the merits to determine whether or not leave should be granted. I just do not see that that serves the interests of litigants or the Tribunal or the planning process as a whole. If there have been problems with the hearings in respect of leave then I am all in favour of giving the new system a try: get rid of the leave provisions.

There is nothing to stop the development of practice directions which would deal with the clarification of issues. There are those procedural rules now in existence in all courts which require specific pleadings to limit the issues between the parties; pre-trial conference, all evidence on the table so that parties become familiar with what each other party is putting—that happens in the Land and Valuation Division. I think there are all sorts of mechanisms that can be developed which will facilitate the resolution of appeals whether third party or otherwise. I think that is the route that we ought to be going and not the retention of a preliminary hearing which will only add to the costs and time taken to resolve a particular appeal.

Amendment negatived; clause passed.

Title passed.

Bill read a third time and passed.

CITY OF ADELAIDE DEVELOPMENT CONTROL ACT AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 4296.)

Clause 14—'Insertion of new sections 39d and 39e.'

The Hon. K.T. GRIFFIN: On behalf of the Hon. Mr Hill, I move:

Page 11, after line 12—Insert the following word and paragraph:

or

(d) an advertisement or advertising hoarding that was, at the commencement of section 14 of the City of Adelaide Development Control Act Amendment Act, 1985, erected or displayed on any land.

New section 39e seeks to regulate the advertisements or advertising hoardings that do not conform with the principles, as I recollect, of the development plan. The difficulty is that under section 39e (2) no order is to be made in relation to an advertisement (display of which is authorised under the Local Government Act), an advertisement required to be displayed by or under any other Act or an advertisement for the sale or lease of land situated on the land concerned. What the Hon. Murray Hill's amendment seeks to do is provide that the power to deal with advertisements or advertising hoardings is not to be exercised in relation to an advertisment or advertising hoarding which was, at the commencement of section 14 of the City of Adelaide Development Control Act, 1985, erected or displayed on any land.

The Opposition has had representations made to it by a number of persons who fear that if the clause as proposed is passed without amendment it will give the council the power to carry out a wide ranging review of all advertising presently in the City of Adelaide and, if it does not conform with the principles of the development plan, then to require that advertising to be removed. That advertising is all in accordance with existing rights. What the Bill seeks to do without this amendment is act retrospectively and give *carte blanche* to the council to review all advertising within the city, even though prior to the commencement of this Act it was legal. We think that that is the worst possible kind of retrospective action by virtue of the operation of this Bill and think that it ought to be resisted.

There is no problem with advertising or advertising hoardings erected after the Bill comes into operation, because then it applies to everything done after the power has been granted to do something about it. However, if it applies to all those advertisements that are presently legal, it seems to us to be a gross infringement of existing rights that ought not be tolerated by the Parliament. I have moved this amendment to achieve this objective that in relation to advertising hoardings and advertisements within the City of Adelaide this Bill does not act retrospectively.

The Hon. C.J. SUMNER: The Government opposes this amendment. This clause has the support of the Adelaide City Council and is on all fours with a clause introduced in the Planning Act, 1982, by the Liberal Government, so all the comments that the honourable member has just made with respect to this Bill that this Labor Government has introduced apply equally to the Bill he fully supported when in Government in 1982 in respect to areas outside the city of Adelaide. Therefore, I do not believe that there is any substance in what the honourable member has said. It certainly would give the Adelaide City Council the power to deal with signs already erected. However, as I have said previously, it is a new provision identical with the one in the Planning Act that has applied since November 1982 and applied to the whole State except the city. An appeal provision is provided. The intention is to ensure control over signs that become unkempt. The erection of signs already requires approval.

The Hon. K.T. Griffin: They have already been erected.

The Hon. C.J. SUMNER: Surely the council would not approve a sign and require its removal subsequently unless it became dilapidated or it was no longer the sign for which approval had been given, or had become unsightly, detracting from the visual amenity of the area. The matter is subject to appeal and can be contested. I do not think a great deal needs to be made out of this matter. It does affect existing rights but any decision taken by the Adelaide City Council is subject to appeal. It does apply to those signs for which the council has already given approval, but I would not expect the council to insist on the removal of a sign that it had already approved unless there was something severely wrong related to that sign such as something being added to it so that it was no longer the sign for which approval had been given or it had become an eyesore and was no longer appropriate to the amenity of the city. I oppose the amendment.

The Hon. I. GILFILLAN: I enthusiastically support the opposition to this amendment. I think that there is every justification for a controlling authority to have the right to seek to remove an advertising or advertising hoardings which do not comply with the principles, or disfigure the natural beauty of a locality within the municipality or otherwise detract from the amenity of such a locality.

I have no hesitation in saying that this provision of the Bill has my wholehearted support. I can see that it could prove to be irksome to some advertisers, but I believe that the principal aims and the intention of the Bill should have overriding precedence in this case and, accordingly, I will oppose the amendment. This provision is about the only part of the Bill that I have read. I make that comment because it is with some concern that I feel that I am now expected to vote on a Bill of some substance and significance, yet I have had no chance to make myself aware of its contents.

The Hon. K.T. GRIFFIN: Having checked the Planning Act, I see that section 55 contains similar provisions but not identical provisions. In fact, there are several aspects of the clause in this Bill which, on first perusal, do not appear to be on all fours with the provisions of the Planning Act. Like the Hon. Mr Gilfillan, I have not had an opportunity to do more than quickly peruse the Bill and this clause and receive some representations from those within the city who have expressed concern about the retrospective operation of the provision.

It is possible that section 55 of the Planning Act, 1982 provides some exceptions which would deal to some extent with the signs already erected at the commencement of the Planning Act. However, the Hon. Ian Gilfillan has indicated that he does not intend to support the amendment. Although I could ask for the Attorney-General to report progress, it is clear that that will not achieve anything in terms of changing the Hon. Mr Gilfillan's attitude. Therefore, I will have to satisfy myself with those very general comments and indicate that, in view of the Hon. Mr Gilfillan's indication of opposition to the amendment that I am moving on behalf of my colleague, the Hon. Mr Hill, if I lose it on the voices I will not divide.

Amendment negatived; clause passed.

Remaining clauses (15 and 16) and title passed.

Bill read a third time and passed.

INDUSTRIAL CONCILIATION AND ARBITRATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 May. Page 3994.)

The Hon. M.B. CAMERON (Leader of the Opposition): This Bill proposes a number of amendments to the Industrial Conciliation and Arbitration Act, all but one of which have arisen out of the Government's self-proclaimed showcase of industrial consensus, the Industrial Relations Advisory Council. In his second reading explanation the Minister attempted to gloss over one change which did not come as a result of suggestions from IRAC, and I refer to the amendment to redefine an owner-driver as an employee. It is this proposal which the Opposition strongly opposes and condemns. The Government has attempted to explain this move away, but one thing that has become absolutely clear in the past few days is that this move has not been explained to the industry that will be affected.

Sections of the industry have been told what is going on, one of which is the union; I am not sure about the employers—I have yet to find one who actually knows what is going on. Most employers are completely bewildered by this move, they are apprehensive about it and they have written to the Opposition in enormous numbers. In fact, I have never before had as much information coming in on a Bill in such a short time from people who obviously do not know what the legislation contains. This is coming from people who should have been consulted. IRAC does not represent the transport industry, and I do not believe that the industry even has a direct representative on it.

All of these people do not know what is going on, and I refer to large companies, small companies, employees of companies and anyone you like to mention. Not one single person, apart from members of the union, has yet to tell me that he knows what is happening. If any section of the industry knows what is going on, I would be very interested to hear from them. I am staggered. My problem is that many of these people believe that somehow I knew what was going on. In fact, I have received criticism from a large number of organisations for not informing them. Evidently, I am supposed to inform companies of what the Government is doing when the Government itself has not bothered to go to these companies. I am just staggered. The Minister's second reading explanation states:

> As a result of discussions with the Transport Workers Union the Government intends to amend the definition of 'employee' in the Act to include certain lorry owner-drivers (not being common carriers) who are presently enrolled as members of the TWU. These owner-drivers are people who are very similar for industrial purposes to employees.

In fact, the amendments do not make mention of the TWU at all. What they do is redefine as an employee:

> Any person engaged to transport goods or materials by road (not being a common carrier or a person who employs or engages others in a business of transporting goods or materials) whether or not the relationship of master and servant exists in consequence of the engagement.

In other words, the Government is attempting to throw the net of unionism over subcontracting owner-drivers. The Government is acting in a way that can only be described as being the bag man for the Transport Workers Union. That is what this Bill is all about.

The Hon. L.H. Davis: There is not one front bench member of the Government present.

The PRESIDENT: Order!

The Hon. M.B. CAMERON: The Transport Workers Union—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! I will not tolerate that sort of nonsense any further, and I warn the Hon. Mr Davis on that account. I point out to the Hon. Mr Cameron that it would be better if he addressed the Chair.

The Hon. M.B. CAMERON: I am, Mr President.

The PRESIDENT: The Hon. Mr Cameron is not doing any such thing.

The Hon. M.B. CAMERON: I cannot look at you all the time, Mr President.

The PRESIDENT: I don't want you to look at me. I want you to address the Chair.

The Hon. M.B. CAMERON: Mr President, I have mentioned your name about seven times already, and I am only on the second paragraph.

The PRESIDENT: With your back turned to me.

The Hon. M.B. CAMERON: The Transport Workers Union, if the amendment to redefine hundreds of independent enterprising small businessmen as employees is accepted, will be able to extend its influence no end. There will be no benefit in it for the general community. Surely, that is a part of this whole community that ought to be considered. Ultimately and inevitably, costs will rise. The small transport firms, or users of subcontractors, will go back, and all the while the big will get bigger.

I wonder whether this amendment will suit the larger firms but not suit the smaller firms. That certainly seems to be the case from some of the information that I have received. We all know that unions and Labor Governments go hand in hand as they wheel and deal to the disadvantage of the general community. That certainly appears to be the case in this Bill.

The amendment that deals with the transport industry is being sold to owner-drivers as one aimed at achieving higher freight rates for them, but the Government's intentions go much deeper than that. The Labor Party is and always will be guided by the unions. We all know why: that is an argument that I do not want to go into at any depth. We all know that 75 per cent of the South Australian Labor Party votes in any situation are controlled by unions. It is one of the facts of life of Government under Labor in this State. In spite of all the supposed moves to change that, that certainly has not changed. No faction in the Labor Party has yet been able to get the muscle to change that. Union leaders, rightly from their point of view, like more members. It means more money and influence for them to play with.

The Hon. R.I. Lucas: More votes.

The Hon. M.B. CAMERON: That is right, and more votes to go along to conventions with. It means greater industrial muscle for them to wield at the average citizen's expense. It means even more votes in ALP preselections. That is a good thing from the point of view of the unions. That is part of the system, but it has to be recognised that that is why some of these provisions come into legislation.

This provision in the Bill is not about legitimising those owner-drivers who are presently TWU members: it is about lifting union membership and income. As usual, the union leaders are looking after the conditions of the employee and, unfortunately, so often this happens at the expense of people who might be able to get employment. Allied to the amendment to redefine employees is an amendment to give the Government arbitrary power to change the conditions applying in the transport industry. This amendment is expressed in the following terms:

> The Governor may, by regulation, exclude from the application of this Act, or any specified provision of this Act, the employees referred to in paragraph *(ba)* of the definition of 'employee', or a specified class of those employees.

This means in reality that the Government can by regulation, without reference to Parliament, alter the applicability of the Industrial Act to ensure that not only freight rates are set for owner-drivers but other matters such as workers compensation are also to apply.

In the past two or three days there has been an amazing amount of discussion behind the scenes about proposed amendments. Before I had even got around to speaking on this matter I had a multitude of proposals put to me from

time to time. The place to do that is here in this Chamber. There has already been too much alteration of attitudes on this matter. If this matter had been discussed with the industry, there would not have been the need for that sort of discussion behind the scenes. There was far too little discussion with the industry before the matter came into the Council, and that is where, if any mistake has been made, the Government has made a mistake.

I know that the Government will say that its intention is only to protect the owner-driver by guaranteeing freight rates, and that it will not act to allow workers compensation, etc., to apply, but the Government's word is a wholly inadequate insurance policy for those people who could be affected. It is not good enough. The Hon. Mr Bannon promised not to increase taxes and charges and we all know what happened to that and how many times that has been broken already. It was an absolutely stupid statement by the Premier before the last election because it is obvious that he had no intention of keeping it. I certainly will not believe any letter or anything else that I receive unless it is in an Act of Parliament.

The Hon. R.I. Lucas: Even if it is signed by Jack Wright.

The Hon. M.B. CAMERON: Even if it is signed by Jack Wright I cannot accept it: it is not good enough. It certainly does not bind. Even if the Hon. Mr Wright could be trusted, it does not bind future Ministers. One does not know where the next Minister might go. It will be Mr Brown: he will be all right.

The Hon. R.I. Lucas: What about Mr Blevins?

The Hon. M.B. CAMERON: He might be all right, too. I do have some trust because the Hon. Mr Blevins has been in the Upper House and he has been trained: he is very good now. We are not satisfied by the assurances of this Government: nor should we be. This Government could at any stage before we replace it after the next election act to require those who use owner-drivers to pay for workers compensation, four weeks leave, 17.5 per cent leave loading, and so on. Such action could be arbitrary and without consultation with industry: consultation which this Government so frequently talks about is in reality something it fails to undertake.

This is a prime example of that. The Government's approach to the issue of owner-drivers has shown a very distinct lack of consultation. To this Government, consultation means going to the unions and forgetting about everybody else. That is not good enough: that has to be looked at by the Government. Before it brings this matter back it should go to the industry and talk to it. If the matter is proper and correct and does not affect the industry adversely, at least the Government will come back with a proposal that has been discussed. At least we will not have to act as a consultation force, which I am sure the Hon. Mr Milne has been. I certainly have been in the past few days. I have never known such an amazing amount of discussion and obvious lack of knowledge of a matter that potentially will have such a dramatic effect on an industry.

The Government has acknowledged that this element in the Bill before us did not have the approval and support of IRAC, which is its own creature that it set up for consultation. Indeed, the only reason for the moves contained in this Bill is that there were discussions between the Government and the TWU. There has been no consultation with the transport industry or the owner-drivers in that industry. Instead, just because the union wants it the Government has decided to pave the way for higher costs in and further unionisation of the transport industry. That is unacceptable and is something that we strenuously oppose.

Small businesses are the employment backbone of this State: even the Government has said that from time to time. Many small business people have one or two person operations like the owner-drivers we are discussing. These people are frequently fiercely individual. They are proud of their independence and wish to protect it. Unlike the trade union, which the Government opposite represents, remuneration is not their sole motivation. Many owner-drivers like their lives. They like being their own boss. They appreciate their independence and enjoy their work.

Back door unionisation would put an end to this. Ultimately, as I have already said, the big would get bigger and more powerful. It staggers me that we as a Party, which is so often accused of representing the big companies, are standing up here protecting the small people while the Government is bringing in a measure the obvious end result of which will be that the big companies will get bigger.

I wonder what is happening. I do not want to hear the Government talking about its being the protector of the small person because in this case it certainly is not. I am sure that all members have received a letter from one tanker company involved in the transport industry, which is very telling in the description that it gives of the impact of the Government's proposals. I will remind honourable members of some of the key elements of that letter, which states:

> Our head office and operations centre is based in Adelaide, however, if this legislation becomes effective we would be forced to consider a move to Melbourne. Over 50 per cent of our interstate operation is carried out by contractors, the majority of whom are South Australian based.
>
> Membership of the TWU for these contractors is not voluntary. Indeed, the majority would prefer to be non-members. However, unless a contractor is a TWU member he faces the fact that he will not be loaded in the heavily unionised East Coast industrial centres . . . the interest of the TWU in the owner-driver extends to the collection of union fees. There are other major and more serious problems on interstate operation to which the TWU should address itself.

The letter continues:

> Although it was reported that the intent of the Bill was to provide protection for long range hauliers, the effect on this section of the industry would be as devastating as on intrastate hauliers. It can only lead to the termination of South Australian contractors and engaging New South Wales and Victorian contractors. The amendments are aimed to hit the reputable and major South Australian companies who utilise single truck owner operators.

I wonder whether the TWU does not like the owner operators, because every now and then they break the situation where the union is attempting to organise industrial problems. One has only to look at the situation in Queensland, no matter what one may think of it. The attempt to blockade that State was broken, to a large extent, by single owner operators who were prepared to go in and do the job. Is this an attempt to get over that problem for the union in future so that it can totally control the situation? The letter continues:

> What about:
>
> 1. The single operator who will not tie himself to a transport company and can therefore severely cut freight rates, and
> 2. The fleet operator who is paying below award rates and because he won't incur the overheads proposed by the amendments will have a massive advantage over the major companies?

The letter continues:

> If these amendments are passed it will have a devastating effect on some South Australian industry. The Labor Party fails to acknowledge:
>
> The influence of the transport costs on South Australia's relatively isolated industries. Freight rates have been increased this month by an average 7 per cent to cover the national wage and distillate price increases. Several of our clients . . . have stated that they may seek transport subsidies from the Government to retain their manufacturing base in this State . . .
>
> That transport, as it exists, both interstate and intrastate is a major industry in South Australia. The proposed legn, if enacted, will see a massive swing to eastern State operators and serious lay-offs and unemployment in the transport sector in South Australia.

The letter concludes as follows:

The proposed amendments have not been discussed with the industry. They have far-reaching implications and will be to the disadvantage of South Australian industry. I urge you to oppose the section of the Bill dealing with transport owner-drivers.

I have received many other letters, as I am sure other honourable members have. All of them raise issues of concern not only to this Council but also to the people themselves. I received a letter from a person who had his own family transport business and had been involved in it all his working life. He became a subcontractor with a multinational transport group, and on joining that company, he was informed that he would have to become a member of the TWU, which was not something he did voluntarily. This person said that as he was a subcontractor with one of the multi-national transport groups, he thought he would have a reasonably secure future. Nine months after joining the company he arrived at work one Friday morning to find that the doors were closed and that the company had ceased its operation Australia wide. However, the freight that was being handled by that division is still being distributed today by subsidiary companies in the same organisation.

On speaking to the union representative on the morning in question—and that person was a union member at that stage—this person was told that the union representative was sorry but that there was nothing he could do about it. The person to whom I have referred sought alternative employment, and on the following Monday morning he started with a smaller independent company which was not under union control. He has been employed there for 12 months, carries out his own negotiations and is perfectly happy. This person is $100 a week better off and does not want anyone trying to look after him again because, while he was under union control, he certainly did not get any assistance.

I have no doubt that there are examples the other way. The point I am making is that there are examples where people are supposed to be protected and are not receiving protection. Merely because an organisation is under a union, it does not mean that there is automatic protection for everyone working for that organisation. It does not work that way. There is a simplistic attitude abroad that perhaps that is the case.

I could go on reading letter after letter from companies expressing concern, but I do not intend to do that, as it would take up the time of the Council. I am sure that many members have received the same letters but, if not, I would certainly be prepared to supply them with the letters if they wished to read them.

I now turn my attention to two issues raised by the Opposition last year when the Industrial Conciliation and Arbitration Act Amendment Bill was the subject of debate. I refer, first, to the removal of the preference to unionists clauses and, secondly, to the restoration of the right of individuals and companies to take tort action for recovery of damages as a result of union action.

When we debated the issue last year I expressed my strong philosophical objections to the preference to unionists provisions. Regrettably, but typically, one Party in this Council failed to support the Opposition in its attempts to remove preference for unionists clauses. I trust that there will be an alteration to its attitude this time. I believe that in our society freedom of association and freedom of choice are fundamental principles which we must protect continuously.

These principles are undermined whenever we install in legislation preference to unionists clauses. Employees and small business people should be completely free to exercise their will to join or not to join a trade union. Under this Government their options are being eroded—if they want to work under this Government it seems that they have to join a union. Over many years our individual rights have been steadily eroded. The preference to unionist principles supported by the present Government are totally opposed to the principles of a free society.

Trade unions should win their members—not draft them. We believe that the preference to unionist clauses in this Act should be removed, and we will introduce amendments aimed at achieving this. We do not support the industrial coercion which preference to unionist provisions attempt to legitimise. Regrettably, too many large employers are often prepared to abdicate their responsibility and commitment to the free enterprise system for the sake of convenience. They find it easier to give in, because being large, they can often pass on the increased costs which the consumer has no choice but to pay.

In other words, many larger companies do deals with trade unions to exploit their monopoly position, and the public pays the cost. The Opposition condemns such arrangements. One other area of concern in the present Industrial Conciliation and Arbitration Act which the Opposition seeks to change relates to tort action. The legislation presently prevents the application of civil law to trade unions. It stops a person from sueing unions for economic loss as a result of their actions.

In relation to other issues in the Bill I make the following comments. It is proposed to amend section 31 of the principal Act dealing with the special jurisdiction of the Industrial Commission to deal with cases of unfair dismissal. The 1984 amendments to the Industrial Conciliation and Arbitration Act allowed for unfair dismissal provisions, first, to transfer the jurisdiction from the Industrial Court to the Industrial Commission; secondly, to introduce the additional remedies of employment in another position or compensation; and, thirdly, to require a pre-hearing conference to attempt to resolve the matter by conciliation.

It has become clear that since these new provisions were first drafted doubt has arisen as to the right of the party or proceedings under section 31 to appeal against a decision of the Commission. Whilst section 97 defines persons entitled to appeal and covers various groups of employees and employers, and even in some limited cases individual employees and employers, it does not allow for general appeal by an individual employee. Such a situation, however, is quite likely to arise in the area of unfair dismissal. Clauses 4 and 8 provide for specific appeals in regard to section 31 matters. This Bill also attempts to clarify the time period in which a section 31 appeal must be lodged. Section 98 (1) *(b)* of the Act provides:

If the appeal is in respect of a decision or omission, failure or refusal of a committee or the Commission constituted by a single member to include in an award any matter which if included would have been within his or its jurisdiction, and it will not be followed by the publication in the *Gazette* of the award, the notice of appeal shall be lodged within 42 days after the date of such decision, omission, failure or refusal as the case may be.

In other words, an appeal can be lodged up to 42 days after the handing down of the decision. This is a long delay, and it is necessary to amend the Act to reintroduce the 14 day time limit for section 31 appeals. This is contained in clause 9 *(b)* of the Bill but it also includes an opportunity so that the Full Commission may, if it is satisfied that it is just and reasonable in the circumstances, extend the time within which the notice may be lodged. The Bill also includes within the definition of 'industrial matter' the question of unfair dismissal. This is contained in clause 3 *(d)*. In its explanatory notes, the Government says:

The second aspect to the amendments to section 6 is to define 'industrial matter' as including the dismissal of an employee by an employer. This amendment has been included on the basis of a submission to the Government that, when Parliament by Act

No. 19 of 1984 conferred power on the Commission to act on application by an employee who has been harshly, unjustly or unreasonably dismissed, the Parliament failed to confer the jurisdiction to Act.

The Opposition is not satisfied that the proposed amendment is the appropriate method of correcting the possible lack of jurisdiction. What the Government's proposal will lead to is the possibility of an unnecessary and complicated dual power for the Commission to hear and determine issues surrounding the dismissal of an employee. The Commission would be able to exercise its general and undefined power provided for in section 25 (1) *(a)* as well as pursuant to section 31.

Section 31 has, as I have indicated earlier, specific and defined procedures and powers, and the Commission should have this provision available to cover dismissals only and not as an additional general power. The Opposition will oppose clause 3 *(d)* and believes that our amendments more simply and sensibly rectify any difficulties. The Government, as in so many things in which the Deputy Premier involves himself, has approached the matters broached by this Bill in a clumsy way.

The Opposition is not satisfied with the provisions laid down by the Government in its Bill relating to appeals. Any appeal to the Full Commission against a decision of a Commissioner should limit the Full Commission in the same way that the original hearing was constrained: that is, no decision or order from the Full Commission should include any provision which would be decided on the power of the Commission as constituted in the first instance.

I also have reservations in relation to clause 10 which amends section 99 and which provides an unnecessry limitation on the flexibility of the Commission in regard to ordering a stay of operation of section 31 decision. The Bill as the Government proposes it would mean that, even where an employer was appealing an order to re-employ a dismissed employee, the order would have to be carried out. Quite clearly, the Opposition has major reservations about the Government's approach to the entire Industrial Conciliation and Arbitration Act.

Fundamental to our concern is the vast difference between our philosophical approach and that of the Government. We maintain our commitment to the freedom of the individual and the right of the individual to choose whether or not he or she will be a member of a trade union and the right of the community to have all its citizens treated equally before the law without the privilege of position currently provided by this Government to the trade union movement.

Trade unions, and particularly their leaders, should be just as liable to civil action as is the rest of the community. Subcontracting owner-drivers should be as free as anyone else to decide whether or not they join a union and how they operate their small business. We have a concern, too, about a number of practical aspects of the proposed Bill, and at a later stage I will introduce amendments seeking to correct the Government's inadequate approach.

This Bill covers some issues that are necessary; it makes necessary changes. Unfortunately, the Government has introduced a Bill which makes the necessary changes but which brings in an issue that has caused very grave problems and difficulties in the transport industry—and without consultation. That was a silly and ridiculous thing to do. The Government has caused problems for itself because of the lack of consultation. Members opposite never want to come near me again and say, 'We are the Government of consultation,' because that is not the case. I have become fed up in the past two or three days with receiving submissions from people who believe that they are affected by this Bill. I quite understand their concern. I have had to try to answer their queries and to suggest resolutions to their problems. Numerous amendments have been thrown around, as well as letters from the Deputy Premier, with all sorts of things being promised. However, not once has a person from the transport industry, apart from members of the union, come to me and said, 'We know what it is all about.'

That is not the way to do things: legislation should be brought in after careful consideration and consultation, but that has not occurred. I urge the Council to vote against those clauses that deal with the transport industry. Let us take them out of the Bill, consider the matter, and amend those clauses that require amendment. We can consider amendments in Committee. Do not let us get bogged down in debate when there has been insufficient consultation. If the Government wants to bring back a Bill in August after consultation, so be it: we will consider it then on the same basis. Let the industry consider the matter and let the Government go back to the industry for discussions. I urge members to vote against those clauses in Committee. In the meantime, the Opposition supports the second reading to enable those clauses that are acceptable and necessary to proceed.

The Hon. DIANA LAIDLAW: In April last year the Legislative Council was involved in long and spirited debate on major amendments that had been introduced by the Government to the Industrial Conciliation and Arbitration Act, 1972. The Bill before us now addresses two subjects that were debated at that time, that is, the unfair dismissal provisions and the role of subcontractors. The Liberal Party intends to introduce two further subjects in relation to this Bill, and those matters were also debated last year—the tort provisions and compulsory unionism or preference to unionists.

In part, this Bill seeks to clarify the unfair dismissal provisions that were passed last year. I have confirmed the Minister's second reading explanation that on the whole the new provisions under section 31 have been working well, with a success rate of about 80 per cent regarding settlement at prehearing conferences. I have also confirmed that there is a need to clarify a number of matters relating to unfair dismissal provisions. I understand that all the proposed unfair dismissal provisions have been agreed to unanimously by IRAC, the Minister's Industrial Relations Advisory Council. However, while the Liberal Party acknowledges the need to clarify each area that is highlighted, it does not agree with the approach or the method adopted in each instance, and I understand that amendments will be moved in this respect.

In addition to the unfair dismissal provisions, amendments to clause 3, which amends section 6 of the principal Act, will be moved. These relate to the definition of 'employee' in respect of persons who transport goods and material. I intend to concentrate my remarks on this clause. Before addressing specific objections to clause 3, I wish to refer back to the debate in this Council last April on the Industrial Conciliation and Arbitration Act Amendment Bill. Members may recall that at that time the debate on the amendments initially centred around clause 4, which threatened to wipe out the whole of the subcontracting arrangements that operate in this State.

At that time the threat to subcontractors was not confined as it is on this occasion to the transport industry or truck owner-drivers. In relation to the subcontractors, the amendments last April were aggressively opposed by the Liberal Party in this place and in another place at both the second reading and the Committee stages. The Australian Democrats likewise opposed those provisions and together we were able to defeat the subcontracting provisions last April. I believe therefore it is opportune to remind the Council and the Hon. Mr Gilfillan, the spokesman for the Australian

Democrats at that time, of what the Democrats in fact indicated with respect to this clause. He said, and I quote from *Hansard* of 11 April 1984 at page 3480:

I mentioned first the clause that has been identified specifically as putting under threat the contractor/subcontractor arrangements in South Australia. It has probably shared the top spot on the charts as being the subject of most criticism by those who wish to criticise the Bill. We made a great effort to draft an amendment which would leave the contractor and contracting system uninterfered with, believing as we do that the right of individuals to contract their labour and services free from dictation of what should be specific rates of remuneration and other conditions in which they should work, that those conditions should not be imposed on the contracting and subcontracting areas of industry in South Australia.

However, that amendment left room for a serious threat to the contracting and subcontracting areas in South Australia, so we chose to back off from any attempt at all to amend the clause of the Bill dealing specifically with the contractor and subcontractor areas. Therefore, it is our intention to oppose the clause related to those areas, which was a difficult decision to make. However, we held so high in our priorities the freedom from interference and the right of contractors and subcontractors to work, or to offer to work, at rates and conditions that they alone chose, and the risk of destroying those rights by trying to amend the clause of the Bill was so great that we withdrew our amendment and will oppose the clause.

I trust that the Hon. Mr Gilfillan or the Hon. Mr Milne, who is tonight speaking for the Democrats on clause 3, will hold the same unqualified views on the need to distinguish between and to defend the difference between the rights of subcontractors and employees as they did in April of last year. Further in reference to that debate, I want to make reference to two comments made by the Attorney-General in summing up the debate and commenting on objections that were raised by the Liberal Party and the Australian Democrats. The first is:

There is considerable support in industry and among people who work as subcontractors in certain areas in the transport industry, for instance owner-drivers support it, and there is support among subcontractors in the building industry.

With respect to that quotation, I question, if the support was so strong among subcontractors in the building industry last April, why the Government has not chosen on this occasion to meet the expectations of the building subcontractors by making reference to their industry in clause 3 of this Bill, that is by also extending the interpretation of 'employee' to cover subcontractors in the building industry.

Further, I would question that, if the support was so strong in April of last year among the owner-drivers to this provision, why the Minister in his second reading explanation made no reference that on this occasion owner-drivers supported this measure. The only justification that the Minister gave for introducing this measure was that his amendments contained in clause 3 *(b)* were supported by the Transport Workers Union. The Attorney-General further commented in summing up the debate last April in the following manner:

This is a clause which facilitates the getting on of proper conditions for people who work in industry, something which could ensure justice for many people working in what simply are exploitative conditions.

I want to make some comment about the Attorney's belief that there is such a close association, in his mind at least, between subcontracting systems and exploitative conditions. At the time that remark amazed me and it remains a remark that amazes me today because normally one would concede the Attorney-General was quite an intelligent and rational individual. But to say without qualification, as he did at that time, that the subcontracting system *per se* is so closely associated with exploitative conditions is in my view a very blinkered and narrow minded and misconceived view. The association, as the Attorney said at that time, totally dismisses the many advantages of the subcontracting system and it certainly fails to address why so many subcontractors had not chosen earlier and do not now want to be deemed as employees. They are first and foremost, on the whole, small business people and they prize their independence as the Leader of the Opposition, the Hon. Martin Cameron, indicated in his contribution. They not only prize their independence but they also prize the freedoms which other employees do not enjoy.

I do not deny, however, that there are not injustices in their working conditions that are highlighted from time to time, nor that those injustices exist at the present time, but I would contend that the reaction or response to these injustices should not be so heavy handed as to threaten the whole basis of a particular industry and mode of work. The Attorney-General certainly has reminded me on many occasions since I have been a member of this Parliament that hard cases make bad laws, and I would suggest to the Attorney on this occasion that he heed his own advice.

I would like to address the question of consultation, or lack of consultation. Amendments to clause 3 have the potential to make major changes to the arrangements under which owner-drivers or subcontractors operate in South Australia, with major repercussions arising for the livelihood of owner-drivers and with major repercussions for the basis of the operation of a large range and a large number of companies. Notwithstanding the potential magnitude of the changes, however, the Government did not choose to consult with those directly affected by the changes. In fact it did not even pay those affected the courtesy of advising them of the change that they were sponsoring.

The second reading explanation as I indicated earlier states that the Minister introducing this Bill said, 'As a result of discussions with the Transport Workers Union'. The Minister also indicated later in his explanation that the Bill had been referred to IRAC. Their support, however, was not unanimous. In the other place, a week ago in summing up, the Minister of Labour indicated that the Employers Federation and the Chamber of Commerce had also been consulted and, like the Leader of the Opposition, I would suggest to the Minister, if he is endeavouring to consult in the future, that none of those bodies are representative of the freight industry. In addition, it is relevant that the bodies that the Minister chose to consult with beyond the TWU were all opposed to the course that he is now pursuing.

It has been suggested to me that the possibility of united opposition from those directly affected by this measure other than the TWU is the reason why there has been no consultation by the Government. My view is that this is a generous assessment and that the more likely reason is that the Government was trying to sneak this whole thing through.

The Hon. Peter Dunn: Dishonesty.

The Hon. DIANA LAIDLAW: Dishonesty, as the Hon. Mr Dunn suggests. When the issue of consultation was raised in the other place last week the Minister of Labour, in defence, explained:

Consultation requires that consultation be undertaken with the elected leaders of organisations. 'You cannot suggest that we consult with all people who are members'.

I say in response to this that neither I, nor any of my colleagues, would be suggesting that the Government is required to consult with all people in the industry. However, I would certainly suggest that to be consistent with his own definition of 'consultation' he should have consulted with the South Australian Road Transport Association and the Professional Truck Drivers Association, to name but two. I discovered when I rang the South Australia Road Transport Association on Tuesday last week that it had not then been consulted. The first knowledge it had of this Bill was the phone call that it received from me when I was seeking its advice, so not only were those major representative bodies

not told but also neither were the major companies nor components of the industry such as the tow-truck areas, couriers and the like.

The fact is that the Government just did not bother to consult, and I believe that for that admission it is to be damned. An officer in the Deputy Premier's office has offered the excuse that they simply forgot and have since apologised. That apology was delivered when SARTA and the PTDA were fortunate enough to see and express their concern to the Deputy Premier on Monday of this week. The Government has no right to arrogantly introduce changes that have the capacity to make dramatic impact on people's lives without consultation, let alone without advising them of the move it proposes.

It is relevant that, once the people, the companies and associations affected by this amendment learnt of the changes and made rough assessments of the impact of those changes, they voiced strong opposition to this proposal. As a result of that opposition they were given an opportunity to see the Deputy Premier on Monday of this week following which they and a number of members in this Council were provided with suggested amendments that the Government is prepared to make to the Bill in an endeavour to accommodate the strong opposition to it. It is clear that once the people in the companies and associations to be affected by this Bill learnt of it we were able to uncover and expose the very cosy arrangement that had been organised between the Government and the TWU.

This incident, in my view, is a further example of the very offensive nature of the accord between the Government and the union movement where anything is okay as long as it is an arrangement that suits the union movement, and the rest of us can simply go to blazes—we are simply irrelevant. In addition to the excuse that the Government forgot to consult, a further excuse has been offered that the industry has been aware for some time that the issue of the status of owner-drivers is one of considerable concern. It is true that the issue has been around, to my knowledge, for at least three years. This fact, however, does not mean that the industry's concerns and objections are any less valid, or that they have diminished in intensity in that time. The Minister of Labour is not unaware of past concern and objections in relation to this matter and, in fact, in March last year indicated strongly that he was not prepared to bow to trade union pressure on this issue.

This facet of the Minister's view in March last year was explained in a letter to the Hon. Mr Milne from Mr A. Achatz from Achatz, Webber and Company of 19 March, part of which states in respect of the Industrial Conciliation and Arbitration Bill:

> The Minister has decided that at this time he does not wish to introduce legislation which will protect the rights of owner-drivers. We have asked him and his Secretary to include amendments to rectify the problems of the industry but all he could say was that he would investigate the need for such changes in the future and then appoint a Tribunal if, in his opinion, the need was justified.

The Government has now introduced this same measure without consultation, a measure that it is determined to push through this Parliament. In the meantime, however, the Government has provided no evidence that since March it has authorised the investigation that the Minister saw as being so important in March last year.

If the Minister did, in fact, authorise that investigation there certainly has been no sign from him of the outcome of it. He certainly did not appoint a tribunal, as was his intention last March. I ask now of the Government that, if that investigation, followed by that tribunal, was seen to be so necessary by the Deputy Premier in March of last year, why is such an investigation and tribunal not considered warranted 13 months later? It is my view that such an investigation followed by a tribunal is as necessary today as it was then. There is a need to investigate all the factors involved in this issue and there is a need to assess all the ramifications of the issue before we make a firm decision on the Government's proposal to deem all owner-drivers employees.

Objections to the Government's proposal have been dismissed by it on the grounds that the objectors did not understand the provisions and that they have been exaggerating the ramifications. The Government has indicated in the past few days that it is moving further amendments to clarify provisions of the Bill, so one could hardly accuse those who object of protesting falsely about the ramifications of the original Bill. Further, the Minister and Government members may be interested to learn (since none was able to attend the public meeting last Monday) the outcome of the meeting. It was addressed by the President of the Professional Truck Drivers Association who outlined matters discussed earlier that day with the Deputy Premier, including the possibility of amendments.

It was also addressed by Mr Brian McIntosh, who I understand is an organiser with the TWU. He spoke in favour of the Government's proposal. Mr Adrian Achatz, who I understand is an accountant who does a considerable amount of work for the TWU, also spoke in favour of the Government's proposal but outlined some reservations. That meeting was given a quite clear and full picture of the situation with two speakers essentially speaking in favour of this Bill, yet the overwhelming decision (the unanimous decision) of that meeting was to squash this Bill and to hold a rally to voice their protest at the Government's action.

The Hon. R.I. Lucas interjecting:

The Hon. DIANA LAIDLAW: That is right. As the Hon. Mr Lucas says, hundreds and hundreds turned up on the steps outside Parliament House. I assure the Minister and Government members that those present at the meeting and other objectors do understand the ramifications of this Bill. They do not want the Government dictating their livelihood. They want to be owner-drivers, not employees. They want to get on with the job they have chosen to pursue without the interference of Government regulation or union pressure. As an aside, at that meeting I was appalled to hear on three separate occasions that one courier company was not present. I was advised that in the previous week the courier company had spoken with the Deputy Leader of the Opposition and the Australian Democrats about its concerns in relation to the Bill. Following those discussions representatives of the courier company had been threatened by the TWU that if they attended the public meeting last Monday there would be repercussions for that firm. As a result, they did not attend the meeting.

The Hon. R.I. Lucas: Outrageous!

The Hon. DIANA LAIDLAW: It is outrageous. It is hardly the conciliatory sort of gesture aimed to stem reservations about closer association with the TWU. In his second reading explanation the Minister indicated that the TWU alone is in favour of this Bill. Currently there are 1 673 owner-drivers who are members of the TWU. That is few amongst the total number of owner-drivers in this State. The TWU says that it only wishes the right by way of this Bill to represent the 1 673 owner-drivers in industrial matters before the Arbitration Commission.

At the public meeting I referred to earlier Mr Brian McIntosh of the TWU sought to reassure those present that the TWU support for the Bill was motivated by only the most noble of intentions. Among several comments of his that I noted at the meeting I refer to two as follows:

> The TWU has no vested interest in this matter. We simply wish to see that the industry runs along smoothly . . . The intent

of this Bill is not to solicit members, nor is it about compulsory unionism.

I assure members that both statements drew a very vocal reaction from those present. In assessing that reaction since, I suggest that those present, due to prior experience, were not convinced of the innocence of the TWU's motives. Unfortunately, Mr McIntosh was not able to stay after he had spoken to be questioned by those present.

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

The Hon. DIANA LAIDLAW: It might have been fortunate, but he did not stay for whatever reason to answer questions raised by people concerned about the ramifications of the Bill on their livelihood. Although it is possibly not widely known, the Government is aware that the TWU is currently in the throes of preparing the second national industry based superannuation scheme, a scheme similar to that which caused considerable concern in industrial and Federal Government circles, which was promoted by the BLF over the past 18 months. Naturally, for the scheme to be effective both financially and administratively it is necessary for the TWU to recruit to membership status every person that it can who is involved in the transport industry. The more members the easier it will be for the TWU to pressure employers to accept the scheme.

Certainly, it will be difficult for the union to be successful if companies have, for instance, 50 per cent employees and 50 per cent owner-drivers. It would be administratively complicated for that company to operate and, therefore, it would not be nearly so easy for the TWU to sell to that company. Further, I think it is timely to remember that in respect of the transport industry South Australia is one of five respondents to the Transport Workers Award of 1983. The other respondents are Victoria, Tasmania, Queensland and Western Australia. New South Wales alone has its own State award. Therefore, what happens in South Australia will have ramifications in other States, and we are all familiar with the flow-on principle in industrial relations. Therefore, South Australia cannot act in isolation, and nor should it. For what we agree to here in this Parliament will become the standard. Therefore, we have a wider responsibility, I suggest, to assess the impact of these amendments, not only on the transport industry in this State but also on industry in other States which are respondents to this award.

I am certainly not fully aware of the impact of this legislation and therefore I am not prepared to support this change without further discussion of the matter with interested parties both here and interstate. I understand that one reason the Government and the TWU is using to justify pressing for owner-drivers to be deemed employees is due to injustices in conditions of work for owner-drivers, especially in respect to rates of pay and remuneration. In respect to conditions, it is opportune to remind honourable members, first, that the TWU is at present represented on the Federal committee that determines rates of pay for owner-drivers and, secondly, that the TWU has the capacity at present to approach any company with 20 employees (including owner-drivers) to negotiate an award on conditions and rates that are binding on that company, on owner-drivers and the TWU.

Therefore, the TWU has that capacity today, through these two mechanisms, to pursue many of the complaints that it now claims can only be pursued through amendments to deem owner-drivers as employees. I suggest that the TWU is being less than honest in its approach to this Bill. I do not deny that the freight transport industry has problems which must be addressed. I want to talk about the national road freight industry report, which deals with a new topic, so at this stage I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

REMUNERATION BILL

Consideration in Committee of the House of Assembly's amendments to the Legislative Council's amendments:

No. 1. Proposed clause 23, leave out paragraph *(c)* of subclause (1).

No. 2. Proposed clause 23, leave out subclauses (2) and (3) and insert subclause as follows:

(2) Subject to section 22, where a general variation of remuneration payable to employees under awards is made by order of the Full Commission under section 36 of the Industrial Conciliation and Arbitration Act, 1972, there shall be a corresponding variation in the salaries payable to—

(a) Ministers of the Crown;

(b) members and officers of the Parliament;

(c) members of the Judiciary whose remuneration is subject to determination by the tribunal under this Act;

(d) officers whose remuneration is subject to determination by the Tribunal under this Act.

(3) For the purposes of other statutory provisions governing remuneration, salaries fixed under the foregoing provisions of this section shall be deemed to have been fixed by determination of the Tribunal.

(3a) Notwithstanding any other provision of this Act, while this section remains in force, no determination of salary shall be made by the Tribunal except—

(a) in relation to a member of the Judiciary referred to in subsection (1) *(d)*;

or

(b) in respect of an office or position for which there is no determination of salary currently in force under this or any other Act.

Schedule of the consequential amendments made by the House of Assembly:

No. 1. Clause 22, page 6, lines 3 to 5—Leave out 'no determination shall be made by the Tribunal reducing the salary of a member of the Judiciary' and insert 'no reduction shall be made under this Act in the salary payable to a member of the Judiciary'.

No. 2. Clause 24—Leave out the clause.

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

That the House of Assembly's amendments Nos 1 and 2, and consequential amendments Nos 1 and 2, be agreed to.

Honourable members will recall that when this Bill was before us on a previous occasion certain amendments were made by the Legislative Council. They were returned to the House of Assembly, which has now made further amendments.

If these House of Assembly amendments are incorporated in the Bill, this will mean, first, that the remuneration paid under the Bill will be paid automatically following the cases that fix the national wage increases; secondly, the amendments ensure that senior public servants and statutory officers are included within the jurisdicition of the Tribunal. They are amendments consistent with the Bill as it was previously before us.

The Hon. M.B. CAMERON: The Opposition does not have a great problem with the amendments because they do not represent vast changes. However, some words have been altered, and the Attorney should perhaps give an explanation of those.

The Hon. C.J. Sumner: I just did.

The Hon. M.B. CAMERON: Not fully, I do not think. Did the Attorney explain fully why clause 24 should be deleted?

The Hon. C.J. Sumner: That is consequential on the other amendments.

The Hon. M.B. CAMERON: I would be interested to know the reason for that.

The Hon. C.J. SUMNER: I explained that the amendments are to ensure that the increase in salary to members of Parliament, members of the Judiciary, statutory officers and permanent heads flows from national or State award increases; that was the intention previously.

The Hon. M.B. Cameron: So, it is necessary to delete clause 24?

The Hon. C.J. SUMNER: It is necessary to delete clause 24 because, while the accord is in place and wage increases are governed by the provisions of the accord and indexation, those increases will automatically flow and there is therefore no need for the Tribunal to meet within four months of the commencement of this Act to determine remuneration, although the question of allowances is still a matter that the Tribunal will have to consider. There was no need to put a time limit within which the Tribunal must meet.

The Hon. M.B. Cameron: What about Parliamentary allowances? Can they be considered or not?

The Hon. C.J. SUMNER: Parliamentary allowances can still be considered by the Tribunal, but clause 24 in the original Bill was there to ensure that the Tribunal met within a reasonable time—four months—in order to give effect to any wage movements that had occurred in accordance with the accord and with indexation. As that has now been included, as I understand it, with the support of the Liberal Party in the House of Assembly, there is no need for clause 24, because those wage movements will automatically flow through once the Full Commission of the South Australian Conciliation and Arbitration Commission has made a decision with respect to increases in wages based on indexation in accordance with the accord.

So, all those statutory officers, as was explained previously, will now have their salaries pegged in accordance with the accord, and Parliamentarians and judges will be subject only to indexation increases from here on, which will automatically be granted.

The Hon. K.T. GRIFFIN: Taking that a little further, the 2.6 per cent increase on 6 April 1985 is, by virtue of the Statute, applied to judges and magistrates. The amendment relating to the general variation of remuneration payable to employees under awards by order of the Full Commission under section 36 of the Industrial Conciliation and Arbitration Act applies only, obviously, from the date on which this Act comes into operation. That may mean that for all those other than judges and magistrates, who have specifically got the 2.6 per cent, it will not operate to pass on that 2.6 per cent. So, there may need to be a provision such as that in clause 24 to enable the Tribunal to at least grant to members of Parliament and statutory office holders any percentage increase made by the Commission prior to the date when this comes into operation.

That is the only question I raise: whether the Attorney-General is satisfied that all those increases that have been made by the Industrial Commission prior to the date when the Act comes into operation will flow on other than to judges and magistrates. That is a fairly important question, as he will appreciate. It may be that something else in the Bill does that, but I have not had a chance to look at that—only at the message that has come from the other place.

The Hon. C.J. SUMNER: That may be a problem. The honourable member may be right.

Progress reported; Committee to sit again.

CONSTITUTION ACT AMENDMENT BILL (No. 2)

Consideration in Committee of the House of Assembly's amendments:

No. 1. Clause 2, page 1, lines 14 to 16—Leave out this clause and insert new clause as follows:

2. Commencement.

(1) Subject to subsection (3), this Act shall come into operation on the day when Her Majesty's pleasure thereon is publicly signified in South Australia.

(2) Her Majesty's pleasure may be so signified by proclamation.

(3) Section 4 shall come into operation on the day on which the House of Assembly is next dissolved, or next expires, after the commencement of this Act.

No. 2. Page 5, after line 15—Insert new clause as follows:

5. Insertion of new s. 43a.

The following section is inserted after section 43 of the principal Act:

43a. Disqualification of members occupying seats in both Houses.

(1) No member of the Legislative Council shall be capable of being nominated as a candidate for election as a member of the House of Assembly.

(2) No member of the House of Assembly shall be capable of being chosen by an assembly of the members of both Houses of Parliament to supply a casual vacancy in the membership of the Legislative Council.

Amendment No. 1:

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

That the House of Assembly's amendment No. 1 be agreed to.

This Bill left the Legislative Council with the complete agreement of all members of the Council except for the Hon. Mr DeGaris who members will recall voted against the third reading. The final form of the Bill was arrived at after some detailed and extensive negotations between me, (on behalf of the Government), the Hon. Mr Gilfillan (on behalf of the Australian Democrats), and the Hon. Mr Griffin and other members opposite, to achieve what was eventually conceded as a good Bill that achieved the objectives that had been set out for it.

The Hon. Mr Griffin had some reservations about the clause dealing with four year terms and three year fixed terms, but they were only reservations and I think that he agreed that what had been produced was a satisfactory Bill to deal with that situation. There was no comment or objection to the clause dealing with the filling of casual vacancies. However, from what I have been told, I understand that that particular clause provoked some discussion in another place and, as a result of that discussion, we now have before us two amendments to the Bill which I am prepared to accept.

The first amendment deals with the commencement of the Bill and ensures that section 4, which deals with four year terms and three year fixed terms, does not come into operation until after the House of Assembly is dissolved following the expiration of this particular Parliament. I think that that was just a clarification. That was always intended, and I believe the drafting initially did achieve it; but there was apparently some doubt raised about it and now it has been incorporated in the Bill.

The other amendment deals with the question of members of either House being qualified to occupy seats in the other House. That amendment makes it clear that no member of the Legislative Council shall be capable of being nominated as a candidate for election as a member of the House of Assembly; and the reverse—no member of the House of Assembly shall be capable of being chosen by an assembly of the members of both Houses of Parliament to supply a casual vacancy in the membership of the Legislative Council. It clarifies what I believe was probably the practical position in any event, namely, that if a member of the Legislative Council wishes to contest an election for another House, then he or she would resign and contest that election.

Doubt was apparently expressed as to whether or not, reading it strictly, a person could be a member of both Houses. I would not have thought that that was an interpretation that would be looked upon with any enthusiasm. Therefore, all this amendment does is clarify the situation. It ensures that a member of the Legislative Council must resign prior to being chosen as a member of the Legislative Council by an assembly. Then, the member of the House of Assembly shall resign. This matter should not excite very much debate in the light of the fact that members opposite supported the provisions of the Bill when it was last before us.

The Hon. K.T. GRIFFIN: When the Bill left the Council I indicated that, in relation to that part of the Bill dealing with the four year term and the minimum three year term, I had some doubts about whether we had really achieved sufficient flexibility to ensure that in certain constitutional situations an election could be held earlier than the three year period. At that time I indicated that, notwithstanding my reservations about the constitutional position, the Bill had been improved substantially and I was prepared to support it because it was very much improved on what had first been introduced in this Council. In relation to the filling of casual vacancies in the Council, I did raise some questions about persons who were not members of political Parties. I indicated that I supported the general principle of the Bill which had been introduced, but it still left areas of uncertainty, as I said, in respect of Independents and where political Parties had ceased to exist or had merged with other political Parties.

In fact, I moved for the consideration of information provided by the Electoral Commissioner about the person who would have been next in line at the election where the person whose seat became vacant was elected. However, that was defeated and I accept that that would have been a potentially expensive exercise and, while the information would have been valuable, it was not binding on the joint assembly. Honourable members should remember that the Bill passed before Easter after having been introduced before Christmas, and had been the subject of a great deal of consideration. Subsequent to Easter there was some speculation that one member of this Council might be nominating for a House of Assembly seat and might be given some guarantees by the present Government that, if not successful at the next State election for that House of Assembly seat, he could be reinstated to his former position in this Chamber. That has some fairly serious ramifications for the status of the Council and constitutional practice generally. It certainly gave the impression that there was something akin to constitutional musical chairs likely to be played with a seat in this Council.

It seemed that the amendments in the Bill relating to the filling of casual vacancies in this Council were likely to lock in an assembly called to fill the vacancy if the scenario that had been raised publicly in fact occurred. The assembly might not be in a position to express its concern about the constitutional musical chairs which might have been played and which brought into some contempt the constitutional propriety of a vacancy being retained for a member standing for a seat in another House, and having been unsuccessful, seeking to be reinstated to the Parliament. This appeared to the Liberal Party to be an abuse of the Constitution and certainly in our view it was never envisaged as a reasonable procedure in the light of the general consensus that had developed in relation to filling of vacancies that had occurred in good faith or as a result of a death, illness or for some other *bona fide* reason.

So it was in the light of that scenario that my colleagues in another place decided that they would seek to clarify the constitutional position in two respects. First, they wanted to ensure that no member of one House could nominate for election to a seat in the other House while remaining a member of the first House. Secondly, it was believed that, if a person had resigned his or her seat in the Legislative Council to contest a seat in the House of Assembly, that person should be prevented from being reinstated to the vacancy caused by his or her resignation from the seat in the Legislative Council. We thought that that scenario protected the constitutional position of the Legislative Council in particular, recognised constitutional propriety and was a reinforcement of the general procedure relating to the filling of casual vacancies that had been accepted by this Council in good faith.

The House of Assembly has made two amendments to the Bill, the first relating to the date on which the Bill comes into operation. I support that amendment, because quite obviously, if the second amendment (either as it comes to us or as it may be amended by the Council) is accepted, it will have to come into operation prior to the date of the next election; otherwise, it would be ineffective. So the four year term provisions would come into operation at the date of the next general election and the other provisions of the Bill would come into operation on the day when the Queen signifies her assent to the Act (as it then would be). So there is no difficulty with the first amendment, and the Opposition supports it.

The second amendment is accepted so far as it goes, because it seeks to deal with the position that I have outlined, namely, that a member of one House should not be able to nominate for a position in the other House. I want to add to that amendment so that the person who resigns and whose seat becomes vacant in this Council cannot subsequently be reinstated to that vacancy.

Motion carried.

Amendment No. 2:

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

That the House of Assembly's amendment No. 2 be agreed to.

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

After subsection (2) insert new subsection as follows:

'(3) The person who formerly occupied a seat in the Legislative Council that has become vacant shall not be capable of being chosen by an assembly of the members of both Houses of Parliament to supply that vacancy.'

The Hon. C.J. SUMNER: I oppose this amendment. The Hon. Mr Griffin in a lawyer-like manner has attempted to put a cloak of respectability on the clearly politically motivated arguments of his colleagues in the House of Assembly. However, I am afraid that what the honourable member said has no merit: what his colleagues in another place did on that famous evening last week had no merit. This clause dealing with casual vacancies passed this Council with the support of all members but one. The possibility of a member contesting a seat in the House of Assembly and returning to the Legislative Council was available then. Really, there could be no objection to that in constitutional terms.

If the public of South Australia see that as being something on which they wish to express a view in an electoral context, that is the right of the people of South Australia. But clearly this is not contrary to the Constitution or any constitutional principles. In fact, it could be argued that it is desirable that a member of one House should seek to go to another House: whatever political Party is involved, there may be good reasons for a member moving from one House to another, whether from the Legislative Council to the House of Assembly or vice versa. That has happened on occasions. Mr Russack, I seem to recall, was a member of this Council and moved to the House of Assembly.

The Hon. Anne Levy: And John Gorton.

The Hon. C.J. SUMNER: Of course, John Gorton moved from the Senate and became Prime Minister overnight. Of course, that was something that the Liberal Party in government organised—if we like to put it in those terms. There was nothing wrong with that. I do not raise any objection to that circumstance and I really do not see why in constitutional terms there should be any objection to a member of this Council seeking election in the other House. What I can say is that new section 13 does nothing more than codify the convention that already exists.

So, if this Bill was not passed by the Parliament, the Hon. Mr Blevins, who has become the subject of this debate, would still have the right to contest a House of Assembly

election and to be renominated by a joint assembly of the House of Assembly and the Legislative Council to the casual vacancy that he created. That is the existing law under the present Constitution. That is not altered by what is in this Bill. This Bill codifies the current conventions and ensures that the sort of thing that occurred in Queensland over the Senate vacancies, and in New South Wales, cannot occur.

With respect to the position of a member seeking election for the House of Assembly and then contesting or nominating for the casual vacancy that he created by way of the joint assembly, that is permissible now under the existing law. So, this amendment does not affect that situation. That is where the debate has gone off the rails. It is where the political motivation of the debate is completely exposed, and I do not think anyone needs to bother arguing that to any great extent. It was clearly a politically motivated debate. I emphasise that this Council passed the clause for casual vacancies without objection from any member opposite. They would have known that that possibility existed.

The Hon. R.I. Lucas: We didn't know anything about it.

The Hon. C.J. SUMNER: If honourable members did not know that that was a possibility, they clearly did not read the Bill or understand the existing practice or what is possible under the existing practice. The other thing about the Hon. Mr Griffin's amendment is that it is quite unacceptable for another reason. First of all, what the honourable member does is disqualify for all time—

The Hon. K.T. Griffin: No.

The Hon. C.J. SUMNER: Yes he would; that is what the amendment says. In any event, surely it is a denial of the right of a person to nominate for a seat and then to be nominated again by his political Party for a seat in the Legislative Council. As I said before, in terms of changing from one House to another, surely that is not something that should necessarily be frowned upon if that is what the people of South Australia want to see happen. Surely that matter ought to be left to the electors. I therefore do not believe that there is any substance in what the honourable member opposite has put with respect to this clause or what his colleagues in another place have put. As I say, the plain fact of the matter is that the casual vacancy clause was accepted by this Council without any complaint when it was here. It became a matter of controversy in another place only because of certain political issues that the Opposition wished to attempt to exploit. I certainly ask the Council to completely reject the amendment moved by the Hon. Mr Griffin and leave the Bill as it is at present with that small amendment made by the House of Assembly.

The Hon. I. GILFILLAN: I oppose the Hon. Trevor Griffin's amendment. It is an unfair discrimination, and I do not see any reason why a person should be disqualified from being selected to fill a vacancy in compliance with the normal procedures of the Constitution Act because, for whatever reason, that person may have been the one who vacated the seat originally. That to me is not a ground on which to disqualify a member. If that were the only criterion on which we rejected people from coming into Parliament, it would be a very slender ground indeed. I would be far more concerned with the quality of the representative and the ability of that individual to perform his job. It seems a very petty amendment and it is obviously targeted at one contemporary political situation, and I reject it.

Regarding the substantial amendment to the Constitution that is now before honourable members, I can see good justification for it to come into place. It has been argued adequately by both the Government and the Opposition, so I will not spend time debating that, except to say that it is extraordinary that it has been an oversight for so long. It was suggested to me elsewhere that perhaps the way to deal with this should have been through the Electoral Act, but the Hon. Trevor Griffin assured me that in his opinion this was the appropriate place, and I respect his judgment. It seems a reasonably substantial and important decision to make, and perhaps that justifies its being in the Constitution Act. I think that there are grounds upon which it could be questioned regarding its so quickly moving into the Constitution Act, and I know that my colleague has some varying thoughts to mine on this matter. However, I indicate my support for the Attorney's amendment.

The Hon. K.L. MILNE: I want to make a protest at the whole procedure concerning these amendments, both in another place and here. I think the Constitution Act left this Council with its approval and was tampered with in another place for the express reason of political Party manoeuvring. It is disgraceful and it will come up in history from time to time as an example of Party politics being played, and that is quite an irresponsible thing to do with legislation that is as important as the State Constitution. The Liberal Party amendment in the House of Assembly was so politically motivated that they had to change it themselves, and even the second attempt was irresponsible. Then we had an amendment from an Independent member that we now have to consider.

The Hon. R.I. Lucas: Disgraceful, too.

The Hon. K.L. MILNE: It is absolutely disgraceful. First of all, it is disgraceful to try to amend the Constitution Act with so little notice and for such an inadequate reason. The Bill passed this Chamber to the satisfaction of the Legislative Council and we now find that there are two attempts to change the Constitution without proper notice being given to the members of the public.

It is not our Constitution—it is their Constitution, and we are doing it for the express purpose of manoeuvring for the possible convenience of one person. That person would have had this opportunity and freedom to move under the present law, so there can be only one reason for this manoeuvring and that is to embarrass the Government.

That is political point scoring of the worst possible kind. As we all know, individual cases make bad law. I believe that that will happen in this instance, and that it will be seen as such in the near future. Even if we pass the amendment suggested by the Independent member in another place, I am sure that people will want to change it again because the matter has not been thought through properly. I will oppose the Hon. Mr Griffin's suggested amendment. The honourable member feels that he has had to move that amendment because the Liberal Party is in a jam, having got itself into trouble in another place and its members have to be loyal and try to get themselves out of that jam. This is a selfish and irresponsible way in which to do that. I think that the honourable member's amendment is quite reprehensible. The House of Assembly's amendment is at least unwise and certainly also reprehensible. No amount of semantics or apologetics will change my mind. I will therefore oppose both amendments.

The Committee divided on the Hon. Mr Griffin's amendment to the House of Assembly's amendment No. 2:

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

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

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

Majority of 1 for the Noes.

Amendment thus negatived.

Motion carried.

Progress reported.

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

That the Committee's report be adopted.

In moving this motion, I wish to make some remarks as the Bill is now in its final form. I have had the Bill as amended by the House of Assembly and as now agreed to by the Legislative Council perused by the Solicitor-General, and I will make some statements about the Bill in that form because of its constitutional importance. I therefore wish to make some remarks regarding certain aspects of the Constitution Act Amendment Bill (No. 2) (1984) as it has come to this Chamber following its passage through the House of Assembly with some amendments to which this Council has now agreed. The Solicitor-General has perused the Bill in its final form.

Clause 3 of the Bill deals successively with the questions of casual vacancies in the Legislative Council, the term of service of Legislative Councillors incorporating as far as possible the concept of simultaneous elections and the determination of the order of retirement of Legislative Councillors for the purposes of elections. Clause 4 deals successively with the questions of the term of the House of Assembly and the Governor's powers to dissolve the House of Assembly. Therefore, clauses 3 and 4 of the Bill respectively seek (among other things) to make changes that will affect the terms of the Legislative Council and the House of Assembly.

The Bill does not seek in any way to alter the powers of either House of Parliament. Nor does it seek in any way to repeal or amend section 41 of the Constitution Act, which is the section which deals with the procedure for the settlement of deadlocks arising between the two Houses of Parliament. This means that the special provisions relating to a referendum do not apply to this Bill. However, the Constitution Act itself does prescribe a special procedure in respect of a Bill of this nature. That procedure is contained in section 8 of the Constitution Act, which provides as follows:

> The Parliament may, from time to time, by any Act, repeal, alter or vary all or any of the provisions of this Act, and substitute others in lieu thereof: Provided that—
>
> *(a)* it shall not be lawful to present to the Governor, for (Her) Majesty's assent, any Bill by which an alteration in the constitution of the Legislative Council or House of Assembly in made, unless the second and third readings of that Bill have been passed with the concurrence of an absolute majority of the whole number of the members of the Legislative Council and of the House of Assembly respectively:
>
> *(b)* every such Bill which has been so passed shall be reserved for the signification of (Her) Majesty's pleasure thereon.

The question that arises under this Bill is whether it alters the 'constitution' of the Legislative Council or House of Assembly within the meaning of section 8 placitum *(a)*. The High Court of Australia has considered that the expression 'constitution' of a Legislature as it appears in the Colonial Laws Validity Act, 1865, is synonymous with its 'composition form or nature' (see *Taylor v. Attorney-General of Queensland* (1917) 23 C.L.R. 457 at 468, 477).

It is the view of the Government and the learned Solicitor-General that a provision affecting the term of either House is one that affects its constitution. The term of either House, that is, as presently regulated by section 13 for the Legislative Council and section 28 for the House of Assembly, goes to the very roots of the form and nature of the House and therefore to its constitution. It is reflected in our language. We speak of the 43rd, the 44th and 45th Parliaments, for example. They are discrete entities: the 45th Parliament (that is, the present Parliament) is not and cannot in any way be regarded as the same as the 44th Parliament.

We also talk of the 'life' of a Parliament: a discriminating factor that sets apart one Parliament from another, is its duration, its distinctive and discrete life-span, its terms or period of existence. These considerations led the Government and its advisers to the conclusion that section 8 of the Constitution Act was attracted to the amending Bill (No. 2). In particular, an absolute majority of the whole number of members of the Legislative Council and House of Assembly was required to concur in the second and third readings of the Bill. Of course, that occurred.

In light of the extreme constitutional importance of the measures proposed in this Bill, I am now taking the step of tabling an updated Memorandum of Advice of the Solicitor-General. That advice canvasses the constitutional implications of the Bill as it now stands before the Legislative Council, following its passage through the House of Assembly. I seek leave to have the Memorandum of Advice incorporated in *Hansard*, and I also seek leave to table it.

The PRESIDENT: That raises a problem. If it is tabled, which is the normal thing to do with such a document, it does not appear in *Hansard*. Because it is not statistical, we will create a precedent if it is incorporated in *Hansard*.

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

That the Memorandum of Advice from the Solicitor-General (Mr M.F. Gray QC) dated 14 May 1985 to the Attorney-General on the Constitution Act Amendment Bill (No. 2), 1984, be incorporated in *Hansard*.

Motion carried.

MEMORANDUM OF ADVICE

Re: Constitution Act Amendment Bill (No. 2) 1984

1. You have requested that I examine the above bill in the form it has reached following the passing of the second reading and the third reading of it in the House of Assembly. In particular, you have asked that I advise on the constitutional implications regarding the amendments sought to be effected by this Bill. I note that in both Houses of Parliament the second and third readings of the Bill were passed with the concurrence of an absolute majority of the whole number of the members of the Legislative Council and of the House of Assembly respectively. I also note that the Bill was amended in the House of Assembly as a consequence of certain amendments moved by Mr M.J. Evans M.P. Those amendments deal respectively with the proposed time of commencement of the Act and the disqualification of members occupying seats in both Houses of Parliament. I do not regard either of these amendments as having any constitutional implications material to my present advice.

2. The proposed sections deal, successively, with the questions of casual vacancies in the Legislative Council, the term of service of Legislative Councillors and the orders of retirement of Legislative Councillors.

Proposed sections 13, 14 and 15

3. The provisions of section 41 (2) *(b)* (dealing with the settlement of deadlocks between the Houses) are related to the predecessor of the proposed new sections 14 and 15, which when read together, make provision for the order of retirement in the case of double dissolution and the subsection effectively provides for a minimumn three year term for one half of the members of the Legislative Council in respect of the election held next after a double dissolution.This section is unaffected by the combined effect of proposed subsection (2) and (3) of section 14.

4. In my opinion, the repeal of existing section 13, 14 and 15 neither abolishes nor alters the powers of the Legislative Council, within the meaning of those expressions in section 10a.

5. Section 10a requires that its procedures be followed in respect of a Bill providing for or effecting the repeal or amendment of section 41. Sections 14 and 15 are both

referred to section 41 (2) *(b)*. It seems to me that this ought to be read as a reference to those sections as amended from time to time, provided that any amendment is limited as to subject-matter, that is, as long as any amendments to sections 14 and 15 continue to provide for the order of retirement of members of the Legislative Council, the proposed sections 14 and 15 do so provide.

6. In my opinion the section 10a procedures are not attracted to the amendments proposed to sections 13, 14 and 15.

Proposed sections 28 and 28a

7. The proposed sections dealing with the term of the House of Assembly and the dissolution of that House by the Governor do not, in my opinion, alter the powers of the Legislative Council within the meaning of section 10a (1) *(c)* or section 10a (2) *(c)*.

8. The retention of a minimum term for Legislative Councillors is not directly affected by any alteration to the term of the House of Assembly. Although the minimum six year term is obviously related to the (present) expected three year House of Assembly term there is no essential correlation between the two.

Proposed section 43a

9. As I have already indicated, proposed section 43a (resulting from an amendment passed in the House of Assembly and dealing with the disqualification of members occupying seats in both Houses) is not material to my present consideration of the constitutional implications of this Bill.

Section 8 procedure

10. In my view the procedure prescribed by section 8 of the Constitution Act, 1934 applies to the provisions of this Bill; in particular, proposed section 14 (term of service of the Legislative Councillors) and proposed sections 28 and 28a (term of the House of Assembly and dissolution thereof) required an absolute majority of the whole number of the members of the Legislative Council and of the House of Assembly for the passing of both the second and third readings of this Bill.

11. This is so because, in my opinion, the Bill sought to alter the 'Constitution' of the House of Assembly within the meaning of section 8 placitum *(a)*.

12. I note that on two occasions when the term of the House of Assembly has been altered (see Acts No. 2381 of 1937 and No. 49 of 1939) the Bills were reserved for Royal assent.

13. Although this is not conclusive in itself, judicial authority, on the meaning of 'Constitution' of a House of Parliament lends support to this view. I refer in particular to *Taylor v. Attorney-General of Queensland* (1917) 23 C.L.R. 457 at 468, 477; *Trethowan's Case* (1931) 44 C.L.R. 394 at 429; *Attorney-General for W.A. (ex rel. Burke) v. State of W.A.* (1982) W.A.R. 241 at 246.

Conclusions

14. In my opinion, therefore, the 1984 (Bill No. 2) to amend the Constitution Act, 1934:

(i) did not attract the special referendum procedures laid down in section 10a of that Act;

(ii) required the absolute majority procedures laid down in section 8 of that Act.

15. Therefore, since the second and third readings of the Bill have been passed with the concurrence of an absolute majority of the whole number of the members of the Legislative Council and of the House of Assembly, I do not now see any constitutional impediment to the reservation of the Bill for the signification of Her Majesty's pleasure thereon, as required by section 8 placitum *(b)* of the Constitution Act, 1934.

The Hon. C.J. SUMNER: I now seek leave to table the Memorandum of Advice.

Leave granted.

The Hon. C.J. SUMNER: I believe that this is an important constitutional measure which will be for the benefit of South Australia and the South Australian community. In particular, I refer to the question of four year terms and the three year fixed term proposal that it contains. It also clarifies the question of casual vacancies, which I think was always an important measure.

The Hon. K.T. GRIFFIN: The Liberal Party's attitude to the Bill as amended and as it finally leaves the Council is already on the record. I make one comment about the Solicitor-General's Memorandum of Advice, which the Attorney-General made available to me just prior to this debate. I have not had an opportunity to study it in depth. I have no doubt that section 8 of the Constitution Act applies to the Bill and that the appropriate procedural requirements have been complied with there. During the course of the debate the Hon. Mr DeGaris raised questions about the need for a referendum under section 10 of the Constitution Act. In fact, I referred to that myself. There are some arguments that suggest that a referendum may be necessary. I also indicated that they were not arguments that I was promoting in the context of this Bill. I did not want the recording of the Solicitor-General's advice without comment to be taken as an unequivocal acceptance of it. It is only for that reason that I—

The Hon. C.J. Sumner: Do you agree that a referendum is not warranted?

The Hon. K.T. GRIFFIN: I just said that there are some arguments. The Liberal Party and I are not promoting that a referendum is necessary. However, I am not in a position to reflect upon the Solicitor-General's advice. I have no intention of arguing that a referendum is necessary. I made that clear, but I do not want the lack of any comment on the substance of the Memorandum of Advice to be taken as an unequivocal concurrence with the Solicitor-General's opinion, because I have not had an opportunity to study it in detail.

Motion carried.

CONSTITUTIONAL CONVENTION

The House of Assembly intimated that it had agreed to the Legislative Council's resolution.

ROAD TRAFFIC ACT AMENDMENT BILL (No. 3) (1985)

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

MOTOR VEHICLES ACT AMENDMENT BILL (No. 2)

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

INDUSTRIAL CONCILIATION AND ARBITRATION ACT AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 4316.)

The Hon. DIANA LAIDLAW: When I sought leave to conclude my remarks earlier this evening I was addressing the subject of injustices in the industry and had indicated that I did not deny that the freight transport industry has problems that have to be addressed. These problems have been recognised for some time. In fact, the recognition of those problems prompted the Federal Transport Minister, Mr Peter Morris, to announce on 12 September 1983 the establishment of a committee of inquiry, chaired by Mr Peter May, to inquire into, report on and make recommendations relating to the Australian road freight transport industry.

The announcement of this inquiry had the unanimous backing of the Australian Transport Ministers Council, which comprises all State and Territory Ministers responsible for road transport. The inquiry reported in reference to rate regulation and capacity licensing, which are two measures that have been promoted very strongly by the TWU as means to improve conditions in the industry. The May inquiry stated on page 97 of its report:

1. Submissions on rates and capacity limitation. Many submissions proposed that entry to line-haul trucking be restricted and/or that Government legislation be introduced to control rates paid for such work (especially the rates paid to subcontractors). This chapter examines these proposals and makes recommendations . . .

3. Those who seek an alternative (or supplementary) method to increase financial rewards in line-haul work favour legislative control over rates paid. Among submissions made along these lines, special note should be made of that put forward by the Transport Workers Union of Australia (TWU), which proposes that the Commonwealth Conciliation and Arbitration Act be amended to establish a mechanism to set minimum subcontractor freight rates for owner-drivers 'sufficient to cover costs of running a vehicle and a wage component' (TWU submissions, p.5). The TWU also wants capacity licensing: it goes on to propose that 'all vehicles currently used for interstate work [should] be licensed and no new licences . . . granted'

4. The TWU focuses on interstate line-haul, perhaps because the financial problems are most serious there, and because intrastate work might be controlled by State legislation . . . If Commonwealth legislation canot be arranged, the TWU's second preference is for complementary State legislation on rates.

5.2 Overview of the arguments and the inquiry's conclusion. The analysis undertaken by the inquiry reveals that any effective scheme for rate regulation and/or capacity licensing in line-haul work would need to be very complex, and is likely to be particulary difficult and costly to enforce.

The inquiry believes that the introduction of such schemes:

- would lead to an overall decline in the economic efficiency of the industry, and hence to an increase in charges to the customers
- may lead to some improvement in road safety, but the amount of such improvement is likely to be small.

In respect of the industry's judgment on regulation by law of owner-driver rates, the report states that it:

- would be particularly difficult to enforce;
- would be especially damaging to the economic performance of the industry;
- likely to bring major benefits to employed drivers and possibly the railways, rather than to existing owner-drivers.

3. After weighing the arguments, the inquiry concludes that there is no case on economic grounds for the introduction of rate regulation or capacity licensing. (It also believes that, for line-haul owner-drivers, the improved working conditions which are desirable on social grounds can be more effectively secured by other means, discussed in Chapter 7.)

At the conclusion of this chapter on rate regulation and capacity licensing, the inquiry recommends:

1. Governments not introduce capacity licensing or further rate regulation in line-haul trucking or in other sectors of the industry.

2. Existing Government regulation of rates be re-examined by the parties concerned, in the light of experience and in relation to the decisions taken on the recommendations in this report.

The inquiry notes that:

3. In line-haul trucking (and elsewhere in the industry) the present financial and other difficulties appear to be addressed more effectively by the measures discussed in Chapter 7 than by capacity licensing or rate regulation.

The inquiry, as I indicated, was presented with submissions by the TWU in favour of rate regulation and capacity licensing for owner-drivers and subcontractors. Both these arguments were rejected by the May inquiry as measures to improve the conditions in the industry and to solve the injustices. On 12 May last, the Federal Government announced that it accepted the May recommendations and that the State Transport Ministers had accepted unanimously the report in principle.

I will not read the press statement by the Minister of Transport, who made that announcement, but he did herald the announcement by saying that it was a radical look at the freight transport industry in this State. It is very important in discussing clause 3 in this Bill that we take note of that major national road freight industry inquiry and the recommendations of that inquiry in considering our response to clause 3. It is very clear that the TWU, having failed in its attempt to influence the Federal Government's inquiry and the Federal Government itself on the merits and value of regulating and controlling owner-drivers as employees by way of rate regulation and capacity licensing, has now resorted to pursuing these goals through the South Australian Parliament.

As to the impact of this measure on the South Australian economy, our economy, as all honourable members are well aware, is not buoyant at present. Indeed, it is quite vulnerable and unemployment rates are unacceptably high. I acknowledge that our economy is subject to national and international economic factors, but it is also, as the Hon. Lance Milne constantly and effectively reminds us, a separate economy.

One of the major characteristics of our economy is that we are removed from the principal Australian and international markets. Therefore, to prosper and be in a position to compete for the sale of our goods, the cost of these goods must be lower than those of our competitors. Freight costs are a very important consideration in this scenario. To reach the more populous markets, South Australian goods have to be transported a greater distance than is the case with those of our competitors situated in the more populous markets. In this respect, South Australia is at a geographic disadvantage, which we as representatives in this Parliament must not aggravate by measures such as this one in clause 3, which will increase the cost of freight to these markets.

This concern has been expressed by many companies that have written to me and to other members of this Parliament with respect to this Bill. I respect the fact that many of them have included in their costings factors that the State Government will now seek to clarify, and that they will not be major consequences arising from this Bill.

Nevertheless, the companies and owner-drivers that have corresponded with members have an immediate concern about the cost consequences of this measure. Small businesses, in particular, are concerned and, as the Hon. Mr Cameron indicated, it is likely that they and not the major larger companies in this State will be the ones that bear the brunt of any cost increases. Small business is unable to absorb further cost increases of any kind. Such businesses would then have to pass it on to the consumer and, in those circumstances, it is inevitable that many of them would no longer be viable.

I appreciate that the Government has sought, by amendment, to confirm in its definition of 'employee' that sick leave and recreation leave referred to in sections of the Industrial Conciliation and Arbitration Act will not apply in relation to 'employees' under this Act. The Government has also prepared a draft letter, but I do not know whether it has any status at this time, that is, whether or not it still remains in draft form. However, by that letter the Government sought to reassure companies that the Long Service Leave Act, the Pay-roll Tax Act, the Workers Compensation

Act, and the Commonwealth Income Tax Act would not apply to this Act.

The Government fails to realise that beyond the factors that I have just mentioned there are many award conditions that would naturally flow to people who are deemed to be employers. Those award conditions include such things as negotiations on redundancy rates, about which I know the Democrats expressed concern earlier this year, and superannuation, which I mentioned earlier in my contribution. Both those matters, plus other award conditions, are certainly items that potentially could have an onerous impact on employers if the Bill passed in its present form.

I do not doubt that the amendments suggested by the Government and the draft letter would not appease the owner-drivers with whom I have had discussions or who attended the public meeting on Monday night. Their concern essentially is that they do not want their status referred to as 'employee'; they want their status retained as an owner-driver, which carries with it the connotation that they are self-employed business people with freedoms, independence and choice, which is not associated with the status of being an employee. I do not believe that owner-drivers who are not presently members of the union and business people in this State have had their concerns covered by the Government's amendments.

I mentioned at the outset that it is the Liberal Party's intention to introduce amendments to the so-called preference to unionist clauses and tort actions. I have previously spoken on these matters—in fact in April last year—and during the Committee stage I intend to speak on them further. Therefore, I will not develop those subjects at the present time.

Because of what I believe to be the Government's inept manner in handling this Bill and its failure to advise, let alone consult, the persons and parties in the transport industry affected by the Bill; the range and intensity of feeling generated in the community that has been conveyed to me both in person and by letter; the amount of conflicting advice and uncertainty over the ramifications and repercussions of this Bill that may flow to other States; and the findings of the May report to which I have referred on the national freight industry, I am unable to support clause 3, which aims to deem owner-drivers as 'employees'. I am sympathetic to the call from industry that more time is necessary to investigate and assess the merits and ramifications of the Bill. I support the second reading.

The Hon. K.L. MILNE: I will deal with the question of owner-drivers and clause 3, and my colleague, the Hon. Mr Gilfillan, will deal with the other matters in the Bill. I congratulate the Hon. Diana Laidlaw on the research that she has carried out on this matter. I ask all interested parties to read her speech very carefully, because she has had the opportunity of doing a great deal more research than I have been able to do owing to other problems. There is a great deal of truth in what the honourable member says, and her speech could well be the basis of discussions, whether or not it is all absolutely right. It was a valiant effort in trying to define the problems of why so many interested parties are worried.

The problem of owner-drivers is very complex and that became more apparent this week. The overwhelming problem with clause 3 of the Bill is that for some extraordinary reason, and surely by some oversight, there has been little or no consultation with the major interested parties. It was my impression that the number of interested parties was far greater than the Government realised. In other words, owner-drivers are far more widespread in this State and country than many of us realise. The Bill passed in another place last Friday, and the industry has been in turmoil ever since it was reported in the press.

I know that frequently members of the public do not take much notice until a Bill is either in Parliament, is about to be passed, or has been passed in one House. Then all hell breaks loose. This is a most extraordinary reaction and one of the most violent reactions that I have experienced in my 5½ years in this Parliament. As the week has progressed it has become crystal clear that people are very worried. I do not know who is to blame. Perhaps many of the companies should have known more about it and should have made a fuss before, but the fact is that they did not do so.

In fact, it would seem that members of this Parliament have been undertaking much of the consultation that should have been undertaken before. This error of judgment (and I am sure that it is an error of judgment) or misunderstanding has meant that none of the Parties is behaving naturally. They are so frightened (in fact they are frightened stiff) that they are finding it difficult to be rational. I would like to thank the Deputy Premier for the trouble he has taken to set out his views and to calm down people, and for his willingness to compromise.

The Hon. Diana Laidlaw interjecting:

The Hon. K.L. MILNE: That may be so, but having found that there was a misunderstanding (and let us be fair) he has tried to set our minds at rest by seeking legal advice from the Crown Solicitor and writing a letter that was handed out to any interested party. The Government has prepared a major amendment to the definition of 'employee' under this Bill. The amendment was prepared yesterday and amended again today. That is the kind of thing that is likely to happen at the end of a session, but it should not distract us from our duty of considering the matter properly.

Many of those involved in this matter will recall that right at the beginning of the week I said that I wanted to be quite sure that what the Government intended would in fact happen if this Bill was passed. The Government relies on the Conciliation and Arbitration Commission. I have made perfectly clear (and many people would agree with me) that we cannot put a lot of faith in the conciliation and arbitration system to achieve a balance. A system of considering disputes whereby someone has to win and someone has to lose is a funny way of coming to an amicable conclusion. In fact, that very rarely happens. If we look back to the history of the conciliation and arbitration system, we might find that its time has run out.

The Government replied to my criticism by saying that it would make quite certain by amendments that those extraneous matters (that is, matters other than rates of remuneration) would be taken out of this Bill so that the Arbitration Court would not be empowered to consider them. I am afraid that even now I do not have a great deal of confidence in these amendments. They are a valiant effort, and after hearing legal advice from both sides I believe that perhaps we might accept them in the end. However, I find it difficult to accept them now. In this amendment the Government has tried to limit the powers of the Conciliation and Arbitration Commission to making awards that determine the rates of remuneration.

Penalty rates for employees under this special definition have been excluded from consideration. However, there is some doubt about whether the Government or any Government could legislate to distort the word 'employee' as much as would be necessary to place small business people within the category of 'employee' so that they could obtain the protection that the Government intended. The amendment also excludes sick leave and recreation leave and, of course, that also takes out leave loading. I suppose that that is helpful.

I think that I still share the Hon. Diana Laidlaw's fears that, even having taken out all those extraneous matters, such as on-costs which that are worrying the employers and which in this case are worrying the owner-drivers, the way in which this Bill is drafted will result in increased costs. As we all know, South Australia can ill afford that. There is another problem that lawyers have referred to me at the request of some of the employer organisations, and that is workers compensation. People have asked whether this Bill will make certain that workers compensation, in the sense that we understand it under the Act, will not be involved with hourly rates for owner-drivers. People are not sure about that: they cannot be sure by the end of tomorrow.

There are also questions in relation to Federal legislation, such as the PAYE legislation, the pay-roll tax legislation and the long service leave legislation. I accept that the Government is trying to get rid of those things. They do not apply now, and the Government intends that they shall not apply in the future—or certainly not according to the Bill. It is all very well for the Government to say that it knows what it intended and that it has altered its proposal in the Bill to fit the objections and the fears of the members who have spoken in this debate and of people who have spoken at conferences and in discussions. However, when members of this Government are no longer here and when other members consider the legislation they might not understand the background. They might say, 'These matters have been omitted and we will put them back again.' We might have to take that risk, because obviously something has to be done in this very complicated and frail industry. One might say that this industry is on a tight rope all the time.

In spite of all that, we find ourselves in the unenviable position of discovering so many different points of view that it is impossible to classify them all in the turmoil of the next day or two at the end of the session. Unless we classify them all and apply different rules to them all, we will do someone an injustice. Like the Hon. Mr Cameron and other members of Parliament, I have received literally dozens of letters, telephone calls, telegrams and deputations on this matter in the past few days. In case members think I am exaggerating, I can show them the file that has developed in the past few days on this matter. It is quite impossible to assess what it all means in the time available, in trying to be fair to the Government and the people whom we seek to protect.

There are employers who want the Bill; there are employers who do not want the Bill. There are owner-drivers who want the Bill; there are owner-drivers who dread it. There are country carriers who do not want it, have never heard of it and are terrified of it, and there are city carriers who feel the same. The Small Business Association does not want it, I understand. The Petrol Distribution Association, which I had never heard of before and which is a very big and important organisation, does not want it. Yesterday a procession of drivers passed Parliament House along North Terrace; they were against the Bill; they did not want to have anything to do with it or with the TWU. Today a procession of drivers, mostly in very big vans, were in favour of the Bill. It was quite extraordinary that many of those trucks were from TNT or its subsidiaries. I do not know why TNT would be making such a play for its drivers to be in favour of this Bill. That is something I must find out.

I have made clear at two conferences and elsewhere that the Democrats and I will not have a bar of legislation that will increase unemployment. In this instance I simply cannot tell whether or not it will do that; it has been impossible for me to find out. When I listened to my colleague Mr Achatz, a chartered accountant, I could see from his correspondence both in 1984 and now that there are injustices. I believe that in certain instances, and perhaps without owner-drivers even knowing, they are being paid an hourly rate that is less than the sum that will in fact pay their costs and a living wage. Whether the owners are doing that on purpose or whether they do not know either, I am not prepared to say, but I am sure that that is happening and it must be looked at. That kind of situation must be rectified. However, I do not know what areas they are in; there is different treatment for the interstate hauliers, for example, who might bring a load for TNT over here and take a load for, say, Mayne Nickless back to Melbourne.

I am well aware of the aims of this Bill. Certain owner-drivers will become 'employees' for the purposes of this Bill so that they can join the Transport Workers Union and the Union can represent them. Agreements can be registered with the Conciliation and Arbitration Commission, thus giving some classes of owner-drivers and employers greater protection. The hope is that that would stabilise the industry. From speaking to the Government representatives, the accountant (who is a specialist in this field) and the trade union, I think it probably would do that, but it is a matter of whether or not it stabilises the industry at an uneconomic level which will, in fact, put a great many people in the industry out of business. I do not know the answer.

There are too many doubts and misunderstandings and there is no question in my mind that it is in the interests of the industry and the Government to delay the introduction of this Bill until Parliament meets again in August. I am not saying that we should do nothing until then. I am sure those of us who are involved in sorting out this matter would make ourselves available to the interested parties in an attempt, perhaps by more conferences, to come to a sensible answer in an economic sense that is suitable for everyone.

I would like to thank those who have tried so hard, I believe, to come to consensus quickly, such as Mr Don Bennett and others of the South Australian Road Transport Association; Mr Brian McIntosh of the Transport Workers Union; Mr Les Wright, Adviser to the Deputy Premier; Mr Lance Hosking of the Tip Truck Association, which is one of the big ones—it is not a union but it represents a lot of people; Mr Adrian Achatz; and many others who attended the conferences and deputations. Some owner-drivers have tried to help by putting in many hours and losing a lot of money. They have all tried openly and I think sensibly to make us all understand each other, but we did not quite make it. Therefore, I oppose clause 3 at the present time.

Having said that, let me make clear that I agree thoroughly, as do so many others (including my colleague the Hon. Mr Gilfillan) that some reforms need to be made. That is quite obvious. I hope that we will be part of the process to facilitate this when the Bill is reintroduced after full consultation and discussion, when I hope consensus will be reached. I think it is fairly close and consensus can be reached without a great deal more difficulty. Therefore we support the second reading to enable the remainder of the Bill to be debated as we do not wish the whole of the Bill to be thrown out.

The Hon. R.I. LUCAS: I congratulate the previous speakers—the Hon. Lance Milne, the Hon. Diana Laidlaw and the Hon. Martin Cameron—on their contributions to this most important matter. In my view this Bill is the Trojan Horse through which the TWU will take control of much of the transport industry. Like the Trojan Horse, it looks inocuous on the outside; however, when one opens it up, there is real trouble inside. Instead of Trojans, we have the TWU and compulsory unionism. What has been the catalyst for this position was more than capably summarised by a

short paragraph in the second reading explanation of the Minister when he said:

> By including such lorry owner-drivers under the definition of employee in our State Act, the Federal Transport Workers Union would then be able to amend their rules to officially enrol such owner-drivers in South Australia. This would enable formal recognition of what is now a de facto membership of the union.

The result of that would certainly mean that it will be easier for the TWU to enforce compulsory unionism within the transport industry in South Australia. In exactly the same way as the BLF and the BWIU have done with respect to the building industry, so too will the TWU use these provisions with respect to the transport industry.

All members have seen many examples of the activities of the BLF and the BWIU on building sites around South Australia, and I instance only the most recent with which I am familiar. That was a small delicatessen not too far from here where a person was attempting to set himself up in a small business. He employed subcontractors; the union organiser who was walking past the site happened to see two subcontractors working on site. They were in fact friends of the business man. The organiser who was walking to a larger building site nearby popped his head in the door and said, 'Are you members of the union?' The men said that they were not. The organiser said, 'If not, you had better be members of the union by tomorrow morning.'

That was the instruction from the union organiser to the two subcontractors on site. The small businessman asked what he should do. The simple answer was that the two subcontractors worked all through the night to ensure that they finished the job on site, so that when next the union organiser walked past that small building site they were not to be seen.

The Hon. L.H. Davis: That is Australia 1985.

The Hon. R.I. LUCAS: That is Australia 1985, and it is only a small example; there are much larger examples which get the publicity, but a small example like that does not get publicity. It is just one instance of the many hundreds of examples of union intimidation with respect to compulsory unionism and the building industry. As I argued earlier, we would soon see the same situation with respect to the transport industry. In effect, many members have already received submissions from companies involved in the transport industry in the eastern States to the effect that if one wants their truck to be unloaded one must already carry union membership.

Most of the owner-drivers in the transport industry whom we are discussing are fiercely independent, and a number of members who attended the meeting on Monday night saw that. They made quite clear that they do not want to have a bar of the TWU. I give credit to the union organiser, Mr McIntosh, who fronted the hostile crowd on Monday evening in the western suburbs and put the TWU case. Like the Hon. Diana Laidlaw, I simply do not believe the view that he put to the meeting that really the union would not solicit extra members if it had this power; basically, he said that the union was only there for someone to approach it and ask it to represent them. However, the history of the union movement—the TWU in other States as well—indicates that that is simply not the case. Together with this provision, it would have made it so much easier for the TWU to move to a greater degree of compulsory unionism within the transport industry.

The owner-drivers at the meeting on Monday night were extraordinarily angry. They regarded themselves not as union members but as small business people—people who had risked hard-earned capital to invest in their own small business. They wanted the degree of flexibility that owner-driving gives them. They were prepared to take certain risks with respect to their hard-earned capital and they did not want to become part of the TWU. That was passed by an overwhelming margin or, as the Hon. Diana Laidlaw put it, it was unanimous: certainly, there was no dissenting voice. Most importantly, the organisers of the meeting asked for an indication of the number of subcontractors at the meeting: some two-thirds of the people present at the meeting on Monday were subcontractors.

The Government has really been caught with its hand in the lolly jar on this occasion. As previous speakers have indicated, it has tried to sneak through this Bill in the dying weeks of the session, in weeks when members of both Houses have been kept up until the early hours of the morning debating other matters. There has been no consultation with the major industry groups such as SARTA. The only consultation has been with the TWU, as indicated by the Minister in his second reading explanation. It is quite clear that the Government has now found to its cost, now that it has been caught out, that this measure is electorally unpopular; the Government, through the amendments that I will discuss in a moment, is starting to back off. I suspect that the Government is probably secretly wearing its electorally pragmatic hat on this occasion, quite happy that it appears that clause 3 is to be removed.

There is no doubt that, if one detected the feeling at that meeting on Monday night, one would have found that many people involved in the trucking industry who were formerly strong supporters of the Australian Labor Party will certainly not at the next election be supporting that Party in any shape or form. Quite clearly, the Government (and particularly the Deputy Premier) has been stunned by the opposition to this Bill and the Government has (as I previously indicated by way of the amendments I have circulated) commenced a reversal on it. I do not intend covering the same ground as that covered by previous speakers, but will raise a couple of matters of a slightly different nature.

The first is a matter that has not been discussed in relation to the precise definition in the Bill of 'employee'. When one looks at the definition in the Bill as to who, in effect, will be covered by this provision one finds that the definition of 'employee' provides:

> . . . any person engaged to transport goods or materials by road (not being a common carrier or a person who employes or engages others in a business of transporting goods or materials) whether or not the relationship of master and servant exists in consequence of the engagement.

The most important part of that provision, a part that has not yet been discussed, is the exemption of 'not being a common carrier'. I must confess that I had no idea of what the definition of 'a common carrier' was, so I consulted the learned text *Halsbury's Laws of England,* Fourth Edition, volume 5, to find out what on earth a 'common carrier' was. *Halsbury's Laws of England* summarises the definition of 'a common carrier' at page 134 as follows:

> A common carrier is one who exercises the public profession of carrying the goods of all persons wishing to use his services or of carrying passengers whoever they may be. His rights and liabilities are determined by the common law for reasons of public policy, although they may be varied by contract, and stem from his status as a common carrier rather than from contract, express or implied.

Then, later:

> To constitute a person a common carrier of goods he must hold himself out, either expressly or by a course of conduct, as willing to carry for reward, so long as he has room, the goods of all persons indifferently who send him goods to be carried at a reasonable price. He must hold himself out as ready to carry for hire as a business and not as a casual occupation for a particular occasion. To constitute a person a common carrier of passengers the same tests apply, namely holding himself out as ready to carry all persons indifferently who wish to be carried at the proper fare.

That is all wonderful stuff. It has been explained to me what that is saying to us. For example, the interstate haulier who currently (I am advised by people in the industry) in

one year works for 30 to 40 different employers. He is working not just for one trucking company but for a large number of companies.

Legal advice to me is that, in effect, that person is a common carrier. If that is the case, it means that that interstate haulier is not covered by the definition of 'employee' under the Industrial Conciliation and Arbitration Act; that the interstate haulier, about whose conditions most criticism has been directed to members, would not be covered by the definition of 'employee' in this Act; and that the TWU would not be able to have those interstate hauliers join it or be able to represent the interests of those interstate hauliers in the Industrial Commission or in negotiations with employers.

That is a most important matter. Given that the clause may die at this stage, but that the Hon. Mr Milne has indicated that negotiations ought to continue in the future, that matter needs to be resolved. If one looks at the public demonstration today, one sees that a good number of those persons were interstate hauliers who believe that if this Bill passes, they will be able to be represented by the TWU and be able to have rates and awards set for them. If the legal advice given to me is correct, that is not the case and their good intentions of supporting the Bill out there today with respect to their own interests were misplaced. They may have been supporting somebody else's interests, but it is unlikely that they would have been assisted by this provision in the Bill.

There is no doubt that other sections of the transport industry, such as couriers and taxi trucks, would not be covered by that exemption—that is, they are not common carriers—because I am advised by people in the industry that couriers and taxi truck operators generally work for one employer or, at most, a couple of employers. So, the definition of 'common carrier', to which I referred earlier, would not apply to them and, therefore, they would be covered by this provision in the Bill. I repeat that there is certainly sound argument that the interstate haulier would not be covered, so that all those arguments that have been put to me with respect to hauliers not being paid the agreed rate for a trip between here and Sydney and perhaps being paid only 50 per cent to 70 per cent, and that through the passage of this Bill their position would be rectified, may not be correct.

There has been further confusion in the debate with respect to the definition of 'employee' because originally (and this is the fault of the Government) the definition of 'employee' was in this Bill and most people then felt that 'employee' basically meant what we generally understood an employee to be, that is, someone who is working for an employer. Many other Acts also include definitions of 'worker'. I will not read from the Workers Compensation Act because the definition of 'worker' in that Act goes for about 15 lines. The Long Service Leave Act states:

> 'Worker' means a person employed under a contract of service and includes a person so employed who is remunerated wholly or partly by commission.

There are differing definitions in many other Acts. The confusion that arose originally was that, because someone was going to be deemed to be an employee under this Act, under all those other Acts defining workers, such as Workers Compensation Act, Long Service Leave Act and Pay-roll Tax Act, the employers of these owner-drivers now deemed to be employees would have to pay those costs and other on costs such as recreation leave and sick leave.

As a result of that concern, we received many submissions about the dire effects on businesses of companies having to pay such on-costs. Following that, as previous speakers have indicated, a letter was sent from the Deputy Premier to Mr Brian McIntosh of the Transport Workers Union. I will read from that letter, as follows:

> Advice received from the Crown Solicitor's office is that the Long Service Leave Act, the Pay-roll Tax Act, the Workers Compensation Act, and the Income Tax Act of the Commonwealth contain their own independent definition of 'worker', which determines which groups they apply to, and none of the definitions under the above Acts are linked in any way to the definitions of employee and employer in the Conciliation and Arbitration Act . . . You do not have to worry about the on-costs, because there are separate definitions.

Because of the sneaky way in which this Bill was introduced and the lack of consultation, there was natural concern from many employers in the industry when they saw this provision in bold print in the Industrial Conciliation and Arbitration Act Amendment Bill. So, there was good reason for confusion in the minds of small employers.

However, after discussion with persons better placed to provide legal advice than I, I believe that the advice that the Deputy Premier has given to the Transport Workers Union and others with respect to long service leave, pay-roll tax and workers compensation was correct—that is, that the common law position is that owner-drivers basically are not employees. However, with the Industrial Conciliation and Arbitration Act Amendment Bill the owner-driver was going to be deemed an employee for the specific purposes of that Act. He was only doing it for that Act.

With respect to all other Acts—workers compensation, pay-roll tax and long service leave—the common law understanding would still remain: that is, that the owner-driver is not an employee or worker for the purposes of those Acts. So, the only change to the common law understanding of an owner-driver not being an employee would be with respect to the Industrial Conciliation and Arbitration Act, and only with respect to that Act would an owner-driver be deemed to be an employee. For all other Acts the common law position would still remain, that is, that they are not employees—unless those Acts were changed at some future time to bring them into line with this change in the Industrial Conciliation and Arbitration Act.

So, I do agree with the letter from Jack Wright to Brian McIntosh that the Long Service Leave Act, the Pay-roll Tax Act and the Workers Compensation Act do not apply. But, the sneakiness of the Government on this issue did not stop at that stage, because there was no mention by way of that letter of other on-costs, such as recreation leave, the leave loading and sick leave. It is clear from the Bill before us without the amendment that, because an owner-driver was to be deemed an employee under the Industrial Conciliation and Arbitration Act, employers of such owner-drivers would have had to pay sick leave, recreation leave and the leave loading to those owner-drivers, because sick leave and recreation leave are provisions in the Industrial Conciliation and Arbitration Act. They do not have separate Acts.

However, Jack Wright, in his negotiations with the TWU, in the letter and in those earlier negotiations with other employers, did not make that point clear. In effect, he went on to say some inflammatory things about anyone who dared oppose the Bill.

The Hon. K.L. Milne: What was that?

The Hon. R.I. LUCAS: Jack Wright was a little sneaky at that stage because certainly recreation leave, sick leave and the leave loading still had to be paid then.

The Hon. K.L. Milne: What did he say about anyone who opposed the Bill?

The Hon. R.I. LUCAS: The Hon. Jack Wright released a statement on 14 May saying that owner-drivers had nothing to worry about, and he made some inflammatory statements about anyone who dared oppose the Bill, on the basis—

The Hon. K.L. Milne: In the letter?

The Hon. R.I. LUCAS: No, it is a press release, implying that anyone who opposed the Bill and argued that it would increase costs did not know what they were talking about. On the back of the press release he says that workers compensation, pay-roll tax and long service leave did not apply. As I said, I agree with him at the moment. However, what he did not say was that recreation leave, sick leave, leave loading, and possibly the other things that the Hon. Diana Laidlaw mentioned (redundancy provisions which I may follow through, and possibly superannuation) might well apply. That statement was released on 14 May, and the Hon. Mr Milne may well have seen a copy of it.

The passage of the Bill in that form at that stage would have meant increased costs for employers. As a result of further discussions, we now have the amendment to be moved by the Attorney-General. The second part of the amendment provides:

(1b) The provisions of this Act that provide for the granting of sick leave (section 80) and recreation leave (section 81) to employees do not apply in relation to the employees referred to in paragraph *(ba)* of the definition of 'employee'.

As I indicated earlier, the Government has been forced to retreat further. It is now saying that sick leave and recreation leave will not have to be paid by employers with respect to owner-drivers; whereas the Bill if it had gone through in its previous form, would have meant that it was possible (unless regulations had been moved) that there would be increased costs with respect to recreation leave and sick leave for employers.

We received one submission from a company which looked at increased costs under the new amendments and, as I indicated, a number of them will not apply now. That company looked at holiday pay, including the loading, and said that presently they paid $2 349, but that under the new provisions they would have to pay $83 331—an increase of $81 000 in holiday pay to owner-drivers. That is an enormous increase in costs for that company and it gives no estimate of the increase in costs with respect to sick leave.

As I said, the Government was forced to retreat. That is why we see the second part of the amendment which now provides that sick leave and recreation leave does not apply. That the Government has been forced to retreat is a credit to the lobbying that has been carried out by representatives of the transport industry over the past few days. The first part of the amendment provides:

(1a) The power of the commission to make awards in relation to the employees referred to in paragraph *(ba)* of the definition of 'employee' is limited to the making of awards that determine the rates of remuneration, other than penalty rates, of such employees.

That indicates that under this provision the Commission would have power to make awards to determine rates of remuneration; for example, it may well have set a certain rate per hour or per parcel. But, within that rate, let us take the figure of $20 per hour which the Commission may award and which has to be paid to these owner-drivers: while they might not refer to a component of that $20 per hour as being a payment for sick leave or recreation leave, it is possible for the Commission to have within that $20, unsaid, an estimate of the value to the employee (the owner-driver) of the sick leave and recreation leave. Therefore, that $20 may well include a component of, say, $5 an hour, which would make allowance for recreation leave and sick leave that the owner-driver would not be able to take because of the exemption under the second part.

While there is the exemption under the second part of the Government's amendment, there is nothing under the first part of it (if the amendment is agreed to) to prevent the Commission from awarding a rate to owner-drivers, to be paid by employers, which would increase substantially the costs to employers by a rate roughly equivalent to the costs of recreation and sick leave. There would be nothing to stop the Commission from doing that.

I have been informed again that there are other instances in other industries where in relation to people employed in a similar fashion the set rate does take into account these sorts of on-costs or these sorts of additional benefits that the owner-drivers in this instance would not specifically be able to take, but they are compensated by a monetary amount. If that was to happen, even though it would not be classified as sick leave or recreation leave or on-costs, the effect on employers would be exactly the same, that is, they would have to pay the extra amount to the owner-drivers, although that amount would be called something else. In that case the possible ramifications applicable to industry having to pay on-costs would be exactly the same for small businesses.

The provisions in proposed new subsection (1a) are still very wide, and this is still certainly a matter of much concern. As a result of such an increase in rates, the competitors of the transport industry (and I shall refer to couriers, for example) would certainly flourish. The illicit traffic in parcels through the taxi-cab industry or the legal trafficking of parcels by way of a person carrying a parcel to its destination would flourish, because the costs of the courier industry would increase, and the taxi-cab industry would become more competitive. At the larger end of the freight market spectrum, trains and the rail system would become more competitive as compared with the road transport industry. So, it is quite clear that there would be a possibility of a number of small businesses going to the wall.

Sometime late last year we legislated for the formation of the Small Business Corporation, which the Premier and the Attorney-General told us would be a fearless and independent advocate for small business in relation to Government legislation, irrespective of the Government of the day, and it is a matter of some disappointment to me that it has failed at one of its first tests. Nary a peep has been heard from the Small Business Corporation on behalf of small businesses in relation to this matter.

The Hon. L.H. Davis: Do you think that it was consulted?

The Hon. R.I. LUCAS: I do not know whether it was consulted. However, the Corporation is meant to oversee State Government and Federal Government legislation and to act as a fearless advocate to Government for small business. I indicated in the debate on the Small Business Corporation that I suspected that more often than not we would not see the Small Business Corporation stand up to the Government of the day when it sought to decimate small business in a certain area.

In general terms I support the other provisions of the Bill, to which the Hon. Mr Cameron has referred. I shall certainly support the amendments to be moved by the Hon. Mr Cameron in respect of preference to unionists. I certainly oppose clause 3. I believe that the Government, through its ineptitude and lack of consultation has shafted itself on this matter and that it has no-one to blame other than itself. Had the Government not tried to sneak the provisions through in the dying days of the session and had it sought to consult on this matter, these provisions may well have been treated with a different attitude by the Australian Democrats. With those words I support the second reading, but I indicate that I intend to oppose clause 3 of the Bill.

The Hon. C.J. SUMNER (Attorney-General): I acknowledge contributions made by members opposite, and I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

ELECTORAL BILL

Returned from the House of Assembly with amendments.

ROAD TRAFFIC ACT AMENDMENT BILL (1985)

Returned from the House of Assembly with the following amendment:

Clause 2, page 2, lines 3 to 6—Leave out subclauses (2) and (3) and insert subclause as follows:

(2) Subsection (1) is subject to the following qualifications:

(a) it does not apply in respect of a road, or a part of the State, excluded from its application by regulation;

(b) it does not apply when the driver is making, or about to make, a right turn in accordance with this Act;

(c) paragraph *(a)* does not apply where the speed limit applying to the carriageway is less than 80 kilometres an hour.

The Hon. M.B. CAMERON: I move:

That the House of Assembly's amendment be agreed to.

This small amendment allows the Government of the day to regulate out any roads where a problem results from this legislation. I think that is sensible. It is only proper that the Government of the day, if it receives advice from police or other traffic authorities that the legislation in a built-up area is causing some difficulty, should have the right to regulate out. I understand that for the initial stages the Act will cover every road in the State and it will be only if an obvious problem is shown to exist that any moves will be made. That is not anticipated in the early part of the legislation. In fact, it might be that no action is found to be necessary. I frankly would anticipate that. Once people realise the Bill is in force, common sense will prevail and the situation will resolve itself. The Bill will then have the effect that it is intended to have.

Motion carried.

BUILDING SOCIETIES ACT AMENDMENT BILL (1985)

Returned from the House of Assembly without amendment.

SOUTH AUSTRALIAN HEALTH COMMISSION ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

TRANSPLANTATION AND ANATOMY ACT AMENDMENT BILL (1985)

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 1.10 a.m. the Council adjourned until Thursday 16 May at 2.15 p.m.