LEGISLATIVE COUNCIL

Tuesday 18 February 1986

The PRESIDENT (Hon. Anne Levy) took the Chair at 2.15 p.m. and read prayers.

DEATH OF MR A.R.G. HAWKE

The PRESIDENT: I draw the attention of honourable members to the death of Mr Albert Redvers George Hawke, a member of the House of Assembly for Burra Burra from 1924 to 1927. He was probably better known throughout Australia for having been a member of the Western Australian Legislative Assembly from 1933 to 1968. During that time he was Minister for Employment and Labour, Labour and Industrial Development, Water Supplies and Industrial Development and Child Welfare. He was Deputy Leader of the Opposition in that Parliament from 1947 to 1951 and Leader of the Opposition from 1951 to 1953, and then Premier and Treasurer of Western Australia from 1953 to 1959, and Leader of the Opposition from 1959 to 1967.

He retired from Parliament in Western Australia, came to South Australia and lived around the corner from me. He continued his strong support for the Labor Party at all elections in our area. On behalf of everyone here, I wish to express the deepest sympathy of the Council to his family and I would ask all honourable members to stand as a mark of respect to his memory and as a tribute to his meritorious public service.

Members stood in their places in silence.

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Industrial and Commercial Training Act 1981—Declared Vocations (Amendment).

Report of the Actuarial Investigation of the Long Service Leave (Building Industry) Fund 30 June 1984.

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

Pursuant to Statute—

Planning Act 1982.

Crown Development Report by S.A. Planning Commission on Grader Operator Training Courses, Kingston College of Technical and Further Education.

Supply and Tender Board—Report, 1985 and Final Report.

By the Minister of Tourism (Hon. Barbara Wiese)—

Pursuant to Statute—

South Australian Film Corporation—Report, 1984-85.

By the Minister of Local Government (Hon. Barbara Wiese)—

Pursuant to Statute—

District Council Naracoorte—By-law No. 22—Traffic.

QUESTIONS

DRUG AND ALCOHOL SERVICES COUNCIL

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Minister of Health a question about the Drug Services Council.

Leave granted.

The Hon. M.B. CAMERON: Last week I asked the Minister some questions on the Drug Services Council in relation to certain changes that were obviously occurring there. In his reply the Minister drew the Council's attention to some changes that had been brought about particularly in relation to the direction of the Drug Services Council's attitude to drug addicts. There is no doubt that the Minister is correct in that there are differences of opinion in relation to the treatment of drug addicts. However, I am sure that the very drastic change in direction was the subject of a very detailed investigation before that change occurred.

The Minister indicated that when he became Minister of Health there were 40 people on the methadone program; he also indicated that there had been a very dramatic drop since the methadone treatment program was moved from Hillcrest to Osmond Terrace. I am not quite certain whether the figures that the Minister gave are correct; the figures given to me indicated that there were 500 addicts on the methadone program—but that may well be incorrect.

The Minister also indicated that there were now 270 people on methadone treatment at Osmond Terrace, and said that one of the major reasons for the change in direction and the policy change by both the State and Federal Governments was as a result of consultation with Dr Bob Newman who came here from New York. The Minister stated that Dr Newman as a special consultant established the methadone program in Hong Kong. According to *Hansard*, the words used by the Minister were, 'He halved the crime rise in Hong Kong within 12 months.'

The Hon. J.R. Cornwall: Crime rate.

The Hon. M.B. CAMERON: I thought that is what the Minister said, but *Hansard* says, 'Crime rise', so perhaps the Minister should look at *Hansard*. In order to ascertain whether in fact a similar change has occurred here since the change in direction—and I am not sure of the specific time when there was a fairly dramatic change in direction at the Osmond Terrace clinic—I looked at the statistics for drug related crimes in South Australia and I found that in 1983-84 there were 6 829, and in 1984-85 there were 8 175. There may be other reasons for that rise, but it seemed to me to be contrary to what the Minister had said. I then looked at other crime rates and it did not seem to me that there were any dramatic differences in any area. That may be a simplistic assessment of what the Minister said, but there was a simplistic statement by the Minister in answer to the question. I also understand that Ministers of the Crown have problems in providing information off the top of their heads in reply to questions without notice.

I do not expect the Minister to be able to provide me today with all the answers to these questions. I think, however, that there are a number of questions that need to be answered. I will put them to the Minister and, if he indicates those that he can answer and those that he cannot, I will be perfectly happy to be provided at a later stage with the information in relation to questions that cannot be answered today. I ask the following questions:

1. What authorities, other than Dr Bob Newman of New York, were consulted before the direction and policies of drug treatment were changed to methadone, and in other areas of changes of direction at the Osmond Clinic? Were authorities who disagree with these changes also consulted for an opinion on these changes because, as I understand it, there are some criticisms of Dr Bob Newman by world authorities?

2. Is the Minister aware of the recommendations in the Sax Report which, as I understand it, recommended a dramatic shift away from the then freely available methadone treatment program? I understand that he had made some recommendations about it being shifted from Hillcrest, and also about the downturn in the number.

3. What specific evidence was used to justify the change, other than the evidence put forward by the Minister that

Dr Newman had reduced the Hong Kong crime rate by 50 per cent?

4. What further evidence is now being sought either by monitoring of the programs or by monitoring of the drug addicts themselves, or of the crime rate or any other area which was touched by this problem, if those are the criteria that the Minister suggests were used to justify the changes away from the method previously being used?

5. Have all authorities in all other States changed their systems to the model now outlined by the Minister? If not, which States are not doing so?

6. Has the Minister taken up this matter with his fellow Health Ministers in other States? If so, what are the outcomes of any of these discussions he may have had with those Ministers?

The Hon. J.R. CORNWALL: The question of methadone maintenance is, admittedly, a controversial one. There are a number of ways in which methadone is used. It can be used basically to bring people off narcotic addiction. That is usually done over a period of around 21 days. Of course, it can be used for long term and lifetime maintenance. Methadone is a narcotic and is highly addictive. The question that one has to ask is whether that is preferable: in taking a decision to put somebody who is addicted to narcotics on to life-long maintenance or on to very long-term maintenance, one has to ask, 'What are the reasonable alternatives?'

In South Australia and, indeed, anywhere else in Australia if that person is still in their teens and if their experience with narcotics is of a short or only medium term duration, then it is extremely unlikely that they would ever be offered methadone maintenance. At the other end of the scale, however, if that person has had a narcotic addiction problem of long standing (and by long standing I am basically talking about periods in excess of five years, and, in many cases, more) you then have to consider that against the known recidivism rate.

The recidivism rate for long-term narcotic addicts is well in excess of 80 per cent. It is unrealistic to expect that most long-standing narcotic addicts will respond to drug-free programs. We do offer drug-free programs: and methadone is only one of the several options offered. We certainly will be increasing the scope and level of services available for drug-free therapy and the proposed country living facility at Ashbourne will be only one of those.

The methadone maintenance program is available to those who, in the assessment of the team at Drug and Alcohol Services, are unlikely to respond to one of the drug-free regimens—they are then offered methadone. To the best of my knowledge, with the exception of Tasmania, methadone programs are available around Australia.

The Hon. R.J. Ritson: In Canberra?

The Hon. J.R. CORNWALL: I am unable to comment on Canberra.

The Hon. R.J. Ritson: In the Northern Territory?

The Hon. J.R. CORNWALL: One could argue that the Nothern Territory is politically not a reasonable comparison: it is a spurious comparison.

I can tell the honourable member that there are more than 900 people on methadone maintenance in Queensland. That has, in fact, drawn adverse comment from some of the more reactionary members of the National Party who, in their politics, are even further to the right than some of the rural rump who sit in this Council. Compare that number—in excess of 900 people on long-term methadone maintenance in Queensland—to 270 people, or thereabouts, on methadone maintenance in South Australia. Any notion that our approach in this area has been radical when compared to the rest of the country is, of course, nonsense.

I am prepared to get figures in relation to this matter from the rest of the States with the exception of Tasmania, which does not run a methadone maintenance program. I know, because I keep close tabs on Queensland as I have inlaws there whom I visit regularly, from a recent matter of controversy that there are in excess of 900 people on methadone maintenance in that State so, with more than three times as many people, per capita it is a higher figure.

I will refer to the authorities who made these recommendations. First, there was the Smith report. I am sure that the Hon. Mr Cameron, in coming to grips with his new shadow portfolio area, would know that we had Dr Smith prepare a report on mental health services in South Australia—he was the principal author. One of the members of that team was Dr Bob Newman from New York, who specifically looked at the area of drug abuse and narcotic addiction.

We had our own task force on drug and alcohol services, which reported to the Government in February last year. There are various national authorities, including the National Health and Medical Research Council. There is also the International Convention, which covers the question of narcotics and which is a United Nations single convention on narcotics. We most certainly did not rely exclusively on the advice of Bob Newman. We also, of course, used a little bit of compassion and concern. As I said the other day, I believe passionately that it is criminal to turn people out of a methadone program without following them up and without offering them intensive support.

I believe that we are in a satisfactory position with regard to our methadone maintenance program in South Australia, although the waiting time should be reduced even further and perhaps the sophistication of the assessments should be improved. I do not believe, on the advice I am given, that the use of narcan is justified in the great majority of cases. I still believe that we probably use narcan in too many cases in South Australia.

There are a number of controversial matters, of course, as I said: I concede that. But, the guidelines have been drawn up after consultation with the State Ministers and the Federal Minister. There is an official booklet which I would be very happy to supply to the Hon. Mr Cameron (to help him as he grapples with this vast and difficult shadow portfolio he has now inherited) which lays out the national guidelines very clearly.

With regard to the Sackville Royal Commission of which Earle Hackett was a member, we did not accept all of its recommendations. For example, we did not accept its recommendation to decriminalise marijuana. With respect to methadone maintenance it got it all wrong. That was the prevalent wisdom in South Australia at the time. Times and attitudes change and sophistication and methodology change.

The consensus advice of the national and State authorities in this country at the moment is that methadone maintenance is one of several major options available to people who abuse narcotics. In regard to further evidence now being sought, naturally we have a drug monitoring evaluation and research activity at Osmond Terrace. We continually assess. We have a link to the Canadian authorities: we share information with them.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: I could not tell the honourable member the exact details off the top of my head, but we do have a link with the Canadian authorities so that the matter is continually monitored. I am sorry that I have taken up so much time of the House, but it is a matter of great importance to all South Australians. In the matter of controversy there is undoubtedly a basic difference in the approach of perhaps those people who go through a family

medicine training program and those who would seek a multidisciplinary approach on the one hand and the psychiatrists on the other.

We held a search conference at Wirrina last year as part of the new strategies and directions and significant expansion of drug and alcohol services in South Australia. At that search conference it was made very clear to psychiatrists attending that the overwhelming majority of staff involved in services at the Drug and Alcohol Council were less than happy with the psychiatric approach, if you will—the approach which says that in many or most cases there are significant underlying psychiatric problems in the first instance. I am unable to comment as an expert in that field, of course, but I repeat that the overwhelming majority of staff present at the search conference, all of whom are involved in drug and alcohol services, believed that we should change to the multidisciplinary approach which we have now adopted.

LEAKED TREASURY MEMO

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General, representing the Treasurer in another place, a question about a leaked Treasury memo.

Leave granted.

The Hon. L.H. DAVIS: On Tuesday 3 December the main headline on page 1 of the Adelaide *Advertiser* was: 'Treasury warns on Liberal policies SAOG sale would fall short of estimates'. The article began as follows:

> The chief of the State Treasury has told the Government some Opposition policies, including the planned sale of Cooper Basin shares, will not raise the cash needed to meet tax-cut promises. The costings are contained in a confidential Treasury memo submitted to the Premier, Mr Bannon, by the Under Treasurer, Mr A.R. Prowse, following the Liberal policy speech on 19 November.

The article later noted:

> A key finding by Mr Prowse is that the Liberal's planned sale of 49 per cent of the South Australian Oil and Gas Corporation will generate a maximum of only $7.5 million cash. This clashes with the Opposition estimates that the sale of SAOG would generate $50 million a year to finance tax cuts worth $24 million. Mr Prowse says information available to Treasury suggests the estimated gross value of SAOG is $360 million, but the Government's legislation for lower gas prices would make a 'guesstimated' gross value of $340 million. As SAOG's debt was running at $260 million, this left a net value on the company of between $80 million to $100 million. So, the sale of 49 per cent of company shares could raise $40 million to $50 million.
>
> The Opposition believes SAOG is worth about $368 million and says it expects to raise $184 million from the public share sale. It plans to use this cash to reduce the State debt and generate annual interest savings of $50.7 million. But Mr Prowse says the Treasury's estimate that the sale of SAOG shares would raise only $40 million to $50 million means that if this were put totally into paying the State debt it would produce interest savings of only $6 million to $7.5 million a year.

These comments were, understandably, given wide publicity by the media as it was an authoritative statement from the most senior Treasury officer in South Australia about a key Opposition policy on four days before the State election on Saturday, 7 December. The Opposition Leader, Mr Olsen, in the same article attacked the Under Treasurer's findings. The next day (4 December) the *Advertiser* reported strong criticism of Mr Prowse's calculations by Mr Stephen Mann, a partner in the chartered accountants, Peat, Marwick, Mitchell and Co. Mr Mann was quoted as saying:

> It appears Mr Prowse was basing his costings of SAOG on the belief that money raised in the sale of SAOG shares would have to go straight into paying the debts. My reaction to that is that this just does not happen out in the real world.

Mr Mann said that, in a normal takeover of a company, the buyers did not have to immediately repay all the loans being used to finance part of that company's operations. I have discussed this matter with two accountants and an executive of an oil and gas explorer. They agree that Mr Prowse's criticism ignores a most fundamental point. In fact it is a point which should be immediately obvious to even a second year accounting student. A partial change in ownership of a company, whether it be through takeover transactions on the share market or the float of 49 per cent of SAOG, does not require the repayment of debt.

I have raised this issue because it seriously brings into question the competence of Mr Prowse as Under Treasurer of South Australia and the propriety of the use of this confidential yet erroneous memo from a public servant in an election campaign.

The Hon. J.R. Cornwall: What a disgraceful statement!

The PRESIDENT: Order! Under Standing Orders no argument or opinion can be offered in a question: it must be facts only, and then only as far as necessary to explain the question. I ask the honourable member very carefully to keep his explanation to facts and only as far as necessary to explain his question, which is about a leaked Treasury memo.

The Hon. L.H. DAVIS: Thank you Madam President. My questions to the Attorney-General, representing the Treasurer, are as follows:

1. If Mr Prowse can give inaccurate advice on such a basic matter what confidence can the Treasurer or members of Parliament or the community have in Mr Prowse with respect to decisions made or opinions offered by him?
2. Who leaked the confidential albeit erroneous Treasury memo to the *Advertiser* which subsequently appeared in the Tuesday 3 December edition on page 1?
3. Has the Premier, Under Treasurer or any department or officer of the Government instigated an inquiry into the leaking of the document?
4. If so, when was the inquiry conducted and what was the finding of that inquiry? If not, why not?
5. Will the Treasurer make the document public and, if not, why not?
6. Does the Government accept the correctness of Mr Prowse's findings in relation to the Liberal's proposal to sell 49 per cent of SAOG to the public and, if so, will it cite support for his findings from a disinterested and well respected national or international firm of accountants?

The Hon. C.J. SUMNER: It seems that the Opposition has apparently forgotten that it lost the election: it seems that, having resoundingly lost the election, it is now casting around for scapegoats. I think it was the Leader of the Opposition who, at one stage, attempted at a declaration of the poll after the election to blame the electoral system. Subsequent to that we now find that the Hon. Mr Davis (who has the grand title, I understand, of 'Deputy Leader of the Opposition in the Legislative Council'—a very illustrious title for the honourable member) on behalf of the Liberal Party, is blaming the State Treasury for the loss in the election.

The Hon. L.H. Davis: I did not—

The Hon. C.J. SUMNER: The honourable member said that four days befor the election a leaked Treasury document which was critical of the Liberal Party's costings on the SAOG privatisation policy was made public and the honourable member implied that somehow or other that affected the election result.

I can assure the honourable member that in my view it did not affect the election result, and he should not be looking around for scapegoats for the Liberal Party's own electoral loss. Certainly, it should not be looking at a senior public servant—the Under Treasurer (Mr Prowse)—and attempting to cast doubt on his veracity and the report or memo that he produced for the Government.

Mr Prowse, who worked for successive Federal Governments for many years, was secured, after an extensive search, as Under Treasurer in this State. As to the question of whether Mr Prowse's advice was inaccurate, that is something that I would take issue with and indeed, as I recall, the Liberal Party's policies on SAOG and the privatisation policies were the subject of massive controversy—there was criticism not just from the Labor Party but from many others at the time in relation to the privatisation policy on selling off the Housing Trust, which the Liberal Party could not do anyhow—

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: It is true. The honourable member says that they could have sold. The fact is that under the Commonwealth-State Housing Agreement they could not sell Housing Trust houses—

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: That is the situation.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Clearly, that is not correct. They could not sell off Housing Trust homes without an amendment to the Commonwealth-State Housing Agreement—

Members interjecting:

The Hon. C.J. SUMNER: —which they apparently overlooked. One can therefore—

The Hon. K.T. Griffin interjecting:

The PRESIDENT: Order! I suggest that interjections do not occur, as they are out of order. The Minister should not debate an issue in answering a question, but it is rather difficult to pull him up for answering an interjection that should not have occurred in the first place. Please proceed.

The Hon. C.J. SUMNER: The fact is that the whole privatisation policy was botched and the SAOG aspect was one such policy. I assure the Council that the Government does have confidence in Mr Prowse. It is not true to say the advice he gave was inaccurate, which is what the Hon. Mr Davis has asserted as a fact. On whom do members opposite rely for their assertions that Mr Prowse is inaccurate? The Liberal Party resorts to none other than Mr Stephen Mann. For goodness sake—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: If it is good enough for the Hon. Mr Davis to say—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —that we should lack confidence in Mr Prowse because of his opinion on SAOG, let us look at the independence of the Liberal Party's advice on this topic during the heat of a campaign: it came from none other than Mr Stephen Mann. As I understand it, Mr Stephen Mann is very closely connected with the Liberal Party. In particular he was closely connected with the Liberal Party during the 1979 campaign, when he was involved in some phony taxpayers association that put in third party advertisements during that campaign. Those advertisements were authorised by 'S. Mann'. The same S. Mann apparently had it in with the Hon. Murray Hill—

The Hon L.H. Davis interjecting:

The Hon. C.J. SUMNER: Well it was some other front that he organised for the Tonkin election in 1979. He apparently had a good alley with the Liberal Party because, shortly after the 1979 election, what did the Hon. Murray Hill do, as the newly appointed Minister for the Arts? What gong did Mr Stephen Mann get? He got the plum job at the Festival Centre: Chairman, Adelaide Festival Centre Trust. That shocked the arts community; it shocked the whole of the South Australian community when he was appointed, and I understand there was rejoicing everywhere when his term was up. The fact is that he was not very good at the job of Chairman of the Festival Centre Trust, but this is the independent—

Members interjecting:

The PRESIDENT: Order!

The Hon. PETER DUNN: On a point of order, Madam President. What has this to do with answering the question?

The PRESIDENT: I agree that the Minister is wandering into areas that are not relevant to answering the question, but he has been answering interjections. If interjections did not occur, I am sure he would not be moved to depart from the question matter.

The Hon. C.M. Hill: Fancy attacking a man outside this Council!

The Hon. C.J. SUMNER: In response to the Hon. Mr Hill's interjection, I point out that the Hon. Mr Davis sought to traduce a senior public servant, a person who has given public service to this country over many years. The honourable member has come into this Council an said, in effect, that the Government should not have confidence in the Under Treasurer, Mr Prowse. That is what he said. In saying that, what is he relying on? He is relying on the statement of Mr Stephen Mann.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! Interjections are out of order.

The Hon. C.J. SUMNER: All I am concerned to do is to indicate to the Council and the public of South Australia just who this independent expert is upon whom the Liberal Party is relying—it is Mr Stephen Mann. Everyone in the community knows that he is closely connected with the Liberal Party. Everone knows he was involved in the election campaign of the Tonkin Government in 1979.

Everone knows after that election the Hon. Murray Hill gave him a plum job as Chairman of the Adelaide Festival Centre Trust, despite the fact that he had never had any interest in the arts, and had no expertise in that area whatsoever, and that became patently obvious shortly after his appointment. That is the man—Mr Stephen Mann—who the honourable member opposite is relying on for his independent advice. That is incredible. He says that that is his independent advice to traduce the opinions and reputation of a senior public servant in this State.

What I am saying is relevant and very much to the point. If the Liberal Party can come up with something a bit better than Mr Stephen Mann perhaps it might have some credibility. It used Mr Stephen Mann in the 1979 election and he got his pay off. It used Mr Stephen Mann—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: It used him in the 1985 election as well—to much less effect than in 1979. That is the fact of the matter. This Mr Stephen Mann upon whom members opposite rely has no credibility in this area at all. He has connections with the Liberal Party that are well known, and to put him up as an independent assessor of Liberal Party policy is just absolute nonsense.

I do not know who leaked the memo. I do not know whether there was an inquiry into it. All I know is that the Liberal Party's privatisation policies at the last election, including SAOG policy, were criticised not just by the Labor Party but also by a number of observers, who, I believe, were more independent than Mr Stephen Mann whom, apparently, the Liberal Party was able to cajole into supporting its nonsensical proposition.

KEVIN BARLOW

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

Leave granted.

The Hon. K.T. GRIFFIN: Last week in Parliament and on television the Attorney-General said that the Government was not arguing Barlow's innocence when it wrote to the Federal Government in support of Barlow but was merely arguing for commutation of the death sentence. The letter written by the acting Attorney-General (Dr Hopgood) is couched in stronger terms than that and states, in part:

> The principles of common law that apply equally in both Penang and South Australia have led to the objections which Mr Galbally has raised and which the Government has raised and which the Government of South Australia seeks to advance with all the vigour at its disposal.

There are other aspects of the letter which I understand also support the Galbally petition. I understand that the petition lodged by Mr Galbally calls, among other things, for an absolute pardon. That call clearly relates to the question of innocence and not just to commutation of the death sentence.

On the one hand the South Australian Government supports the Galbally petition for an absolute pardon and, on the other hand, according to the Attorney-General, seeks only to have the death sentence commuted. There is a contradiction and it certainly appears that the Attorney-General is backing off from the position stated in Dr Hopgood's letter, or that he misled Parliament in his answers last week. My questions to the Attorney-General are as follows:

1. Why does the Government's present stand conflict with the stand set out in Dr Hopgood's letter?

2. Will the Attorney-General draw the Federal Government's attention to the change in stance?

The Hon. C.J. SUMNER: There has been no change in stance; the situation is as I have outlined in the Council. The letter was eventually sent by Dr Hopgood who was acting Attorney-General in January while I was on leave. The situation, if there is any doubt about it, is quite clear: the South Australian Government is not making any determination about the innocence or guilt of Barlow. We are not necessarily saying that he is innocent; we are saying, as I outlined last week, that there were concerns during his trial identified by Mr Galbally, which I outlined to the Council last week and which I believe the honourable member would agree, if they had occurred here, would have brought a denial of natural justice before a court of appeal. It was on that basis and following the representations from Barlow's parents that the Government decided that these things should be drawn to the attention of the Federal Government to be taken up with the relevant Malaysian authorities.

If the relevant Malaysian authorities felt that the concerns about the trial were such as to warrant consideration of commutation of the death penalty, all well and good. If the Malaysian authorities considered that some other action might be needed or desirable, again, that was a matter for them to determine—to decide whether there should be a retrial or some other means of dealing with Barlow, including, I suppose, the possibility of a pardon. The South Australian Government was not taking any particular view on what should be the end result of drawing these concerns to the attention of the Malaysian authorities. However, in the letter we vigorously asserted that there were problems with the trial that led to a denial of natural justice to Barlow. That was the point that we were making, and that remains the point that we are making.

If there is any concern about that or any problem in interpretation, I am happy to clarify that with the Federal Government by further correspondence. There is no doubt in my mind that what we were doing was putting these concerns to the Federal Government (and supporting Mr Galbally in that respect) with a view to having the Malaysian authorities take whatever action they considered necessary in the light of our drawing those concerns to their attention: that may be consideration of commutation of the death penalty or perhaps some other action. The position as far as the Government is concerned is as I outlined it last week.

The Hon. K.T. GRIFFIN: I desire to ask a supplementary question. In the light of that answer will the Attorney-General make available a copy of the letter from Dr Hopgood to the Federal Government?

The Hon. C.J. Sumner: You've got it.

The Hon. K.T. GRIFFIN: No, not yet.

The Hon. C.J. SUMNER: I understand that I have signed a letter sending a copy to the honourable member. It is as the honourable member said. It is of no different import to what the honourable member has outlined today; it supports Mr Galbally's view of the trial, and the petition which I understand calls for commutation of the death penalty. It was on that basis that those representations were made to the Federal Government. If there is any doubt about that stance, I am happy to make that position clear to the Federal Government. There was certainly no doubt as far as I was concerned, having been involved at least in the preliminary part of Government decision-making on this matter.

JUBILEE POINT PROJECT

The Hon. M.J. ELLIOTT: I seek leave to make a brief statement before asking the Minister of Health, representing the Minister for Environment and Planning, a question about the Jubilee Point project.

Leave granted.

The Hon. M.J. ELLIOTT: I have had a deep concern for some time that the environmental impact statement process has become little more than a sham. In the case of the Jubilee project—

The PRESIDENT: Order! I remind honourable members that opinions cannot be uttered in questions. What the honourable member thinks about environmental impact statements seems to be an opinion. I ask the honourable member to refrain from giving such an opinion in a question.

The Hon. M.J. ELLIOTT: In fact, Madam, I was about to say that it was demonstrable in the case of the Jubilee Point project. When EISs have been prepared in the past, I have been made aware that the company preparing them often requires its researchers to sign a declaration that they will not publicly divulge any information. The end result is that, if anything undesirable is discovered or if there is any distortion in the EIS, the public will not know of it. In the case of the Jubilee Point project, I have been led to believe that Jubilee Point Pty Ltd is a subsidiary company of Kinhill Stearns, the company which is preparing the EIS.

Kinhill Stearns has prepared a number of EISs in the past and has the process down to a fine art. The draft EIS is sadly lacking in substance; for instance, many of the 'major issues' listed on pages 5 and 7 of the Department of Environment and Planning 'Guidelines' simply have not been addressed. A cynic would suggest that all the public can do is comment on the absence of the information. The absent information may then be supplied in the supplement to the EIS, but the supplement is not open to public scrutiny.

I have particular concern that, should the Jubilee Point project proceed, the State will be left with an enormous financial burden for ever more. My doubts are based firmly on the Adelaide Coast Protection Strategy Review, which states at page 1 of the summary:

A feature which is very important to the design of coast protection strategies is the high variability in wave energy and direction, seasonally and from year to year. This makes accurate predictions of the effects of structures which trap sediment or modify the coastal alignment impossible.

Page 25 of the same report states:

The state of knowledge about the coast's behaviour is limited. Much is still based on theories which have not been fully substantiated. And even where a process such as the littoral sand drift is reasonably well understood, reliable modelling and prediction of quantities have yet to be achieved.

Quite simply, what is needed is many years of detailed work before a project such as Jubilee Point could ever be considered just on the basis of the physical environment. Page 8 of the summary states:

The eventual aim of the beach replenishment is to establish wider beaches and a strip of dunes in front of the present rock seawalls.

In other words, the long-term aim is to create a near-natural situation. The Jubilee Point project proposal is directly contrary to what the Adelaide Coast Protection Board is hoping to achieve. There has been a suggestion made to me that the SGIC will have a financial involvement in Jubilee Point which will give the Government an indirect conflict of interest. Finally, of concern to me is the long-term implication of the Government accepting the financial responsibility for the sand pumping that is to be associated with the project. I therefore ask the following questions:

1. Will the Government be introducing an indenture Bill for the Jubilee Point project?

2. Under which Acts would regulations for the Jubilee Point project be gazetted?

3. Does the SGIC have a financial involvement in or commitment to, or a proposed commitment to the Jubilee Point project?

4. If the SGIC does have any commitment, does the Minister consider that this may create a conflict of interest?

5. Does the Government expect to be asked to bear the costs of sand-pumping of the Jubilee Point project if it proceeds?

6. If so, what is the Government's attitude to such a request?

7. What is the estimated replacement time for pipes, pumps and dredges planned for the sand pumping and what is the estimated replacement cost?

8. If the project proceeds, for how many years would the sand pumping need to continue?

9. Is it correct that the Jubilee Point Pty Ltd is a subsidiary of Kinhill Stearns, the company which has prepared the EIS for the Jubilee Point project?

10. If so, does the Minister regard this relationship as being likely to help produce an adequate EIS?

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

PERSONAL EXPLANATION: ADDRESS IN REPLY SPEECH

The Hon. G.L. BRUCE: I seek leave to make a personal explanation.

Leave granted.

The Hon. G.L. BRUCE: In my Address in Reply speech on Thursday 13 February, in reference to the parliamentary travel allowance I referred to the 'lousy $4 700 travel allowance'. In the context of my speech, I would like to say that I do not think the travel allowance is lousy: rather, that the continual sniping at this allowance is what I considered lousy.

TOURISM

The Hon. C.M. HILL: I seek leave to make a short statement prior to directing a question to the Minister of Tourism on the question of an outburst of criticism by a Labor MP on the subject of tourism.

Leave granted.

The Hon. C.M. HILL: In today's *News* there is a heading 'Tourism attitudes "Hicksville"—MP'. The article reads:

SA's entertainment and tourist industry is a disgrace and far below the standard of world travellers' expectation, according to a Labor MP.

Mr Hamilton (Albert Park) said inadequate international airport facilities, outdated dress codes at the Adelaide Casino and lack of railway service and promotion were strangling SA's tourist potential.

'This town is a laughing stock and made to appear Hicksville through lack of planning in the case of the airport,' Mr Hamilton said.

'And ridiculous dress code allows visitors admittance to top restaurants but bans them from the casino.'

'Some clown with no knowledge of fashions can kick visitors out of the casino who are wearing expensive clothes that would be accepted anywhere in the world'.

Because of the shortage of time I will not continue to read that article.

The PRESIDENT: It may not be relevant to the question, anyway.

The Hon. C.M. HILL: I assure you that it is, but I do not have time to read it. There are three columns of severe criticism by Mr Hamilton of this State's tourist industry printed in today's *News*. Would the Minister of Tourism agree with Mr Hamilton and, if not, what action does she propose to take against her parliamentary colleague in another place?

The Hon. BARBARA WIESE: I am aware of the article that appeared in today's *News*, which is reported to be the statement made by my colleague in another place. I must say that I do not agree with everything that Mr Hamilton has said. However, I understand the feeling of frustration that he seemed to be expressing in the remarks that he made with respect to various aspects of tourism in this State; most particularly, the problems that we have faced over a long period of time now with the international airport.

I must compliment Mr Hamilton on the continuing emphasis that he has given to this issue. He has been a longstanding campaigner to have the international airport upgraded, and for that we can only praise him. The international airport, of course, has been something which has been raised a number of times in this place, and there is not much point in going over it again. However, I remind honourable members once again that we are living with an inadequate facility because the former Liberal Government was satisfied to accept a standard that was less than that which we needed in this State. However, I think that some of the remarks that have been made by the honourable member concerning dress standards in the casino and whether or not South Australia is receiving a reasonable share of tourism are, perhaps, slightly overstated.

If there are still problems with dress standards in the casino, then I am sure that we will be prepared to have another look at that matter. As far as I know, most people are now reasonably satisfied with dress standards that have been set there.

With respect to the standard of tourism operators and facilities in South Australia, I think that there again the matter has been slightly overstated and that, by and large, people are satisfied, especially international visitors, with the standards of service that they receive in this State. This was evidenced by the results of the Grand Prix survey conducted by the Department of Tourism. By and large, I do not agree with a number of the statements made by Mr

Hamilton, but I do agree with his feelings of frustration in relation to the international airport.

ACTS INTERPRETATION ACT AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Acts Interpretation Act 1915. Read a first time.

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

That this Bill be now read a second time.

This Bill incorporates a previous Bill that was introduced in the Legislative Council during August 1984, but that subsequently lapsed, amends section 16 of the principal Act in relation to the continuation of investigations and legal proceedings on the repeal or amendment of a relevant provision and effects various other amendments relating to general revision of the content and form of the principal Act.

In an identical fashion to the Bill of 1984, certain provisions of this Bill seek to implement significant law reform measures with respect to the interpretation of Statutes in response to the Ninth Reort of the Law Reform Committee of South Australia on the law relating to the construction of statutes, which was published in 1970.

The courts of this State, as well as their counterparts in other States and other parts of the common law world, have long adhered to the general rule of law which forbids them masterflora2from looking behind an Act of Parliament when they have occasion to construe or interpret the language of that Act.

This self-denying ordinance has increasingly come under closer scrutiny and its fundamental value has often been questioned. Indeed, the Victorian Parliament has passed measures similar to provisions of this Bill in its Interpretation of Legislation Act 1984. The Victorian legislation arose from the 1982 report of the Parliamentary Legal and Constitutional Committee, and that report made the following observations:

> The committee is aware that allowing reference to extrinsic aids may increase the complexity of the interpretation process. The decision to be made must take into account a question of justice: litigants are entitled to be dealt with justly through the court process; 'justice' may be thwarted by the too great expenditure of court time on irrelevancies (although judges are not averse to refusing argument on what they consider irrelevancies); however, it is also thwarted by refusal of courts to look at relevant material that can give the just answer. Complexity abounds, and justice is also not served if judges are left to 'grope about in darkness'.

Furthermore, in 1982 the Attorney-General's Department of the Commonwealth issued a policy discussion paper on 'Extrinsic Aids to Statutory Interpretation' and an Act has been passed which amends the Acts Interpretation Act 1901 of the Commonwealth and which seeks to achieve the same results for the law of the Commonwealth. That amendment came into operation on 12 June 1984.

Accordingly, certain provisions are included to ensure that the courts of this State will be better able to ascertain the intention of Parliament when questions of doubt arise from the language Parliament has chosen to use. This means that *Hansard*, for example, could now be called in aid by the parties to proceedings before a court in cases of difficulty; reports of Royal Commissions which have led to legislative measures being implemented can also be consulted.

In many ways these provisions are a parliamentary acknowledgement of the existing practice in some courts. It is an important law reform Bill that endeavours to improve the administration of justice in South Australia by improving the method of dialogue between those who make the law and those whose duty it is to administer it.

During the 1984 debate on the previous Bill considerable opposition was mounted by Liberal Party members in the Legislative Council against this particular reform. The Government does not accept the criticisms that were made at that time. It is submitted that this Bill will enhance the position of Parliament by providing further assistance to the proper interpretation of its Statutes. Surely every possible aid that may assist in determining the intention of Parliament should be available. The Government considers that justice will be better served by this measure and does not agree that it will cause great problems to litigants. Courts will not expect parties to refer to extrinsic aids if the construction of the Act is clear or easily ascertainable, but if the intention is uncertain then why leave the courts without the ability to refer to materials that could well assist in arriving at a correct interpretation? The courts should be able to use the best means possible to get to the intention of Parliament. This particular reform is worthy of support.

As well, the Bill seeks to overcome a difficulty that can arise when a provision of a Statute has received a particular construction in the hands of the courts and is later repealed and picked up again in a new, consolidating Statute. Some authorities think the old judicial construction of the provision should continue to apply: other authorities consider that the courts should be at liberty to reinterpret the provision.

This Bill puts these doubts at rest. Furthermore, it is proposed to amend section 26 to insert a complementary provision to that which provides that the masculine gender is to be construed as including the feminine gender by providing that the feminine gender is to be construed as including the masculine gender. Another amendment to section 26 provides that a phrase consisting of both a masculine and a feminine pronoun may be construed as also being applicable to a body corporate in appropriate cases.

An amendment to section 16 is also included to ensure that where an office, court, tribunal or body would cease to exist on the repeal, amendment or expiry of a provision, the office, court, tribunal or body may nevertheless continue in existence for the purpose of various investigations and legal proceedings. Finally, various amendments in the nature of a statute law revision exercise (associated with the republication of the Act) are included in the schedule to the Bill. I commend the Bill to honourable members. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for the amendment of section 16 so that an office, court, tribunal or body can continue in existence on the repeal, amendment or expiry of a provision in order that investigations, legal proceedings and remedies may continue.

Clause 3 provides for the insertion of new sections 18 and 19. Proposed new section 18 relates to the presumption that the re-enactment of a provision constitutes parliamentary approval of a prior interpretation. This presumption, applying as a principle of statutory interpretation, cannot be described as being other than highly artificial. Commentators have explained how it has become hedged about with qualifications and decisions of the High Court have raised doubts as to whether it should ever be followed. It is certainly most tenuous to argue that Parliament re-enacts provisions having considered earlier interpretations by Courts.

The Law Reform Committee recommended in its Ninth Report that the presumption should not be applicable in this State. Accordingly, by virtue of new section 18 it is proposed that the presumption should no longer apply. Proposed new section 19 clarifies the status of various parts of an Act. It has been argued that schedules and headings are not proper parts to an Act. Thus, for example, if there was any conflict between the body of the Act and the schedule, the schedule was to give way. This does not accord with modern methods. However, there is no doubt that marginal notes and footnotes should not form a part of the Act.

Although useful to facilitate references, they are not subject to consideration by Parliament and are not intended to contribute directly to the meaning or effect of the substantive provisions. However, there is authority to suggest that a marginal or footnote can sometimes be used as an 'aid' to statutory construction. This would appear to be a satisfactory view. As noted by one author, a marginal note may be a poor guide to the scope of a section, but a poor guide may be better than no guide at all. This approach ties in with a proposed new section relating to extrinsic aids to statutory construction.

Clause 4 provides for the repeal of section 22 and the substitution of two new sections relating to the construction of Statutes. Proposed new section 21a, as does present section 22, requires a purposive approach to be adopted in the construction of Statutes. It provides that where a provision is reasonably open to more than one interpretation, a construction that would promote the purpose or object of the Act should be preferred to a construction that does not. This provision is consistent with approaches applying in several States and the Commonwealth. Proposed new section 22 makes it clear that extrinsic aids may be employed to assist in the construction of a provision. The section lists a number of possible aids to interpretation that may legitimately be used. It is modelled on Commonwealth and Victorian legislation of similar purport. It will clarify the status of extrinsic aids in the processes of statutory construction.

Clause 5 inserts a new paragraph in section 26 relating to the use of words of the feminine gender and a new paragraph relating to the inclusion of bodies corporate when both a masculine and a feminine pronoun are used.

The schedule includes various amendments that may be classified as 'statute law revision' amendments. Section 2 of the Act may be repealed as it serves no further purpose and section 3 will be replaced by a general index to the Act on its republication. Various amendments are to be made to section 4 of the Act to remove obsolete definitions and references. A reference to an 'Act' is to be redefined to include an Act of the Imperial Parliament that has been received into the law of the State or applies by paramount force. A reference to a 'judge' is to include a District Court judge.

The definition of 'statutory declaration' is to be revised so that it will mean a declaration made under the Oaths Act 1936 or a declaration made outside the State in pursuance of a law that renders the declarant liable to a criminal penalty for a false declaration when made before a person who has authority under that law to take declarations. A new section 7 is to be enacted as an amalgamation of existing sections 7 and 8. A new section 15 will operate to save all administrative acts done in pursuance of provisions that are being replaced by others that substantially correspond to those being repealed. Section 30 is to be revised to accord with contemporary styles of drafting. Sections 43 to 47 (inclusive) are to be replaced by two new provisions that will consolidate the useful elements of the existing provisions but not include provisions that also apply by virtue of the Justices Act 1921. Finally, various other amendments are to be effected in order to ensure that the principal Act will, on its republication, be in a form that accords with modern drafting practices.

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

BUILDERS LICENSING BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the licensing and control of builders; to repeal the Builders Licensing Act 1967 and the Building Contract (Deposits) Act 1953; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

As it is in most respects the same as the Bill that was introduced to the Parliament in October, but which was not proceeded with because of the election, and because the second reading explanation indicates changes that have been made to that Bill, I seek leave to have that explanation incorporated in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The purpose of this Bill is to repeal the Builders Licensing Act 1967 and replace it with a new Act. A similar Bill was introduced in Parliament during 1985 but could not be proceeded with before Parliament was prorogued. Extensive discussions have since been held with interested parties and the Bill incorporates certain amendments as a result of those discussions.

The Builders Licensing Act 1967 was introduced with the principal aims of improving the quality and standards of building work and providing protection to home builders and the building industry from exploitation by unqualified persons. The Department of Public and Consumer Affairs has received numerous submissions from interested persons concerning the effectiveness of the Act. A review of these submissions and a critical assessment of the legislative and administrative effectiveness of the Act have culminated in the development of a new Builders Licensing Act. The Bill seeks to rationalise the licensing administration and procedures; ensure that building work is performed by a licensee in a proper and competent manner; provide a speedy and effective method of resolution of building work disputes; extend the degree and measure of disciplinary control over persons engaged in the building industry; and protect home buyers and building owners from inequitable and unfair contractual terms of building contracts.

The first major step to achieve these objectives is the restructuring of the licensing and administrative framework. At present the licensing system is administered by two statutory authorities: the Builders Licensing Board and the Builders Appellate and Disciplinary Tribunal. The Builders Licensing Board acts as the licensing authority and has a general supervisory role over the work of licensed builders. It has power to examine whether building work has been carried out in a proper manner and power to make an order against a licensed builder to carry out remedial work. The Builders Appellate and Disciplinary Tribunal, as the name implies, acts as an appellate tribunal for decisions of the board and, where the board lays a complaint, conducts inquiries into the conduct of a licensed builder for the purposes of taking disciplinary action.

The present licensing and disciplinary provisions have some significant limitations. For example, although when

granting a licence the board must be satisfied as to the applicant's financial resources, the tribunal has no power to conduct an inquiry into the adequacy of those resources once the licence has been granted. There is little that the tribunal can do, therefore, if it suspects that a builder is about to become insolvent unless the builder's work is negligently or incompetently performed.

Furthermore, the tribunal can conduct an inquiry only on the complaint of the board. The result is that there must first be a preliminary inquiry by the board to ascertain whether the facts justify the making of such a complaint and then, if the complaint is made, the tribunal must conduct a more formal inquiry to consider whether there is proper cause for disciplinary action. The involvement of two separate statutory authorities, both of which are constituted by part-time members, often results in considerable delays between the conduct or event in question and the finalisation of disciplinary proceedings.

The new administrative structure vests the Commissioner for Consumer Affairs with the general administration of the Act (as is the case with the Consumer Credit Act, the Second-hand Motor Vehicles Act and other similar legislation) and he will have responsibility for: the investigation of all complaints regarding building work, whether they relate to workmanship, contract, price or a combination of these factors; conciliation of disputes between builders and consumers with a view to negotiating a resolution of the dispute in a manner that is fair and equitable to both parties; assisting consumers to make application to the commercial tribunal and providing reports or evidence to the tribunal for this purpose; and enforcing the provisions of the Act by initiating disciplinary proceedings or prosecutions in appropriate cases.

The commercial tribunal, which was created in 1982 to be the main occupational licensing authority in this State, will be responsible for the licensing of builders and classified tradesmen, the determination of all applications for licences, the examination of annual returns on the adoption of the continuous licensing system and referring to the Commissioner any matters arising out of applications and annual returns for investigation and report; dealing with applications for resolution of disputes about breaches of statutory warranties and also the resolution of contractual disputes involving questions of whether building work has been performed in accordance with the contract; and taking disciplinary action (including the suspension or cancellation of licences in appropriate cases) where the tribunal is satisfied, following consideration of an application by the Commissioner or any other person, that there is proper cause for taking such action.

It is recognised that the lack of business acumen is a major cause of failure in the building industry. The Bill addresses this by requiring an applicant for a licence to satisfy the commercial tribunal that he has sufficient business knowledge and experience, as well as the financial resources to carry on the business authorised by the licence. An applicant must also satisfy the tribunal that he is over the age of 18 and that he is a fit and proper person to be licensed.

It will now be necessary for a person to obtain a licence if he or she carries on the business of performing building work for others. Those who carry on business as sub-contractors will be required to be licensed. It will also be necessary for a person to obtain a licence if he or she carries on the business of performing building work with a view to the sale or letting of the land or buildings improved as a result of the building work.

An evidentiary provision has been included which provides that, where it is proved that a person has sold or let two or more buildings, each of which has been built or improved as a result of building work performed during a twelve month period, the person shall be deemed to have been carrying on business as a builder, unless the contrary is proved.

There will be four categories of licence which will cover the whole range of building work. A category 1 licence will enable the holder to carry out building work of any kind; a category 2 licence will authorise the holder to carry out building work subject to conditions attached to the licence by the tribunal; a category 3 licence will authorise the holder to carry out building work within a classified trade specified in the licence; a category 4 licence will authorise the holder to carry out building work within a classified trade specified in the licence subject to conditions attached to the licence by the tribunal.

It was considered appropriate to attach conditions, imposed by the tribunal, to individual licensees, rather than prescribing classes of building work which certain licensees would not be allowed to perform. This will allow conditions to be more precisely tailored to the individual licence.

The Bill also places stronger emphasis on the need to have building work supervised by an appropriately qualified person. This person will be required to be registered as a building work supervisor. There will be four categories of registration which will correspond to the four categories of licences. The skill and educational requirements required by an applicant for registration for each of the categories will be specified in the regulations.

In addition, every licensee will have to have a registered building work supervisor approved by the tribunal to supervise the work carried out under the licence. In the case of a sole trader, the registered supervisor will usually be the licensee himself. In the case of a company, the registered building work supervisor may be either a director or an employee of the company.

The licensee will not necessarily have to meet any particular education and skill requirements. However, the licensee's registered building work supervisor must have the necessary qualifications to supervise the building work for which the licensee is licensed.

The provisions relating to the licensing of builders have been revised in accordance with recent developments in occupational licensing policy. Licences and registration will be continuous, rather than subject to renewal every three years, but each licensee and registered building work supervisor will have to lodge an annual return and pay an annual fee. Where the return is not lodged or the fee not paid a default fee will be payable and the licence or registration may be suspended and ultimately cancelled if the default is not remedied.

The current licensing framework also distinguishes between an applicant for a licence who is either an individual, partnership or body corporate. Several difficulties have arisen because of this distinction. For example, because a new partnership is created whenever there is a change in the composition of the partnership, a new licence must be obtained by the surviving and/or new partners. The requirement for a separate partnership licence is now deleted.

Considerable concern has been expressed about the apparent ease with which some persons who have previously been bankrupt or who have been associated with insolvent companies have been able to continue to be directly involved in the building industry. Accordingly, the Bill provides that such a person will have to establish special reasons why he should be granted a licence. The same requirement will apply when an application for a licence is made by a company which is related to another company that has been placed in liquidation or receivership.

Similarly, the tribunal will have power to suspend or cancel the licence of a person who is a director of a company

that has been placed in liquidation or receivership, or the licence of a related company.

The scope of sanctions which can be imposed on licensees, former licensees or on any person who has carried on or been engaged in the business of a builder is considerably wider under the new Act. If the tribunal finds that there are proper grounds for disciplinary action, then it may reprimand the respondent; fine the respondent; cancel or suspend his licence or registration; place conditions on his licence; or disqualify the respondent from being licensed or registered. In the last case the disqualified person cannot be employed or otherwise engaged in the business of a licensed builder unless the tribunal has granted approval.

Unlike the present situation where only the board can lodge a complaint, any person may lodge a complaint with the tribunal with a view to disciplinary action being taken against a builder or supervisor.

As far as the arbitration of building disputes is concerned the powers of the board are currently limited to workmanship and licensing matters.

The board has no jurisdiction concerning contractual matters and therefore is often not in a position to achieve a complete resolution of a dispute.

While the board can decide on whether particular work was carried out in a 'proper and workmanlike manner' it cannot decide, for example, the question of whether the consumer is obliged under the building contract to pay for particular work as an 'extra' to the contract. It cannot therefore resolve disputes of a contractual nature, it cannot make orders for the payment of money and it cannot prevent the commencement of parallel proceedings in a court of competent jurisdiction.

With the proposed transfer of jurisdiction to the commercial tribunal it is possible to introduce new measures which confer on the commercial tribunal civil jurisdiction to deal with building disputes which arise where there is an alleged breach of an implied statutory warranty, or which arise where there is an allegation that the building work has not been performed in accordance with the contract. Certain warranties will be implied in every domestic building work contract, in particular a warranty that building work will be performed in a proper manner and that the Building Act and other legislative requirements will be complied with.

The commercial tribunal will be empowered to order rectification work to be carried out by the licensed builder or that some other suitable person be employed to carry out the remedial work. In addition the tribunal will be empowered to award damages if the licensee defaults in carrying out any remedial work.

In order to avoid the situation under which there may be proceedings before the tribunal and also proceedings before a court regarding the same dispute, the court will be empowered to transfer its proceedings to the tribunal so that the whole dispute is dealt with in the same forum.

The Department of Public and Consumer Affairs has consistently received consumer complaints regarding various aspects of building contracts. As a result of the resurgence of the domestic building industry, the number of complaints has increased.

Many building contracts in South Australia use the standard form contract recommended by the Housing Industry Association. The Commissioner for Consumer Affairs has been critical of that form and in his 1983 Annual Report stated that some clauses in the context 'give an unfair advantage to the builder, or have the potential to mislead or put pressure on the consumer'.

During 1985 the department conducted an investigation into the problems experienced by prospective home owners with building contracts in South Australia. A report entitled 'Proposals Paper for the Reform of Home Building Contracts' was released by this Government to the industry and the public for discussion purposes.

Although the Housing Industry Association has now revised its form of contract to take into account some of the concerns that have been expressed, the Government believes that it is necessary to legislate specifically to impose some controls over domestic building work contracts. This will ensure that all builders, whether they have previously used the Housing Industry Association contract or not, must comply with certain requirements of basic fairness.

Limited protection against unfair contractual practices is offered by the existing Act and the Building Contracts (Deposits) Act 1953. However the provisions contained in these Acts fall well short of the statutory contractual requirements which have been developed for other forms of transactions, in particular consumer credit transactions.

This Bill offers building owners a number of safeguards. A domestic building work contract must now comply with certain formal requirements. The contract must be in writing which is legible; set out in full all the contractual terms; must comply with any requirements as to the content of such a contract which is prescribed by regulation; and must be signed by the builder and building owner.

The Bill also provides that any price in the contract which is an estimate or which may change must be followed by the words 'estimate only' or 'this price may change', as the case may be; prime cost items must be listed together in the contract; an estimate must be 'fair and reasonable'; and progress payments cannot be claimed unless the builder makes a written demand.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure and, where necessary, for the suspension of operation of specified provisions of the measure.

Clause 3 provides for the repeal of the Builders Licensing Act 1967, and the Building Contracts (Deposits) Act, 1953.

Clause 4 provides definitions of expressions used in the measure. 'Builder' is defined as meaning *(a)* a person who carries on the business of performing building work for others; or *(b)* a person who carries on the business of performing building work with a view to the sale or letting of land or buildings improved as a result of the building work.

'Building consultant' is defined as meaning a person (other than a registered architect) who carries on the business of giving advice in respect of domestic building work or inspecting and reporting upon domestic building work. 'Building work' is defined as meaning the whole or part of the work of constructing, erecting, underpinning, altering, repairing, improving, adding to or demolishing a building; the whole or part of the work of excavating or filling a building site; or work of a class prescribed by regulation. 'Domestic building work' is defined to mean, in effect, building work in relation to a house or other work of a prescribed class. 'House' is defined as a building intended for occupation as a place of residence but not being *(a)* a building intended for occupation partly as a residence and partly for industrial or commercial purposes; *(b)* a building divided into a number of separate places of residence that are intended only for rental; or *(c)* a building of a prescribed class. 'Minor domestic building work' is domestic building work below a value to be fixed by regulation.

Clause 5 empowers the Governor to grant conditional or unconditional exemptions by regulation.

Clause 6 provides that the provisions of the measure are in addition to and do not derogate from the provisions of any other Act and shall not limit or derogate from any civil remedy at law or in equity.

Clause 7 commits the administration of the measure to the Commissioner for Consumer Affairs subject to the control and direction of the Minister.

Part II (comprising clauses 8 to 12) deals with the licensing of builders.

Clause 8 establishes four categories of builders licences. A category 1 licence is to authorise the performance of building work of any kind. A category 2 licence is to authorise the performance of any building work subject to conditions determined by the commercial tribunal. A category 3 licence is to authorise the performance of building work within a trade classified by the regulations. A category 4 licence is to authorise the performance of building work within a classified trade subject to conditions determined by the commercial tribunal. Under the transitional provisions contained in the schedule, a person holding an unconditional general builder's licence under the present Act will be deemed to have been granted a category 1 licence; a person holding a conditional general builder's licence or a provisional general builder's licence will be deemed to have been granted a category 2 licence; a person holding an unconditional restricted builder's licence within a particular trade will be deemed to have been granted a category 3 licence for that trade; and a person holding a conditional restricted builder's licence within a particular trade will be deemed to have been granted a category 4 licence for that trade. A licence carried over in this way will be subject to the same conditions as apply to it under the present Act. The clause goes on to empower the tribunal to impose conditions upon granting a licence, being conditions limiting the building work that may be performed in pursuance of the licence. Any such conditions may be varied or revoked by the tribunal upon application by the licensee.

Clause 9 provides that it is to be an offence for a person to carry on business as a builder or to claim or purport to be entitled to carry on business as a builder unless the person holds a licence; or for a builder to perform, or claim or purport to be entitled to perform, building work of a particular kind unless the person holds a licence authorising the performance of such building work. The clause fixes a maximum penalty of $10 000 for such an offence.

Clause 10 provides for applications for licences. Applications are to be made to the commercial tribunal and are to be subject to objection by the Commissioner for Consumer Affairs or any other person. Under the clause the tribunal is to grant such a licence in the case of an applicant who is a natural person if the person is over 18 years of age, a fit and proper person to hold the licence, and has sufficient business knowledge and experience and financial resources for the purpose of properly carrying on the business authorised by the licence. In the case of an applicant that is a body corporate, the tribunal must be satisfied that every director of the body is a fit and proper person, that the directors together have sufficient business knowledge and experience and that the body has sufficient financial resources. Under the clause, the tribunal is not to grant a licence unless special reasons are established—

(a) where a natural person applying for a licence or a director of a body corporate applying for a licence is or has been within 10 years before the application, insolvent or a director of an insolvent body corporate; or

(b) where a body corporate applying for a licence is or has been, during the 10 years preceding the date of application, insolvent or a body corporate related (within the meaning of the Companies (South Australia) Code) to an insolvent body corporate.

Clause 11 provides that a licence is, subject to the measure, to continue in force until the licence is surrendered or the licensee dies or, in the case of a body corporate, is dissolved. A licensee is to pay an annual fee and lodge an annual return with the Registrar of the commercial tribunal.

Clause 12 provides that, where a licensee dies, the business of the licensee may be carried on by the personal representative of the deceased, or some other person approved by the tribunal, for a period of 28 days and thereafter for such period and subject to such conditions as the tribunal may approve.

Part III (comprising clauses 13 to 18) deals with the supervision of building work.

Clause 13 provides that there are to be four categories of registration as a building work supervisor:

(a) category 1 registration which is to authorise the person so registered to supervise building work of any kind;

(b) category 2 registration which is to authorise the person so registered to supervise any building work subject to conditions determined by the tribunal;

(c) category 3 registration which is to authorise the person so registered to supervise building work within a particular classified trade; and

(d) category 4 registration which is to authorise the person so registered to supervise building work within a particular classified trade subject to conditions determined by the tribunal. Under the transitional provisions contained in the schedule, any natural person holding an unconditional general builder's licence under the present Act will be deemed to have been granted category 1 registration as a building work supervisor; a natural person holding a conditional general builder's licence will be deemed to have been granted category 2 registration as a building work supervisor; a natural person holding an unconditional restricted builder's licence within a particular trade will be deemed to have been granted category 3 registration as a building work supervisor for that trade; and a natural person holding a conditional restricted builder's licence within a particular trade will be deemed to have been granted category 4 registration as a building work supervisor for that trade. Registration of a person will be subject to the same conditions as apply to the person's licence under the present Act. Under the clause, the tribunal may impose conditions on granting registration, and, upon the application of the registered person, may vary or revoke conditions of the registration.

Clause 14 provides that a licensee must ensure that there is a registered building work supervisor approved by the tribunal as a building work supervisor in relation to the licensee's business at all times during the currency of the licence and that all building work performed by the licensee is properly supervised by such a registered building work supervisor. The requirement for supervision is not to apply in relation to building work that is properly supervised by a registered architect. Where a licensee fails to comply with those requirements for a period exceeding 28 days, the licence is suspended until the licensee complies. Under the clause, provision is also made for a licensee to obtain an exemption from the requirements if the tribunal is satisfied that the work will be supervised by some competent person.

Clause 15 provides for applications for registration as a building work supervisor. Applications are to be made to the commercial tribunal and are to be subject to objection by the Commissioner for Consumer Affairs or any other person. Under the clause the tribunal is to grant registration to an applicant if satisfied that the applicant is of or above the age of 18 years, is a fit and proper person and has the qualifications and experience required under the regulations in relation to the kind of building work that the applicant

would be authorised to supervise if granted the registration or has, subject to the regulations, other qualifications and experience that the tribunal considers appropriate.

Clause 16 provides that for the purposes of Part III a registered architect shall be deemed to hold category 1 registration as a building work supervisor.

Clause 17 provides that registration as a building work supervisor shall, subject to the measure, continue in force until the supervisor dies or the registration is surrendered. A registered person is to pay an annual fee and lodge an annual return with the Registrar of the commercial tribunal.

Clause 18 provides that the tribunal may, on application by a licensee, approve a person as a building work supervisor in relation to the licensee's business. Subclause (2) of the clause ensures that a natural person who is a licensee and a registered building work supervisor is automatically treated as an approved building work supervisor in relation to the person's own business. In other cases, approval is to be given only if the proposed supervisor is a director of a corporate licensee or an employee of the licensee (whether corporate or not). Subclauses (6), (7) and (8) require a licensee to give notice to the Registrar where *(a)* a director who is an approved supervisor for the licensee's business ceases to be a director of the licensee; *(b)* the licensee carries on business in partnership but the composition of the partnership changes or the partnership is dissolved; or *(c)* where a person employed by the licensee to act as a building work supervisor ceases to be so employed. Under the clause, the Registrar of the tribunal may cancel someone's approval as a building work supervisor for a licensee's business if the Registrar is satisfied (whether by reason of the receipt of a notice under subclause (6), (7) or (8) or otherwise) that the person is no longer eligible to be so approved.

Part IV (comprising clauses 19, 20 and 21) deals with the disciplining of licensed builders, registered building work supervisors, persons carrying on or engaged in the business of a builder or persons carrying on business as building consultants.

Clause 19 provides that the commercial tribunal may hold an inquiry for the purpose of determining whether there is proper cause to discipline a person who is licensed or registered, who has carried on or been engaged in the business of a builder or who is carrying on or has carried on business as a building consultant. An inquiry is only to be held under the clause if it follows upon the lodging of a complaint by the Commissioner for Consumer Affairs or some other person. The Registrar of the tribunal may where appropriate request the Commissioner to carry out an investigation into matters raised by a complaint. Where the tribunal is satisfied that proper cause exists to do so, it may reprimand the person the subject of an inquiry; impose a fine not exceeding $5 000; impose conditions upon the person's licence or registration or reduce the person's licence or registration to that of a more limited category; suspend or cancel the person's licence or registration; disqualify the person from obtaining a licence or registration; or, in the case of a building consultant or former building consultant, prohibit the person from carrying on such a business permanently, for a specified period, until the fulfilment of stipulated conditions, except in accordance with stipulated conditions, or until further order. There is to be proper cause for disciplinary action against a person where the person—

(a) has been guilty of conduct constituting an offence against the measure;

(b) has, in the course of carrying on, or being employed in, the business of a builder, committed a breach of any other Act or law or acted negligently, fraudulently or unfairly;

(c) being a licensed person—

(i) has obtained the licence improperly;

(ii) has ceased to be a fit and proper person or, in the case of a corporation, has a director who is not or has ceased to be a fit and proper person to be a director of a corporate licensee;

(iii) is a director of a body corporate that is insolvent or, in the case of a body corporate, is a related corporation of an insolvent body corporate;

(iv) has failed to comply with an order of the tribunal;

(v) in the case of a body corporate—has directors who together do not have sufficient business knowledge and experience;

(vi) has insufficient financial resources to carry on business in a proper manner; or

(vii) has failed to ensure that building work is properly supervised;

(d) being a registered building work supervisor—

(i) has obtained the registration improperly;

(ii) has ceased to be a fit and proper person to be so registered; or

(iii) has failed to exercise proper care in the supervision of building work; or

(e) has in the course of carrying on business as such been guilty of conduct that constituted a breach of another Act or law or acted negligently, fraudulently or unfairly.

Clause 20 makes it an offence if a person disqualified from being licensed or registered is employed or otherwise engaged in the business of a licensed builder except with the prior approval of the tribunal. The clause provides for giving of approvals by the tribunal subject to conditions determined by the tribunal.

Clause 21 requires the Registrar of the tribunal to keep a record of disciplinary action and to notify the Commissioner for Consumer Affairs of the name of any person disciplined and the disciplinary action taken against the person.

Part V (comprising clauses 22 to 33) makes various provisions with respect to domestic building work.

Division I of this Part (comprising clauses 22 to 26) provides for certain requirements in relation to domestic building work contracts.

Clause 22 provides that the Division is not to apply in relation to contracts for the performance of minor domestic building work or contracts entered into before the commencement of the clause.

Clause 23 provides that the following requirements shall be complied with in relation to any domestic building work contract:

(a) the contract must be in writing;

(b) the contract must set out in full all the contractual terms;

(c) the contract must set out the name in which the builder carries on business under the builder's licence, the builder's licence number and the names and licence numbers of any other persons with whom the builder carries on business as a builder in partnership;

(d) the contract must comply with any requirements of the regulations as to the contents of domestic building work contracts;

(e) the contract must be signed by the builder and the building owner personally or through an agent authorised to act on behalf of the builder or building owner;

(f) the building owner must be given a copy of the signed contract as soon as reasonably practicable after it has been signed together with a notice in the prescribed form containing the prescribed information; and

(g) the contents of the contract and the notice must (apart from signatures or initials) be readily legible.

Where any of these requirements is not complied with the builder under the contract is to be guilty of an offence and liable to a penalty not exceeding $2 000.

Clause 24 makes certain provision with respect to price in domestic building work contracts. Under the clause, a domestic building work contract must stipulate a specific price for the work, but it can if it specifies the period within which the work must be completed, include a rise-and-fall clause. Where there is a rise-and-fall clause, the clause can only operate after the completion date if the contract provides for an extension of the time for completion, the delay is the fault of the building owner or due to some cause beyond the control of the builder that was not reasonably foreseeable, the builder notifies the owner by writing of the extension and the cause of delay as soon as reasonably practicable after becoming aware that the completion of the work may be delayed and the work is completed as soon as reasonably practicable. In addition, a domestic building work contract may include a provision for the builder to charge cost plus an amount not exceeding 10 per cent or such other percentage as is fixed by regulation for specified materials or work, or to charge other unliquidated amounts of a kind stipulated by the regulations. Subclause (6) provides that where a contract includes such a provision or a rise-and-fall clause and the price specified in the contract for work, labour, or materials is an estimate only or subject to change, the contract must contain the statement 'Estimate Only' or 'This Price May Change' set out immediately alongside or below the price to which it relates. Subclause (7) requires that all prices that are estimates or subject to change must be listed together in the contract. Subclause (8) requires that any estimate in a contract must be a fair and reasonable estimate. Subclause (9) provides that if any of the requirements of the clause is not complied with, the builder is to be guilty of an offence and liable to a penalty not exceeding $2 000.

Clause 25 makes it an offence (with a maximum fine of $2 000) to demand or require from the building owner under a domestic building work contract, or from the person for whom work is to be performed under a preliminary work contract, any payment under that contract unless the payment constitutes a genuine progress payment for work already performed or is authorised under the regulations. 'Preliminary work contract' is defined as any contract that is collateral to or related to an existing or contemplated domestic building work contract and that provides for the performance of work that is preliminary or ancillary to the domestic building work. The clause would not prevent a pre-payment that is merely requested by a builder or volunteered by a building owner. Under subclause (3), a progress payment is not payable unless requested in writing.

Clause 26 provides that where a house constructed by a builder is made available for inspection by the public with a view to inducing persons to enter into contracts for the construction of similar houses, the builder must ensure that copies of the plans and specifications of the house are kept prominently displayed in the house at all times at which it is open for inspection. In addition, any contract entered into with the builder by a person who to the knowledge of the builder inspected the exhibition house and is seeking the construction of a similar house is, under the clause, to be deemed to include a provision that the house be constructed according to the same plans and specifications and standard of work and quality of materials as those of the exhibition house unless the contract specifically provides otherwise.

Division II (comprising clause 27) provides for certain statutory warranties to be implied in every domestic building work contract (including contracts for minor domestic building work). This clause corresponds to section 19o of the present Act. The clause provides for the following warranties:

(a) a warranty that the building work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications agreed to by the parties;

(b) a warranty that all materials to be supplied by the builder for use in the building work will be good and proper;

(c) a warranty that the building work will be performed in accordance with the Building Act 1970 and all other statutory requirements;

(d) where the contract does not stipulate a period within which the building work must be completed—a warranty that the work will be performed with reasonable diligence;

(e) where the building work consists of the construction of a house—a warranty that the house will be reasonably fit for human habitation; and

(f) where the builder owner expressly makes known to the builder, or a servant or agent of the builder, the particular purpose for which the building work is required, or the result that the building owner desires the building work to achieve, so as to show that the building owner relies on the builder's skill and judgment—a warranty that the building work and any materials used in performing the building work will be reasonably fit for that purpose or of such a nature and quality that they might reasonably be expected to achieve that result.

Under the clause, a person who purchases or otherwise acquires a house is to succeed to the rights of the person's predecessor in title in respect of statutory warranties. Where a person purchases a house from a builder who has performed domestic building work in relation to the house, the purchaser is also to have the benefit of the statutory warranties. Proceedings for breach of a statutory warranty must be commenced within five years after completion of the building work and that period is not to be extended. It is to be a defence in proceedings for breach of a statutory warranty if the deficiencies arise from instructions insisted upon by the building owner contrary to the advice in writing of the builder. Proceedings for breach of a statutory warranty are not to be commenced against a person unless the person has been given reasonable notice of the complaint and a reasonable opportunity to inspect the building work and make good any deficiencies in that work.

Division III (comprising clauses 28, 29 and 30) provides for indemnity insurance to be taken out by builders performing certain domestic building work. These provisions also correspond to provisions in the present Act (sections 19p, 19q and 19r).

Under clause 28, the Division is only to apply to work performed by a builder under a domestic building work contract or on the builder's own behalf. The Division is not to apply to building work for which Building Act approval is not required, to minor domestic building work or to work commenced before the commencement of the clause.

Clause 29 makes it an offence (with a maximum fine of $2 000) if a builder performs such work and the required insurance policy is not in force in relation to the work.

Clause 30 requires such a policy—*(a)* to insure each person entitled to the statutory warranties in respect of the work against the risk of being unable to enforce or recover under the warranties by reason of the insolvency, death or disappearance of the builder; *(b)* to insure the building owner against the risk of loss resulting from non-completion of the building work by reason of the insolvency, death or disappearance of the builder; and *(c)* to comply with the regulations.

Division IV (comprising clause 31) authorises a building owner under a domestic building work contract to terminate the contract during a cooling-off period of five clear business days or, where there has been a failure to comply with any of the requirements of Division I or III (contents of contracts and indemnity insurance), to terminate the contract before the completion of the building work. Under subclause (2), where a domestic building work contract is terminated, the tribunal or a court of competent jurisdiction may, on application by the building owner or builder, order the repayment to the owner of any amount or part of any amount paid to the builder under or in relation to the contract, or order payment to the builder in respect of work done or materials supplied under or in relation to the contract. This right of termination does not apply in relation to contracts for the performance of minor domestic building work or contracts entered into before the commencement of the clause.

Division V (comprising clause 32) sets out the powers of the commercial tribunal in relation to domestic building work. The clause applies in relation to any domestic building work contract or sub-contract whether entered into before or after the commencement of the clause and any domestic building work whether commenced before or after that commencement. Under the clause, the tribunal may, upon the application of a party to domestic building work contract or a person entitled to the benefit of a statutory warranty, determine any dispute arising out of the domestic building work contract or the performance of building work to which the warranty relates. An application may not be made for the determination of a dispute arising out of a domestic building work contract unless the dispute involves some question of whether building work has been performed in accordance with the contract. Where an application has been made to the tribunal for the determination of such a dispute, application may be made for the determination of a dispute arising out of a sub-contract for the performance of any of the domestic building work, but, again, only if it involves some question of whether building work has been performed in accordance with the sub-contract. If proceedings relating to a sub-contract are joined with proceedings relating to a domestic building work contract, the tribunal is to ensure that the hearing and determination of any question as to the performance of work under the domestic building work contract is not unduly delayed.

Where the tribunal finds that there has been a breach of, or failure to perform or fulfil, a contract or warranty, the tribunal may, to the extent to which it is satisfied that the breach or failure may be remedied by the performance of building work, order that remedial work be carried out by the respondent builder or some other builder employed by the respondent or order the payment of any amount due or any amount by way of compensation. If a builder ordered to perform remedial work fails to do so properly or at all, the builder is to be guilty of an offence and the tribunal may, upon further application, order the builder to pay compensation. The clause provides that proceedings commenced by the builder against the building owner in any court may, if the court thinks fit, be removed to the tribunal. Under the clause, the tribunal may not order the payment of any amount that exceeds, or order the performance of remedial work the value of which exceeds, the jurisdictional limit for local courts of full jurisdiction fixed by the Local and District Criminal Courts Act for actions of a kind to which the clause applies.

Division VI (comprising clause 33) deals with harsh and unconscionable terms in domestic building work contracts. The provision follows closely section 46 of the Consumer Credit Act which deals with harsh and unconscionable terms in credit contracts. Under the clause, the commercial tribunal or any court hearing proceedings in respect of a domestic building work contract may grant relief where a provision of such a contract is harsh or unconscionable or such that a court of equity would give relief. The tribunal or court may give relief by avoiding *ab initio* any term or condition of the contract, by modifying the terms or conditions of the contract and by ordering repayment to the building owner. Proceedings for such relief must be brought before or within six months after the discharge of the contract.

Part VI (comprising clauses 34 to 51) deals with miscellaneous matters.

Clause 34 provides that any purported exclusion, limitation, modification or waiver of a right conferred, or contractual condition or warranty implied, by the measure is to be void.

Clause 35 provides that a licensee is not to carry on business in pursuance of the licence except in the name appearing in the licence or in a business name registered by the builder in accordance with the provisions of the Business Names Act 1963. The clause fixes a maximum penalty of $1 000 for an offence against the provision.

Clause 36 provides that a licensee is not to publish, or cause to be published, any advertisement relating to the business carried on in pursuance of the licence (other than an advertisement relating solely to the recruiting of staff) unless the advertisement specifies the name of the builder appearing in the licence or a registered business name of the builder and the builder's licence number together with the licence number of any partner of the builder. The clause fixes a maximum penalty of $1 000 for an offence against the provision.

Clause 37 requires a licensee to install or erect in a prominent position on the site of any building work performed by the licensee or on the outside of the place where the building work is being performed a sign showing in clearly legible characters the name of the licensee appearing in the licence or a registered business name of the builder and the licensee's licence number together with the licence number of any partner of the builder. A maximum penalty of $1 000 is provided by the clause. Under the clause, where a licensee is performing building work on a site on behalf of some other licensee performing work on that site, it is to be sufficient compliance if a sign is erected on the site only by that other licensee.

Clause 38 provides that an unlicensed person who performs building work in circumstances in which a licence is required is not to be entitled to recover any fee or other consideration in respect of the building work.

Clause 39 is an evidentiary provision providing that where it is proved that a person performed building work on behalf of another for fee or reward, the person is to be deemed, unless the contrary is proved, to have been carrying on business as a builder. The clause also provides that if it is proved that a person has, during a period of 12 months, sold or let two or more buildings each of which has been built or improved as a result of building work performed by the person during that period, the person shall, unless

the contrary is proved, be deemed to have been carrying on business as a builder.

Clause 40 provides that an act or omission of a person employed by a builder (whether under a contract of service or otherwise) is to be deemed to be an act or omission of the builder unless the builder proves that the person was not acting in the course of the employment.

Clause 41 provides that the Commissioner for Consumer Affairs shall, at the request of the Registrar of the tribunal, cause officers to investigate and report upon any matter relevant to the determination of any application or other matter before the tribunal; or any matter that might constitute proper cause for disciplinary action under the measure.

Clause 42 confers appropriate powers of inspection upon an authorised officer under the Prices Act 1948, or any person authorised by the Commissioner by instrument in writing, for the purpose of an investigation requested by the Registrar or for the purpose of determining whether the provisions of the measure are being complied with.

Clause 43 empowers the tribunal to refer any matter before it to the Commissioner in order for an attempt to be made to resolve the matter by conciliation.

Clause 44 provides for the preparation and tabling before Parliament of an annual report on the administration of the measure.

Clause 45 provides for the service of documents.

Clause 46 creates an offence of providing information for the purposes of the measure that includes any statement that is false or misleading in a material particular.

Clause 47 provides for the return of a licence or certificate of registration that is suspended or cancelled or that is to be made subject to any condition.

Clause 48 provides that a director of a body corporate convicted of an offence is also to be guilty of an offence unless it is proved that the director could not by the exercise of reasonable diligence have prevented the commission of the offence.

Clause 49 provides for continuing offences.

Clause 50 provides that proceedings for offences against the measure are to be disposed of summarily and must be commenced within 12 months and only by the Commissioner for Consumer Affairs, an authorised officer under the Prices Act, or a person acting with the consent of the Minister.

Clause 51 provides for the making of regulations. The schedule contains appropriate transitional provisions.

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

SUMMARY OFFENCES ACT AMENDMENT BILL (No. 3)

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill to amend the Summary Offences Act 1953. Read a first time.

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

That this Bill be now read a second time.

It seeks to amend the Summary Offences Act 1953 in order to achieve a more efficient method of dealing with breaches of prescribed offences under section 64 of the Summary Offences Act and a better measure of justice for such offenders.

First, it seeks to enlarge the time available for a person, who has been given a traffic infringement notice pursuant to section 64 (2) of the Summary Offences Act to expiate the offence or offences by payment of the expiation fee or fees prescribed for that offence or those offences. Presently, the offender is allowed a period of 28 days, from the day on which the notice was issued, to pay the fee or fees to the Commissioner of Police. This Bill will extend that period to 60 days. Since the inception of the traffic infringement notice scheme, in 1981, the actual level of prescribed fees has progressively increased, in step with inflationary trends. Thus it is not uncommon for expiation fees to be around the level of $70-$100. In that regard, I would refer honourable members to some of the relevant regulations which appear in the *Government Gazette* of 25 August 1983 (at page 530).

As a concomitant of that inflationary trend, the present 28 day period has proved unnecessarily and unfairly burdensome and inadequate for some members of the community. Cases of individual hardship have been documented by some honourable members of this Parliament. The Government believes the proposed 60 day period will provide adequate breathing space for those (for example, unemployed persons in receipt of Commonwealth benefits) who most need it.

I have also introduced a Bill to amend the Justices Act 1921, which will make a consequential amendment in relation to the provision dealing with the service of a summons by post. The proposed 60 day period has necessitated that action. Secondly, section 64 (5) is to be amended to take into account concerns expressed by the Commissioner of Police.

Difficulties arise in relation to sections 74, 75a, 81 and 81a of the Motor Vehicles Act 1959, which are all prescribed sections for the purposes of section 64 of the Summary Offences Act. Those provisions concern, respectively, driving a motor vehicle without a licence, driving in breach of a condition in a learner's permit, driving in breach of a condition of a licence, and driving in breach of a condition of a probationary licence.

As there is no requirement that a driver's licence be carried by a driver, breaches of the above sections often go unnoticed when a traffic infringement notice is issued to a person in respect of an offence detected on the road. Breaches of these sections are often only detected when full licence checks are made at a subsequent time, particularly if a licence was not carried by the driver at the time.

Where a driver has been given a traffic infringement notice, and it subsequently transpires that the driver was at the time driving without a licence, or in breach of a condition of the licence, the effect of section 64 of the Summary Offences Act is that the original traffic infringement notice must be withdrawn, any fees paid refunded, and prosecution in court launched for all the offences. This is inconvenient to the offender who is denied the opportunity to expiate the offences without going to court, and cumbersome, inefficient and costly to the Police Department, the Department of Transport, and the courts.

Thirdly, section 64 (6) is to be amended to provide that when a person has expiated an offence, or offences, to which a traffic infringement notice relates, unless the Commissioner of Police decides to withdraw the notice and prosecute, the person is immune from prosecution in relation to that, or those offences, or for other offences arising out of the same incident except an offence for which another traffic infringement notice has been issued and that has not been expiated.

Finally, section 76 of the Summary Offences Act is to be replaced by a provision that will bear a better interpretation than it presently does. The State Transport Authority had sought the advice of the Crown Solicitor on the intepretation of section 76. The opinion (10 September 1984) concluded:

The peculiarity of section 76 lies in the fact that although there are three distinct persons who may exercise the power of arrest,

this power may only be exercised if one specific person has made the relevant discovery. The owner himself and no other person must have discovered the offence being committed. It is only in these circumstances that the power of arrest exists.

The interpretation given by the Crown Solicitor greatly limits the application of the section. Most businesses are incorporated and the section can have no application. Even in the case of smaller, unincorporated businesses it is often the case that employees and not the owners discover offences. This leaves employees to rely upon their powers of arrest at common law and by statute.

More importantly from the Commissioner's point of view, he is regularly asked by government and semi-government bodies to appoint their employees as special constables. A special constable has all the power of a police officer but generally has little or no training. But the Commissioner has sought to limit the appointment of special constables. He could previously refer these bodies to section 76 of the Summary Offences Act which appeared to give their employees adequate powers to deal with the problems likely to be experienced.

Section 76 is to be amended so that employees can apprehend anyone found by them to be committing an offence on their employer's property or in respect of the property. This will in effect restate a long-held common understanding of the section, update the law (as interpreted by the Crown Solicitor) to accord with commercial realities, and enable the Commissioner to resist appointments of special constables. Given that a power of arrest presently exists, the amendment is really a clarification and very small extension of the circumstances in which it could be exercised.

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

Leave granted.

Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 amends section 64 of the Act by providing for an extension of the period within which a person may pay a fee expiating an offence for which they have received a traffic infringement notice from 28 days to 60 days. The amendment also provides that a traffic infringement notice may be issued for an offence against sections 74, 75a, 81 or 81a of the Motor Vehicles Act 1959, notwithstanding that a traffic infringement notice has already been issued in relation to an offence, or offences, arising out of the same incident.

Subsection (6) of the Act is amended to provide that a person who pays the expiation fee for a traffic infringement notice is immune from prosecution in relation to that offence, or those offences, or any other offence arising out of the same incident, unless the Commissioner of Police withdraws the notice and proceeds to prosecute or there is another traffic infringement notice in relation to offences arising out of the same incident for which no expiation fee has been paid, in which case the person may be prosecuted in relation to the offences contained in that other notice.

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

ADDRESS IN REPLY

Adjourned debate on motion for adoption.

(Continued from 13 February. Page 151.)

The Hon. R.J. RITSON: I support the motion that the Address in Reply as read be adopted. I thank His Excellency for the speech with which he opened Parliament and I reaffirm my loyalty to Her Majesty Queen Elizabeth II, Queen of Australia, and to His Excellency Sir Donald Dunstan, her representative here in South Australia.

First, I would like to pay a tribute to those former members of the Legislative Council who have retired and who are no longer with us in this Chamber. Furthermore, I would like to congratulate you Madam President on your elevation to the office of President. It is pleasing to see that your Party has at last recognised your qualities of integrity, experience and educational qualifications by nominating you for high office. It is equally pleasing to note that this Council endorsed your nomination without a dissenting voice.

I also congratulate those members newly elected to their place in this Council. Whilst it is obvious that there will be differences of philosophy and Party affiliation between us from time to time during debates on particular issues, I am sure that new members will find every goodwill and courtesy extended to them in the course of ordinary affairs outside the Chamber and I wish them well.

The occasion of Address in Reply can be used to discuss the Government's program as outlined in the Governor's speech, it can be used as a general grievance debate to discuss politics in general or it may be used to discuss specific issues. Today, I propose to begin by talking about a couple of specific issues and then move on to a more general consideration of the state of Australian politics—the state of the Parties and the nature of their constituencies both historically and in this day and time.

I want to begin with a few remarks about the election. I will not cry 'sour grapes', and that will be obvious when I get on to the later part of my remarks. It is quite clear that the people in South Australia, in common with people in most other mainland States, have clearly voted for the Labor Party, and so the remarks that I am about to make about the election are somewhat peripheral, but, nevertheless, ought to be made. I think the first thing that should be obvious to objective observers is that this was the first election to be held under the new legislation, which requires a truth in political advertising. It was also one of the most superficially misleading campaigns that I have witnessed.

By way of example of that I want to talk first about interest rates. I happen to believe that the Hon. Mr Howard, Federal Leader of the Opposition, was in fact philosophically correct in his belief that interest rates must be allowed to find their own level if a reasonably well balanced money supply is to be available. I regret that Mr Howard was placed in the position of having to attempt to explain his views during the election campaign, because during election campaigns there is absolutely no forum available where one can elaborate at length and in an educative fashion on complex issues. During election campaigns members of all Parties are making the best they can of 30-second television grabs and on the spot interviews, and this atmosphere leads in some cases to deliberate, but often inadvertent, oversimplification, and, in general terms, misleading interpretations of what is said.

During the period before the election the Labor Government knew very clearly the crisis of the supply of home loan funds in South Australia. The Government also knew that it would be very difficult to explain to the people of South Australia a rise in home loan interest rates in that situation. So, the Government of the day determined that it would not be the Labor Party that would have to do the explaining but that it would be us. In relation to an increase in home loan interest rates the Government of the day used its executive power to restrain the building societies to an increase less than the amount necessary to attract the investment capital into the building funds, as was commonly known by everyone informed on the subject.

Mr Bannon and the building societies knew that, but they were given a .5 per cent increase less than the amount that was required to compete for investment funds. After the election, of course when the prize had been won, the rates rose, and, of course, they rose much higher than would have occurred had the building societies been allowed to attract the necessary capital last October and November instead of trying to attract it now in the face of much higher rates being offered elsewhere.

The consequences are very severe. Until October-November one building society had been lending an amount of the order of $12 million to $15 million a month. However, by January that amount was down to about $4 million a month, and that phenomenon, the drying up of home loan funds, was reflected throughout building societies and indeed the banking system generally. The Premier knew this but he let it happen because the election was in the air.

The consequence of this is not just that an injury has been done to people who wish to buy a home. Certainly, at first sight it would appear to represent a conflict of interest between the people who already have homes and the people who wish to buy homes. But it is not that simple. The damage spreads much further. First, there is the rationing effect, which the building societies are exerting and have had to exert in dealing with applications for home loans. This rationing effect does of course make it harder for people to buy a new home but it also makes it harder for people with an existing home to sell their home. That is reflected in a downturn in the prices of homes within a certain class, homes which are particularly sensitive to the supply of building society funds.

We have seen reports of people who have borrowed perhaps 90 per cent of the evaluation of their home last year and who now find that the value of their home in current market value terms is less than the amount of money that they owe on the home. So, illusory benefits to existing home owners that might be thought to accrue because of restraints on an increase in building society interest rates are just that. They are illusory because what is gained in restraint on monthly repayments is lost in terms of equity in the house and ability to sell the house readily. The Premier knew that, as did all members opposite, but it still occurred: it was still allowed to happen because the election was in the air.

The sad story does not stop there. This has a multiplier effect on home lending. My advisers have indicated that the multiplier effect is of the order of a factor of four. So, the building society whose lending went from $12 million a month to $4 million a month does in fact represent the withdrawal of some $8 million a month and, multiplied by the factor of four, represents some $32 million a month withdrawn from the South Australian economy.

That will reflect through to employment in the real estate and white goods industries, because, to the extent that some of this represents new lending, as lending on new houses, the very first thing that one must have in one's home, before a lounge suite or a carpet, is a refrigerator, a handbasin, a bath, an electric stove and a washing machine. Once that damage is done (as it was done as part of the election campaign) it cannot be fixed the moment the interest rates are restored. It was not fixed this month when the Premier made the belated decision, once he had won his electoral prize.

That will echo through the community for months, because it does change people's investment pattern. For example, I am advised that there is one cash management plan growing at the rate of $6 million a week, and that money has to come from somewhere. However, it is money that might have found its way into home loans if those societies had been allowed to keep pace daily—virtually—with the competition in that field.

These are non-profit organisations; they are almost a social service. It is a great pity that they were politicised in that way, a way that could never have been explained to the electorate. The view of neither Party could have been explained to the electorate in that political climate.

I am moved to make a passing comment about submarines because, somehow, the Australian Labor Party has allowed the people of South Australia to believe that we are likely to build complete submarines in this State, submarines ready to sail away into combat. That is the impression the public has. Any expression of reasonable caution or any expression of a mixture of hope and uncertainty by members on this side of the Council caused a reaction on the part of the Labor Party akin to that dreadful misleading commercial that showed a boot crushing a submarine. It implied that, but for the Liberal Party, we would be building complete submarines worth billions of dollars.

The Hon. Murray Hill will know exactly what I am talking about because, like me, he has served in warships. It is a pity that the Hon. Mr Gilfillan is not here now, because he got close to the mark. Anyone who knows anything about warships knows that the hull and main machinery is a very small part of the cost of the completed ship. That is also true of military aircraft. Once the hull and the main engine are manufactured and installed, then there must be a weapons system.

In the case of submarines, this involves sophisticated torpedoes, and if I knew about them in detail I would still not talk about them in detail for security reasons. It involves sophisticated and intricate computerised and encoded communications systems, involving the same security restraints, very sophisticated electronic warfare systems, and sophisticated navigational systems and the like. These systems add up to much more than the cost of the hull and main engines.

These systems are manufactured internationally by various multinational manufacturers. They need to be NATO compatible with other systems used in fleets of other nations with which we exercise jointly—that is, of course, if the Western military alliance still means anything to Labor Governments in this country. In any case, it is very difficult to imagine any Federal Government promising that, as well as building the hull and installing the main engines, a State like South Australia will establish its own torpedo factory in competition with existing manufacturers (and do it cheaper) or begin its own electronic warfare equipment manufacture or its own sophisticated active and passive sonar manufacture for six submarines plus spare parts.

It is almost inconceivable that the naval advice to the Federal Government was anything but advice along the lines that wherever the pressure hull is built—and I do hope that it is in South Australia, because that is something we have every chance of getting—and the basic fitting out is done, the rest of the fitting out—that is, the really expensive bit, the highly specialised bit—must be done with equipment purchased economically from established multinational suppliers, and installed and with the sea trials and acceptance trials carried out in an existing naval dockyard where the experts and the establishment are located.

I am sure that that is the advice the Navy would have given the Federal Government. I am sure that the Federal Government withheld the explanation of the realities of the situation to assist the sort of superficial campaign which was being run and which we lost with our own superficial advertising. I do not want to be a knocker, but the reality is that we are fortunate if it is recognised that we do have an experienced engineering firm here and we are the appropriate State to build the hull and do some fitting out, then that is about all we were ever going to get. I am sure that

that was the Navy's advice, and I am sure the Government knew it.

Having said that, I do not really believe that those are the sorts of reasons or that that is the level of argument which would explain why Australians from coast to coast throughout the mainland have by and large installed Labor Governments. The reasons for our losses are more fundamental. The reasons do not lie in North Terrace, and they are not to be found entirely in the superficialities of the sorts of campaigns that were run. In order to look to the reasons, I want to direct the Council's attention to the sorts of constituencies that each major Party has and to the sorts of constituencies that the major Parties used to have decades ago, to see whether there are any changes and then, perhaps for my own benefit, to reflect aloud on what sorts of opportunities and changes of direction people like myself in our Party have to look at in order to recapture the lost ground.

In the first place, historically the Labor Party did not begin as a socialist Party. The British Labour Party did. The ALP was the first properly organised political Party in Australia. It was formed in a colonial atmosphere where a largely immigrant working class had previously been disorganised and where government, until the twentieth century, had largely been government representative of the officer class and the pastoralists of the olden days. So, the Labor Party came into being as perhaps the first organised small 'l' liberal democrat working man's Party, and grew from that base.

Later, particularly after the great revolution in Russia, Marxism received encouragement throughout the world, and no less in Australia. Increasingly, the Labor Party had to live side by side with its old origins and with the new grafting on of Marxist/socialist principles. However, in those days the constituency of the ALP was essentially the blue-collar worker and no-one else. It was against that background that the Menzies and the Playfords of this nation—

The Hon. C.J. Sumner: Helped by the gerrymander.

The Hon. R.J. RITSON: The Attorney attempts to anticipate me by saying, 'Helped by the gerrymander'. Certainly, the formation of the principles that I am about to discuss had nothing to do with the gerrymander, but we could argue about that for a long time. The gerrymander has little to do with what I am saying. The Menzies and the Playfords of that day saw that the Labor Party based itself solely on the blue collar constituency. The Liberal Party was formed essentially as a Party which drew in all the other elements that had grown up in this newly emerging nation. The days of the squatters had gone, and the days of the red coat officer rum corps ruling class had gone and the new generation had arisen where all sorts of interests—academic, professional and artistic—were developing their own presence in society and requiring their own representation.

As long as the Labor Party stuck to its narrow blue-collar constituency it left the representation of all these other interests to the Liberal Party. It is my belief that people such as Sir Robert Menzies and Sir Thomas Playford quite effectively represented those groups of people, gave voice to their concerns and administered to their needs, and that this was the reason for the long reign of that sort of Liberal Party. However, changes have occurred over the past decade and, as I have said, they are more fundamental than the more superficial things that I mentioned earlier, such as submarines and advertising agencies. If one looks at the constituencies of the two Parties now, one sees that they are quite different. The world of Arthur Caldwell has gone, just as the world of Bob Menzies went. If one starts to list the constituencies of the Australian Labor Party now, one gets quite a long list.

I think we delude ourselves if we think that big business automatically counts itself as part of the Liberal constituency. Obviously Sir Peter Abeles would not count himself as part of the Liberal constituency. Indeed, I do not believe that big business collectively has any 'ism' or any belief, apart from its quite understandable belief in the need to preserve its own profits. I do not think that that is a bad thing. In fact, I tend to agree with Adam Smith who saw business as a natural product of human greed, and a natural desire to better oneself, and who believed that, if there were minimum control by adequate laws, this desire for self betterment would be a spur to society, to the work effort, and would give rise to prosperity.

It is my personal belief—and I know that some members opposite would disagree—that properly controlled human greed and desire for self betterment is still a far better stimulus to growth and prosperity than is the hope of the award of the Order of Lenin. Be that as it may, I believe the place of big business is to get out there and make profit and be controlled by just laws. It is not expected that big business will be identified with a particular political philosophy which it will pursue and support regardless of what benefits flow to business as a consequence. In other words, big business can be bought. It is quite clear that the Labor Party has purchased some goodwill from big business and thereby added part of that constituency to its former blue collar constituency.

The institutionalised power of unions has never been stronger. It is very clear, as we see the Labor Party join with big business and with the institutionalised power of big unions to form a corporate state, that that component of the Labor Party's former constituency is bigger and stronger than ever. I am not critical of that; I am just making these observations. Other groups that were part of the Menzies constituency—the world of the professions and academia—were very expertly wooed by Mr Whitlam and by people of Labor affiliation at about the time of the Whitlam era. There are never enough Labor voting blue-collar workers to elect a Labor government without help from other groups, without enlarging the constituency. The Whitlam era saw the enlargement of the constituency for Labor by bringing into the fold a substantial proportion of academic and professional voters. Other groups that have been brought in include youth, for example.

Of course, there is a general and understandable trend for youth to think with the heart. It has been said that, if you are not a socialist when you are young, you are hard of heart, and if you are still a socialist when you are old, you are soft of head. Be that as it may, the young people care about other people and in their voting patterns they respond to people oriented issues and apparent caring. There is no doubt that with the lowering of the voting age and with the very careful attention that the Labor Party has paid to speaking on caring matters the youth vote has been added to Labor's constituency. The women's movement is an interesting area because in the old scenario that I painted, where there was a blue-collar base for the Labor Party and a broad base for the Liberal Party, women favoured the Liberal Party in a measurable way. That is no longer so.

I think we must face the fact that the Labor Party can count the women's movement amongst its constituency. There are, of course, very specialised minority pressure groups. I refer to some of the specific lobbies of prisoners, homosexuals and some other small minority groups that automatically adopt the Labor Party. They are small numerically: I do not think that they matter.

One very large group which, I think, we Liberals must consider has been added, on balance, to the Labor Party's constituency is the migrant group. It has been a case of a wooing and a consolidation, and a growth in the size of that group so that it is more and more significant every election.

Whilst some migrant groups (particularly, of course, those from Eastern Europe which have seen the Soviet tanks in the streets of their towns and villages) can be counted, on balance, as Liberal supporters, they are numerically a very small proportion of the entire migrant population, and it is probably still true that the Labor Party, largely through diligent *bonhomie* by people such as the Hon. Mr Sumner and through building visible structures that are, apparently, designated as structures to help migrants, has captured this group's vote, on balance.

One of the means, of course, is the use of other structures— of other institutionalised power bases within their constituency. For example, a migrant newly arrived and ignorant of Australian politics and beginning his first job in a factory is very likely to be told by the activist shop steward that politics in Australia can be likened to politics in his country, in terms that in Australia Labor is the Christian Democrats and the Liberal is the Fascists. That sort of oversimplified introduction to Australian politics is not unusual.

The Hon. C.J. Sumner: A couple of them did—they will probably put you straight.

The Hon. R.J.RITSON: I am sure they will. The Liberal Party, if it looks at its firm constituency, I think has to look at a shorter list. Regarding business, certainly we have a responsibility to business, if we are in government, to keep a set of rules that allow free enterprise and competition, and we accept that. Whether we get back a firm constituency is very doubtful.

The Hon. C.J. Sumner: You have got most of them.

The Hon. R.J. RITSON: The Hon. Mr Sumner comforts me by saying that we have got most of them. I recall in spite of grizzles on the subject, the Premier's small business breakfast at, I think, $100 a throw for fundraising for the ALP. Obviously, the Labor Party did not make a loss on that function. So, whilst we hope for the constituency of small business and business generally, I doubt that we can take it for granted, when the Premier can fill a banquet hall at that price in aid of his Party.

Financial institutions: I think that the Liberal Party can count the financial institutions as a firm constituency. These people are very well aware of the difficulties that Australia is getting into. They are very well aware of the consequences of the financial policies of a Government which promises to reduce taxes, reduce the deficit, reduce Government spending and increase welfare. That does not add up, and everyone knows it does not add up. The rest of the world knows that it does not add up, hence the state of our dollar. I think that the people who actually understand major finance are well aware that our Party's policies are healthier for the nation.

The Hon. C.J. Sumner interjecting:

The Hon. R.J. RITSON: I seek the protection of the Chair.

The ACTING PRESIDENT (Hon. Carolyn Pickles): Order!

The Hon. R.J. RITSON: The Attorney-General will be having a huge serve of me when he winds up this debate, and he knows it. I ask him to wait until then. I have my freedom of speech in this place.

The Hon. C.J. Sumner interjecting:

The ACTING PRESIDENT: Order!

The Hon. R.J. RITSON: Reviewing the Liberal Party constituency, we have an arguable proportion of business; financial institutions, yes; I think the older generation of people of conservative social views, yes; the people who remember Menzies; the rural sector, most certainly—

The Hon. C.J. Sumner interjecting:

The Hon. R.J. RITSON: Not in South Australia. In South Australia the rural sector knows that the only effective representation that deals with their interests is the Liberal Party of South Australia. Indeed, the rural sector has been so mercilessly screwed by the Hawke Federal Government and so misunderstood passively by the State Government, which still fails to understand that the rural people need better education and health and not worse education and health than city people do, that we certainly can count them as our constitutency.

All in all, you can see what has happened. You can see the Australian Labor Party beginning with a narrowly defined blue collar constituency and building with union power, building with approaches to the migrant community, building with the representation of women's issues, building up this bigger and bigger list of constituencies whilst the previously broad-based constituencies of the Liberal Party of old have been reduced essentially to the rural sector, arguably business, the older generation and, I think, still the successful business and professional people who live in the affluent suburbs of the city. I think that is not enough: I do not think that we can assume that with better advertising and a bit of luck we can turn the electoral tide across Australia. I certainly do not believe that there is very much that individual leaders can do in North Terrace to change that overnight, no matter how hard they work and no matter what good policies they produce in myriads of multi-page policy documents to be handed round the community.

There is something quite exciting available to the Liberal Party, because the Labor Party, in collecting these new constituencies, has dumped certain people without realising it. There are some people who have been dumped out of the constituency of the Labor Party and are left with no-one, apparently, caring for them. To begin with, I refer to the large number of non-Marxist unionists, as opposed to the union institutional power structure which has certainly been wooed by the Labor Party.

There are large numbers of these people who feel that nobody represents them. One example of this sort of attitude of forsakenness that these people feel is expressed by people whom I have seen in the course of my medical practice and who have had injuries related to matters of industrial safety. For example, I have said to people, 'Look, this is the third foreign body you have had in the eye this month. Why don't you wear your safety glasses?' They have answered, 'The boss doesn't provide them.' My rejoinder is, 'Why don't you go to the union?' The answer, 'The union wouldn't care about me. They're too interested in big politics.' That is a view that I have heard expressed time and time again.

Let us now look at the migrant problem. I have made the point before that people like the Hon. Mr Sumner have been very successful in building visible structures that appear to cater for migrants and have been very successful in the generation of social goodwill with the leaders of those groups but, in fact, there are whole segments of migrant welfare that remain neglected. For example, the number of psychiatrists and social workers with the linguistic and cultural skills necessary to supply those services to migrant groups is still grossly inadequate. In spite of anything that the Labor Government might say, it is very difficult for anyone to notice anything happening on the ground to fill that void.

Migrant people are still under-represented in the professions and still over-represented in the menial occupations. I believe that they are still discriminated against, albeit subconsciously, by many Australians. If we look at the women's movement we find that there are groups within the constituency of women that have been overlooked. The Labor Party has gone upmarket: it has concentrated in its public utterances, and in its major policy statements and legislative program, on the upmarket end of the spectrum.

It has concentrated on enabling the more skilled and gifted women to achieve higher status.

It has, in a sense, been working at the job of getting women in management into the boardroom. I do, Madam President, pay a tribute to some remarks that you have made from time to time whilst on the Government benches in this place. I recall that some of those remarks have been directed to the more (and I do not wish to say 'down-market') passionate end of the scale in terms of domestic violence and suburban poverty.

By and large, the image that the Labor Party has created is that of a Party aiming at the upmarket and more vocal section of the women's lobby and getting women in management into the boardroom. Perhaps in the past the Liberal Party has competed for the same ground. However, just as there is a constituency that has been overlooked in the unions and a constituency that has been overlooked amongst migrants, so too there is a constituency that I believe has been overlooked by the Labor Party and the women's movement.

I have for 20 years gone in and out of houses, mostly in poor suburbs. I know what is behind the doors at Elizabeth West. I know that some of the front doors are nailed up with a sign that says 'Use back door only'. The reason for that is that the welfare housing supplied to families is often too small to cope with a large number of children, an extended family or a sick grandmother, with the result that the front hallway is necessarily used as a bedroom—hence the front door is sometimes nailed up. That is a women's problem.

I know how difficult it is in some of those suburbs to use public transport to go across suburbs to visit a child in hospital or to visit a parent in the middle of the day. That is a women's problem. There are so many ordinary problems that are specially borne and suffered by a whole range of women, the majority of women, women who are not gifted, who will never get into management but who are forgotten in the hue and cry of the upmarket women's movement.

I am delighted with the appointment of my colleague the Hon. Diana Laidlaw, to speak for the Liberal Party on this matter, because I believe that she has the ability to move into that area of women's welfare, to have a look at that forgotten part of the women's constituency, and to show that the Liberal Party can represent a wide variety of women's problems and not just the upmarket end. I believe that she will do that job very well. That is just another example of the way in which the Labor Party, in moving towards its new identity as a Party of big business, a Party of big union power and a Party of more and more constituencies, has left holes—it has dropped people and left people behind within parts of those constituencies, people whom perhaps the Liberal Party has drifted away from and so those people stay there as groups with nobody to represent them.

The sick poor are another group who are of great interest to me. The great blessing of Medicare has not helped them at all, because the truly needy always had free treatment in public institutions. What did Medicare do for them but offer them what they already had? I will tell honourable members what Medicare did for them: it took away something of what they already had, because when those hospitals provided largely for the truly needy there was not much competition for services—waiting times, the choice of doctor and the general level of services were by and large devoted to those people.

However, now we have our new system which, first, gives those people purportedly what they already had (namely, free treatment in the public hospitals), and, secondly, compels everybody, rich and poor, to contribute. What has happened is that a number of people who are able to provide for themselves and who used to provide for themselves are now tipped into that system. Many of them feel that, having been compulsorily recruited into this welfare system, they are darn well not going to pay twice, so we have competition between the truly needy and the affluent within the public health system. Believe me, nobody is as expert at picking the eyes out of such a system as are the affluent. It is common knowledge that people who live in the wealthy suburbs and who socialise with the medical profession (they probably have doctors living in the same street or belonging to the same club) can very easily advance themselves on waiting lists and have a choice of doctor that poor people cannot have.

They are competing against the truly needy for scarce resources. They are very able to do it, and do it very well. After all, Dr Blewett did it very well himself in Canberra when his daughter got appendicitis. I do not blame him. He had paid his levy and probably did not want to pay it twice. He knew some of the top surgeons and even though they were not on duty they came in and did it. I challenge the Minister of Health to analyse his waiting times and status of treating doctor in terms of social class to ascertain whether or not something like that is happening. On his own admission it is because he came out with an outburst a year or two ago about affluent people indulging in queue jumping within the system. So, I guess in his heart he really knows that he is presiding over a system in this State whereby the affluent compete with the truly needy for scarce resources in the public system.

One can look at the pharmaceutical benefits scheme if one wants to see another example of the inequities of universal welfare as opposed to safety net welfare for the truly needy. A pharmaceutical benefits scheme indiscriminately and universally subsidises contraception. I will not mention names of any particular socialites: that would not be fair. The fact that contraception is an unrestricted benefit does mean that there is a welfare distribution of resources to some highly wealthy people for what some would argue would be a purpose that is hardly the responsibility of the taxpayer but rather the responsibility of the copulator.

Nonetheless, whilst that system persists questions by myself in this place concerning the supply of disposable syringes on prescription to diabetics have fallen on deaf ears. Even if it were a restricted benefit to pensioners only, or only to rural pensioners who cannot get to the Adelaide Hospital to get their free syringes, it would be something, but no, the Government cannot afford it. It is busy subsidising contraception for socialites.

So, I paint a picture of a forgotten constituency. There is a great challenge facing the Liberal Party to step in and pick up this constituency. As I said, there is absolutely nothing that the politicians on North Terrace can do about it: it is something the Party has to do. It may be difficult for the Party itself to do anything about it: maybe it is something that the public has to do. It is its society. If it is disillusioned with the electoral results of the Liberal Party which it may have supported in the past with its votes or donations and if those people are now walking sadly off into the sunset disillusioned, I would say, 'Come back. We are not the power; you are the power.'

I would say, 'Come back and recruit some non-Marxist workers. Come back and recruit some women activists from the other end of the scale. Come back and help us recruit some disenchanted members of the migrant community.' Of course, we do have to make them feel welcome in our Party if they join. We do have to create a social millieu where a proper representation of these people feels comfortable. We do have to make them feel welcome and we do have to encourage them to bear office. That is something

to which all members of the Liberal Party, myself included, may have to pay attention in the future.

We do not have many non-Anglo-Saxons bearing office in our Party. We certainly do not have many Aborigines or women from Elizabeth West, but unless we do something to enlarge our constituency we may be on this side of the Chamber for a very long time. I am not talking about giving away any of our principles, or about moving to the left or to the right in order to attract a different sort of person. I am saying that the sort of people who believe in our principles—such as the anti-Marxists unionist, the Liberal housewife from Elizabeth West and the disfranchised migrant—and who believe in us need to be told by the Liberal Party, 'We want you, we wish to recruit you, we wish to represent you. Do you wish to bear office in our Party?'

I guess it is very difficult for me as a member of the Liberal Party to see myself and my Party as it really is and to see it as it may be seen by others at the same time. It is a little bit like the people who survey the bus routes. May I tell a little parable. If one wants to know whether a bus route is adequate one can get on the bus and ask people on it what they think of it and why they use the bus. One gets one set of answers. However, if one walks around the district through which the bus travels and one asks people who do not use the bus why they do not use it and what is wrong with it one gets a different set of answers.

I am just a little afraid that we in the Liberal Party—myself included, because I share the blame equally with everyone—are on the bus asking ourselves why we are satisfied with it and outside there are a number of groups of disfranchised citizens who have been left behind by the Labor Party in its quest to form the trendy corporate State and who have not been noticed by us or who have spun off from our previously larger constituency and who are saying, 'Hey, come and ask me. Get off your bus and out of your State council and come and ask me.' I would hope that somehow we could make a plea to all those people who are not in the Liberal Party but who have demonstrated their willingness to partake of public life. There are people with ideas to offer and who are crying out for representation who are out there presiding over service clubs, coaching sporting teams but who are not in the Liberal Party even though they belong to a group that the Labor Party has ignored or abandoned and which we could represent. So, we need them. I make a plea for them to offer themselves to our Party. For my own part I will try to see myself clearly enough and all my faults so that when they do come along I will welcome them rather than making them feel unwelcome.

I will welcome people from a new constituency and perhaps then over a period of time we can build up a Party that is confident of governing from coast to coast for another decade or two because it has got its base right, rather than a Party that looks at the polls and casts the entrails and eyeballs off the comet in the hope that it will get back the 2 per cent and perhaps with a bit of slick advertising win on the next occasion. My concern is greater: my vision is longer than that. I do hope it will happen. With those thoughts, I support the motion.

The Hon. G. WEATHERILL: I feel honoured to have the opportunity to support the adoption of the Address in Reply to His Excellency's opening speech. As this is my first opportunity to speak in this Chamber, I would like to set out the principles which will guide me during my term in office. Before that, however, I wish to congratulate the new members of this Council and especially you Ms President on your historic election to your high office. I am certain that you will bring fair yet firm order to debate in this Council. I also hope that your example may encourage other women into the service of their State. I would like to say a few words about the honourable member whom I replaced in this Council. The Hon. Frank Blevins entered this Chamber in 1975. Since that time he has lived up to the commitment he made in his maiden speech when he said:

> I am a dedicated socialist who takes every opportunity to promote the principles and ideals of democratic socialism. The reason I am a socialist is simple: I do not believe that any person has the right to exploit the labour of any other human being for his own gain or personal well-being. To me the making of profit through exploitation is immoral and, although I make no claim to be a christian myself, I am sure that the misery and poverty the capitalist system brings to the people of the world also makes it unchristian. Like this Chamber, the sooner capitalism is relegated to the history books the better off mankind will be.

Whilst I agree that very often an Upper House can serve to slow the reform process, it is worth noting that the preferential voting system in the Upper House gives an effective check against gerrymanders. This is clear from the Queensland experience where there is no Upper House. I pledge to continue the good work which the Hon. Frank Blevins has begun in this Council.

I will now set out the principles which my Party and I will apply to the formation and implementation of policies. We believe in a more equal society: a more equal distribution of opportunities and wealth. We deplore exploitation and discrimination of any kind. To this end we believe that we have a responsibility to protect the young, the old, the sick, and the physically and mentally disadvantaged. We also believe that we have a responsibility to discourage racial and sexual discrimination. Our objectives in that regard have been clearly set out by the Hon. Mario Feleppa and the Hon. Carolyn Pickles in their Address in Reply contributions.

I wish, however, to comment on discrimination against women. Our Party is committed to giving women access to good quality child-care at low cost. Another area in relation to which serious discrimination occurs is in the workplace and involves lack of superannuation, unequal job opportunities and sexual harassment. All these matters will receive constant attention by the Bannon Government.

One of my main concerns is the exploitation of working people. I have had first-hand experience of that exploitation through my working life, first, as a worker and, secondly, in representing the interests of workers. Individual workers are in a weak bargaining position with their employer. The most important protection that a worker can have is the benefit of an effective trade union within a united trade union movement.

The Hon. Ian Gilfillan in this Council last year drew attention to the exploitation of bike couriers who were paid a pittance for riding around the city delivering documents in what was hard and very often dangerous work. This is an example of an un-unionised industry where employees are exploited. This is not a rare situation but it clearly shows the value of an effective trade union. Unfortunately, the incentive which profit making gives the individual to work hard also gives him the incentive to exploit labour to reduce costs and increase profit. The ALP was formed by the trade union movement to minimise this exploitation.

The most important function of the trade union movement is to protect and where possible improve the pay and conditions of working people. In this struggle the movement is being assisted by the Bannon Government through the important industrial legislation in our program: workers compensation and rehabilitation, occupational health and safety, and long service leave. The ALP State platform provides:

> The industrial policies of Labor are to protect and foster the basic human rights and legitimate aspirations of all members of

the workforce without regard to age, marital status, sex, sexuality, race, country of origin, religion, political belief, or physical, intellectual or sensory impairment.

Labor affirms the basic right of all people to the opportunity of satisfying work for fair remuneration under conditions which protect safety, health and welfare, and which enhance human dignity and full personal development.

Labor asserts the right of all workers to a fair and equitable participation in the economic benefits of their labour and in the decisions which affect their working lives.

Labor will foster and maintain a climate of industrial harmony and cooperation as a necessary basis for progressive social reform, broadly based economic development and the advancement of our community.

Labor accepts and encourages the development of a free, democratic and effective trade union movement as the voice of worker aspirations, their protection against exploitation and as an essential partner in the development of industry and the community.

I have found support for my appointment within the ALP from the trade union movement. This support has been given because I have had the confidence of the working people for over 24 years, being elected and re-elected to positions within the trade union movement. I feel that I can contribute to the debate in this Council by bringing a first-hand knowledge of the issues which affect working people.

As I mentioned before, a most important piece of legislation will come before the Council this session, the Workers Rehabilitation and Compensation Bill. A workers compensation Act is an example of a situation where Parliament is called upon to protect workers' welfare. The position without such an Act is one where the employer has a mere moral obligation to compensate an injured worker. In response to the unfairness of this situation common law actions against the employer began to develop. However, these proved to be inadequate as employers who could not be found negligent or in breach of a statute were not liable.

It came to be accepted that workers who were injured by reason of their being at work should not be disadvantaged by reason of that injury, and should be compensated for the pain and loss of the ability to enjoy life and the loss of money they would otherwise have earnt.

Our Bill also seeks to emphasise rehabilitation. We believe that the best form of rehabilitation is finding an injured worker suitable work. This is important because the most serious threat to injured workers, outside of their physical injuries, is their mental injuries. These set in after long periods out of the work force, making it difficult for a worker to return to the work force or even lead a full and happy life. However, we must not lose sight of another just as serious mental injury, that which arises from workers who feel the true cost of injuries is not adequately represented in the compensation they receive.

I noted with pleasure the comments of the Hon. Ian Gilfillan in his Address in Reply contribution. I commend his concern for the safety of working people. However, we also see that compensation is just as important a consideration. He also expressed hope that all members would look at the legislation from a wider perspective than the interest groups they represent. We assure him that in the framing of this Bill detailed submissions were received from all sections of the community with all parties making concessions.

I, like the Hon. Ian Gilfillan, express regret that the Occupation Health and Safety Bill is not also ready for debate, as the two Bills naturally go together. However, due to the detailed consultation and redrafting that the Workers Compensation Bill necessitated the Government was concerned that both Bills be ready before they were introduced. The Workers Compensation Bill has my total support as it represents a dramatic improvement on the existing law.

However, I wish to draw attention to specific issues in the Bill which, should the Bill pass into law, I will be monitoring closely. These are issues on which the trade union movement compromised to ensure that the legislation will achieve broad acceptance. First, I will be monitoring the decisions of the proposed panel of doctors which assess the right to compensation. This constitutes a fundamental shift away from workers' rights being determined by the Judiciary, to their being determined by the medical fraternity, especially given the limited rights of appeal from their decision.

Secondly, I will be monitoring the operation of the redemption provisions. These allow workers to take their pension in the form of a lump sum discounted to a present value. The ability to redeem a pension to which the worker is entitled is important. It may allow a worker to discharge financial liabilities which, in themselves, create pressures that can impede rehabilitation. Thirdly, there is a fundamental shift in the cost of representation. No provision is made in the legislation for the award of costs, and hence the trade union movement will have to absorb costs formerly contained within the premiums. So, all members can see that the trade union movement has not been involved in negotiations regarding this Bill without compromise.

The reduction of the level of unemployment is a priority of the Bannon Government. To this end the Workers Compensation Bill will mean a reduction in premiums for employers. The transfer of income from doctors, lawyers and insurance companies has not been made just to the injured worker. The transfer has also been made to employers by the reduction in premiums which will reduce the disincentive to employment.

I hope that these brief comments make clear to members that the Government is not merely serving narrow interests but the wider community in its efforts to reduce unemployment. There is some misconception in the community over the role of the trade union movement. The common wisdom, courtesy of the media, is that trade unions are irresponsible and greedy. This is not borne out by the facts. The ALP and the trade union movement, represented by the ACTU, entered into the prices and incomes accord. This agreement is the most important reason why Australia is now recording strong economic growth, reducing unemployment, inflation and the number of industrial disputes.

As I have mentioned before, one of the most important problems we are facing is high persistent unemployment. The accord meets this problem by restricting wage increases to workers. Unions have asked their members to make sacrifices for the benefit of the rest of the community, hardly the act of irresponsible organisations. I am not afraid to emphasise the strong links the ALP has with the trade union movement. As I pointed out, in the ALP platform the ALP is concerned, as all trade unions are, to protect and pursue the legitimate rights of working people. One of my greatest concerns is that in this wealthy society there still exists severe poverty. One of the principal causes of poverty is unemployment and this remains a priority of the Bannon Government. Our Party, being a reform Party, will bring about changes. For their acceptance, attitudes also will have to change. For this reason we see communication of any proposed changes as important. In this Council, in particular, we acknowledge that a clear explanation is even more important. However, I am confident that members opposite will judge our legislative program on its merits and not criticise it to gain some short-term political advantage.

In closing, I feel it would be wrong of me in the International Year of Peace not to comment on the issue of world peace. This is an issue on which all others hinge. I feel that the first objective in this regard should be the

availability of information so that Australians can understand their position in the world scene.

This can be achieved through the education system. Another objective should be to open the lines of communication between countries in conflict. I believe that the single greatest threat to world peace is when the lines of communication break down. I hope that the matters I have raised will occupy much of this Council's time, as they are all matters of importance. I support the motion.

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

CHILDREN'S PROTECTION AND YOUNG OFFENDERS ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 February. Page 132.)

The Hon. K.T. GRIFFIN: I support the second reading of this Bill which, as the Attorney-General has indicated, is a series of miscellaneous amendments recommended by the Children's Court Advisory Committee, judges of the Children's Court, judges of the Supreme Court, and the Department of Community Welfare. The series of amendments deal with a variety of issues. The first relates to the definition of 'homicide' and brings that definition and provisions relating to attempts to commit crimes in line with amendments made to the Criminal Law Consolidation Act in 1981 and 1983. The Opposition has no difficulty with those amendments.

The second amendment deals with section 12 of the principal Act which provides for the Minister to make an application for a declaration that a child is in need of care. There are a series of grounds upon which application can be made to the court by the Minister, but not a ground which was in the old Juvenile Courts Act that a guardian is not a fit and proper person to be the guardian of a child. The proposed amendment reinstates that provision of the old Juvenile Courts Act and will thereafter allow the Minister to make an application for an order that a child is in need of care where a guardian is not a fit and proper person to be a guardian. Again, the Opposition has no difficulty with that amendment.

The next amendment relates to section 51, which will allow the court to make an order that, where it finds an offence to be trifling and does not convict a child, the offence may not be referred to in subsequent proceedings for any other offence, other than in the Children's Court at a later time. Does that amendment then mean that, if at some time in the future, after a series of offences a person appears as an adult in an adult court, there can be no basis upon which that Children's Court order can be reviewed or even referred to? There appears to be no mechanism by which the Children's Court order, for good reason, can either be varied by the Children's Court in the future or varied in the future by the Supreme Court or a district court once the person in respect of whom the order has been made by the Children's Court has become an adult. It is really just a question of flexibility which does not appear to be there in relation to the amendment, and it could be important at some time in the future.

I cannot think of occasions where it might be necessary except perhaps where a succession of offences had been committed by a young offender subsequently as an adult offender and it might be relevant to look at all the history of that person in dealing with subsequent offences. Perhaps the Attorney-General could indicate whether it is proposed that the Children's Court order envisaged by section 51 is a final order and can never be reviewed by the Children's Court, a district court, the Supreme Court or even a magistrates court after the child becomes an adult.

The next amendment is to increase the maximum monetary amount which may be established as the basis of a recognisance. It is increased for a child over the age of 15 years from $200 to $500. The Opposition has no difficulty with that provision.

The next series of amendments relate to clarification of the community work order system as a condition of a suspended detention order to clarify the position for short detention orders of two to four months duration. Again, the Opposition has no difficulty with that. We fully support the application of community work orders to young offenders whether they be part of a suspended detention order or work in default of payment of fines or for any other reason. Community work orders are an important way for young offenders to be rehabilitated and to be alerted to their wider responsibilities to the community.

The next amendment deals with the maximum monetary penalty that can be imposed by magistrates in the Children's Court. The present maximum of $300 was set in 1979; it is proposed to increase that to $500. Again, the Opposition has no difficulty with that.

The next amendment relates to the issue of a warrant for apprehension where a young offender has failed to observe conditions of release from detention. There is no difficulty with removing from the scheme the requirement that a notice be given to the young offender in default prior to requiring return to detention. I can appreciate that the giving of the notice in itself may be a sufficient basis for a young offender to abscond and, therefore, rather than alerting the young offender to the pending issue of a warrant, I am satisfied that the issue of a warrant is appropriate right from the start.

I notice in relation to the principal Act that the warrant is issued by the Training Centre Review Board, and I recognise that that is already part of the scheme of the principal Act. However, in retrospect it is rather curious that a statutory board should issue the warrant and not a court. In respect of adult offenders who may be in default, as I understand the scheme it is the responsibility of the court, upon application, to issue the warrant and not any statutory body.

Although this scheme gives important powers to the Training Centre Review Board, I think that it is important to at least give some consideration as to whether it is appropriate for that board to issue the warrant for apprehension. Might I also mention in that context that the Bill provides for the Governor to appoint suitable persons to be deputies of members of the Training Centre Review Board as well as deputies of members of the advisory committee.

Although the lack of deputies may create some minor administrative difficulties, I would have thought that the responsibility of the board and of the advisory committee was such that it was not necessary to have deputies appointed. It might be appropriate for the Attorney-General to make some observation on the necessity for deputies to be appointed and what sort of difficulties there are in the present system, which has been operating for some seven years.

I come now to an important issue, and that relates to the publication of information which might identify a child who has been charged in the Children's Court. Section 93 of the Children's Protection and Young Offenders Act prohibits the publication of information which might tend to identify any young offender. The prohibition is quite extensive. Section 93 provides:

(1) Subject to this Section a person shall not publish, whether by radio, television, newspaper or otherwise, a report of any proceedings before the Children's Court or before an adult court pursuant to this Act.

(2) Unless otherwise ordered by the court, the result of any proceedings under part IV of this Act—

that is, in relation to criminal proceedings—

may be published in accordance with this section, and for that purpose that court shall, at the request of a person desiring so to publish the result of any proceedings, make that result available to him.

(3) Where, in any proceedings under part IV of this Act, the child is convicted of an offence, a brief summary of the circumstances of the offence may be published together with any publication of the result of the proceedings unless the court orders otherwise.

The amendment proposes an additional embargo, and that is on publication of a report of the charges, where that report would identify or contain information leading to the identification of the young offender. The difficulty I have with section 93 is that it places some very strict limits upon the media in respect of reporting matters in the Children's Court. I think that now is the time to review the constraints which are imposed upon the media. I think that, some seven years having passed since the present section 93 was enacted, that would provide a sufficient level of experience to identify particular difficulties with the strict limits on reporting of proceedings in the Children's Court, and it is now time for the Government to review the operation of that section.

Periodically I have received criticisms of the strict limits imposed by the section, and criticisms that the extent of juvenile criminal activity is not readily accessible in the public arena contemporaneously with the occurrence of that behaviour. To some extent I can appreciate that concern, and the point has been made to me that if information were more readily available about the sort of proceedings which are being taken in the Children's Court it would raise the level of understanding of the community about crime by young people and might, in fact, even have the effect upon young people of having particular experiences drawn to their attention as being undesirable.

Certainly, the criticism has been made to me that, because there is inadequate information available publicly contemporaneously with the event—about the level of juvenile criminal activity—there is a complacency in the community about it. There is no information available to other young people which might act as a warning to them and, generally, the proceedings of the Children's Court are largely conducted in secret.

In that context, therefore, without doing anything which would lead to the identification of the young offender, it is important to review the strict limits and to ascertain whether the strict limits are now desirable in light of the various factors to which I have referred.

I must make it clear that I do not wish to have the identity of young offenders made known, except in extraordinary circumstances, and then that can be a matter for the discretion of the court. Whilst I am not opposing the amendment which the Attorney-General has proposed in the Bill to section 93 of the principal Act, I want to make it clear that I and the Liberal Party think that it is time for a review of the operation of that section.

The last major amendment deals with section 100 of the principal Act and relates to the transfer of children from one training centre to another or from the training centre to a prison, when the young offender has attained the age of 18 years. There have always been difficulties with young offenders who have been ordered to be detained who attain the age of 18 and are not able to be transferred to an adult prison. I take the view that anything which will ease the transfer of those adults (convicted as young offenders) from training centres to a prison environment, where it is appropriate, is to be supported.

The Children's Court makes the order under the proposal in the Bill, and that is the appropriate body to exercise that responsibility.

The Opposition supports the second reading of this Bill. We raise the questions to which I have referred but, generally speaking, see the amendments as being sensible clarifications of the provisions of the Children's Protection and Young Offenders Act and the operation of the Chidlren's Court. I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his support of the Bill and I will deal with his queries in the Committee stage.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

SUMMARY OFFENCES ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 13 February. Page 132.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill. Last year we supported the enactment of a new section 78 in the Summary Offences Act which gave police the power to detain a person who had committed a crime, or who was alleged to have committed a crime, for a period of up to four hours after arrest before that person was delivered into custody at the nearest police station.

We also supported the additional provision in section 78 which allowed an extension of that period of detention by up to four hours by order of a magistrate. At the time that section 78 was enacted I presumed that it applied to both young offenders and adult offenders. I must say that I was somewhat surprised to hear in the Attorney-General's second reading explanation that the Crown Solicitor has advised that the Children's Protection and Young Offenders Act will, in fact, override section 78.

However, if that is the advice given, I am certainly prepared to support any amendments that will put the matter beyond doubt. The important safeguard in relation to young offenders is supported, that is, the safeguard that requires a solicitor, relative or friend over the age of 18 years, or a nominee of the Director-General of Community Welfare, to be present during any questioning that may occur in the period of detention before delivery into custody at a police station.

I think that for young people particularly it is quite unnerving, as undoubtedly it would be for many adults, to be arrested and questioned by police in relation to an alleged offence. For young people in particular I think that it is important to have somebody present who is there to keep the young offender company while the questioning occurs. It is also important for the police so that there can be no mischievous allegations about them in relation to their handling of the interrogation. So, the provision of section 78 is important. We support all stages of the Bill in respect of clarification in so far as it applies to young offenders.

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

STATUTES AMENDMENT (CHILDREN'S BAIL) BILL

Adjourned debate on second reading.

(Continued from 13 February. Page 133.)

The Hon. K.T. GRIFFIN: The Opposition supports this Bill. When the Bail Act was before the Parliament last year I must confess that I presumed that it was dealing with all areas of bail and not just those areas of bail as they affect adults. Quite obviously, my presumption was inaccurate and there needed to be some substantial amendments to the Children's Protection and Young Offenders Act to bring all of the provisions relating to bail, in so far as they affected young offenders, into the Bail Act.

We supported at that time the bringing together of all provisions relating to bail in the one Act. It was important, in our view, not only for lawyers and the courts but also for the police and the defendants, that there was one code which dealt with the granting of bail, which set out all of the procedures and requirements and which had to be complied with in the consideration of bail matters.

I can see the advantage of having bail in relation to young offenders included in the Bail Act and for that reason we support the Bill. I have attempted to assess all of the individual amendments. I see no difficulty with them so far as I have been able to check them. It seems to me that it is essentially a drafting matter, but the way in which the drafting has been undertaken meets any difficulties that may arise under the Children's Protection and Young Offenders Act with young offenders being arrested and not charged at that point but in fact appearing before assessment panels prior to appearing in court, if appearance in court is necessary. The mechanisms in the Bill, so far as I can assess, are adequate and for that reason I am prepared to support it.

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

TRAVEL AGENTS BILL

Adjourned debate on second reading.

(Continued from 12 February. Page 58.)

The Hon. K.T. GRIFFIN: This Bill establishes a scheme by which those who carry on business as travel agents are required to be licensed. The Liberal Party, prior to the election, had a policy that the concept of negative licensing of travel agents was more appropriate than establishing the bureaucratic mechanisms of formal positive licensing.

At the time we did not proceed with that because the Federal Government had proposed to introduce legislation which would establish a uniform scheme across Australia to provide for the licensing of travel agents and the expectation in the community for three years was that that licensing would be undertaken at the federal level with complementary legislation at the State level. After the last State election in December the federal Minister for Tourism (Mr John Brown) announced that the Federal Government did not intend to proceed with it. I suspect it was because the cost of administering it at the federal level was going to be much more than at the State level.

The Canberra bureaucracy is notorious for the escalation of administrative costs compared with what occurs in the States. So, for three years the travel industry and the travelling public have been led to believe that there would be a comprehensive scheme across Australia. It is for that reason that the Liberal Party did not push the question of licensing of travel agents because we believed that there was likely to be a scheme in place.

If the Federal Government had taken a decision three years ago it would have meant that the travelling community could have been protected at a much earlier stage by some form of licensing or negative licensing at the State level. So, for three years they have been left unprotected and there have been a number of defalcations in the travel industry, the most recent several weeks ago amounting to up to $1 million around Australia. That is something which the travelling public can ill afford and which shakes its confidence in the travel industry. I understand that this Bill is a direct result of the travel industry itself being concerned to develop some protective mechanisms to ensure that where there is a default by a travel agent the travelling public is inconvenienced as little as possible. I want to address some remarks to that later.

So far as negative licensing is concerned, while some organisations such as the Consumers Association would disagree with the Liberal Party we believe that it is the better system to adopt where the industry establishes a code of conduct, where that code of conduct is recognised by legislation and given the force of law and that if anyone in the travel industry does not comply with the code of conduct then proceedings can be taken in the appropriate tribunal or court for suspension or other orders so that the court or tribunal imposes the penalty which can extend to the prohibition of a right to carry on business.

The Hon. C.J. Sumner: It is not appropriate in this case.

The Hon. K.T. GRIFFIN: I am coming to that. That is in my view and the Liberal Party's view the better course to follow. But, we have before us a Bill which, according to the second reading explanation of the Attorney-General, is part of a uniform package agreed between Western Australia, South Australia, New South Wales and Victoria and, for that reason, the licensing concept is the appropriate way to go.

The Hon. C.J. Sumner: The industry will not support negative licensing in this case. That is the problem. There has got to be up-front licensing in order to get it to support the compensation scheme.

The Hon. K.T. GRIFFIN: Obviously, there is more to it than meets the eye. Undoubtedly, the Attorney-General can respond in his reply at the close of the second reading stage. Whether or not the travel industry wanted negative licensing or positive licensing I would still adopt the attitude and the position that it is more appropriate for licensing, but I have acknowledged that it is part of a four-stage scheme and we do not—

The Hon. C.J. Sumner: You can't get a compensation scheme up and running if you have negative licensing.

The Hon. K.T. GRIFFIN: I would disagree with that.

The Hon. C.J. Sumner: You can, but the industry will not cooperate in the compensation scheme. It is as simple as that.

The Hon. K.T. GRIFFIN: I have made the point, though, that notwithstanding my preference and the Liberal Party's preference for negative licensing, we will not oppose the Bill. We recognise that something needs to be in place to protect the consumers and to maintain some confidence in the travel industry. So, we are going along with the licensing provisions of this Bill, although we have a number of questions about the Bill itself and I want to raise those in the course of the debate.

The question I suppose is whether it is really going to give the consuming public the sort of protection for which it is looking and which the travel industry believes might be appropriate. There is no reference in the Bill or the second reading explanation to the level of the levy which might be imposed on travel agents in respect of the compensation fund.

We do not know at this stage, and I would ask at the appropriate time for the Attorney-General to identify what is the expected levy upon travel agents; what is the expected level of contributions in aggregate to the compensation fund; what is the extent to which it might be envisaged that there would be any deficiency in the operation of the com-

pensation fund; and what mechanisms are proposed to deal with any deficiency.

What comes to mind immediately is the Land and Business Agents Act where the fund maintained under that Act has not been adequate to pay out 100 per cent of defalcation by some defaulting land agents. The most recent case relates to the matter of Field where recently I think an order was made by the Land and Business Agents Board that 35 cents in the dollar be paid, leaving a quite considerable deficiency or loss for those who suffered at the hands of Mr Field, a defaulting land agent.

My contacts in the travel industry indicate that the province of Ontario in Canada had a similar sort of problem in the mid-1970s when the compensation fund there was inadequate to meet a defalcation of some $8 million (Canadian) and there was a grave deficiency in terms of the amounts which the travelling public were not able to recover. I would like to explore those questions during the Committee stage of the Bill, but I flag them now for the Attorney-General with a view to obtaining information about the level of compensation and what is going to happen if the fund is not adequate to cover all potential defalcations.

The definition of 'travel agent' is particularly wide. It identifies a travel agent as 'a person who carries on the business of selling or arranging for sale rights to travel or rights to travel and accommodation'. It provides some exceptions, such as 'where a person sells rights of accommodation at a place owned by that person or where the owner of a motor vehicle sells rights to travel in that vehicle'. The exceptions are generally fairly minor, so a variety of bodies will be travel agents under the definition of clause 4 of the Bill. There is provision for some exceptions to be made, and I would like the Attorney-General, during the Committee stage if possible, to identify whether or not any exemptions are proposed. However, subject to exemptions, if any are proposed, one could envisage all travel agents being specifically included within the definition.

In relation to country areas, the general store might happen to sell bus tickets for transport to Adelaide on lines such as Ansett Pioneer, Stateliner, or one of those other country bus services. It may also apply to the small provincial store, which among its agency business might be acting for Ansett Airlines, TAA, or even Qantas, and which may have only a small turnover of travel-type business but nevertheless would come within the definition of 'travel agent'. It would also encompass the State Transport Authority in so far as the authority charters its buses for metropolitan, near metropolitan or country charter work. It would extend to the South Australian Government Travel Centre, because quite obviously that acts as a travel agent; to the State Bank of South Australia, which has a travel agency section; to other State Government travel centres which have travel agents in South Australia; to Australian National, Trans Australia Airlines, Ansett Airlines, Airlines of South Australia, and all the other airlines, whether major or minor.

I suppose it would even extend to some of the charter airlines, because they sell rights to travel. Although they would generally be selling rights to travel in their aircraft, they may also on occasion sell rights to charter other aircraft where perhaps they do not have sufficient numbers of aircraft to meet the demand. The definition would also include the Commonwealth Bank through its travel section and Australia Post, because it sells travel rights, I understand, on Greyhound buslines. So, there is a range of agencies and businesses which are likely to be required to be licensed under this Act.

The first point I want to make about the Bill is that it does not bind the Crown. I think that the Crown ought to be bound in every respect, except where it might be liable for prosecution for a breach of the Act. Although it may be only a bookkeeping entry, it ought to pay licence fees, or fees equivalent to licence fees. It ought to make a contribution to the compensation fund. I am referring to the Government Travel Centre, State Bank, and the State Transport Authority, for example, to the extent which other similar agencies in the private sector of the community are required to make contributions and bound to maintain certain standards. They ought also to apply to those agencies of the Crown in the right of the State.

In respect of the travel centres of other States, I would expect the same sort of standard to apply so that the Crown in the right of other States is similarly bound by the provisions of this Bill. The Commonwealth is a slightly different matter because of the constitutional difficulties in binding agencies of the Commonwealth. However, I see no reason at all why the Commonwealth Bank should not be bound in terms of its travel agency business. There is no reason at all why Australian National, to the extent that it operates as a travel agent, should not be bound. Ansett Airlines will be bound, so why should not Trans Australia Airlines be similarly bound and make the necessary contribution to both the costs of running this scheme through licensing fees and the compensation fund.

I recollect that in relation to the financial institutions duty there was a difficulty in binding the Commonwealth Bank and other Commonwealth agencies to pay financial institutions duty. However, that was overcome by what I thought was a particularly draconian measure, placing an onerous burden upon the depositors with the Commonwealth Bank.

The difficulty occurred not only in relation to a Commonwealth instrumentality but also because it would have been a tax on the Commonwealth. So, it might be possible in some way to bind the Commonwealth instrumentalities to be licensed or at least to pay into the compensation fund and make contributions to the maintenance of this licensing scheme proposed under the Bill. I propose to move amendments at the appropriate time which will seek to bind the Crown in the right of the State and to go as far as constitutional limitations will allow in respect of Commonwealth instrumentalities.

The Bill provides for an application fee to be paid on application for a licence. It also provides for annual licence fees. Both those fees are to be prescribed. The second reading explanation gives no indication of what these fees will be. Will the fees be based on turnover, which of course would bring us into the realm of constitutional difficulty about whether or not they would be duty of the Department of Customs and Excise, or whether they relate to sales tax or whatever? Are they to be based on a graded scale, depending on the extent of one's business, or are they to be a flat fee per travel agent? Would Ansett Airlines pay one fee because it is a travel agent, or would it pay a fee based on its outlets? Would all the major travel agents in Adelaide, for example, pay the same fee as that paid by the small country store or country agency business? If that were the case, it seems to me that that would be grossly disproportionate in terms of the level of business involved.

I would like to have some detail from the Attorney-General as to what sort of fees are likely to be imposed, and the basis of calculation. Further, will there be any gradation according to the size of the operation and level of business? I am not proposing that we fix the fees in the Bill, as I think that that would be cumbersome. However, I think it is important to have something on the record about the levels of fees likely to be proposed by regulation.

I also raised the question of the compensation fund. While a trust deed is to be established by regulation and approved by the Minister, it is important for us in the course of this debate to have a copy of the trust deed so

far as a copy might be available of the terms and conditions concluded so far. We need to look at things such as who removes the trustees, in what circumstances they can be removed, what directions may be given to the trustees, who makes decisions about payouts, how the fund is to be invested, and whether it be subject to the provisions of the Government Financing Authority? A whole range of questions could arise under the trust deed which we should have available now while the Bill is being debated. Therefore, I ask the Attorney whether, at the appropriate time, he will make available to the Council a copy of the trust deed so far as it has been resolved at present.

The second reading explanation indicates that a copy may be with the Department of Public and Consumer Affairs now. If it is with the department, it also ought to be available to us. Also, I have already raised other questions about the level of contribution that can be expected by the travel industry for the benefit of the compensation fund. Again, I would like to know the basis on which the fee is to be calculated. I would also like to know the extent to which supplementary levies can be made to top up the fund in the event of a major defalcation and the fund being inadequate to meet the demands on it by those members of the travelling public who have suffered as a result of defalcation.

Another major area of concern with the Bill is that, although there is a requirement under clause 17 to keep proper accounts, as may be prescribed, and there is provision in the regulation making power in clause 35 to require periodic audits of accounts, nowhere is there reference to the requirement to keep the trust account. I have been used to the mandatory requirements placed on legal practitioners to keep trust accounts that separate the funds of clients or customers from those of the entrepreneur, the lawyer or other such person, so that there is a clearly defined body of money that is not the property of the agent. In this instance, it is contributed by a consumer for passing on to airlines, accommodation groups and so on to purchase goods and services for the consumer.

I am surprised that there is no provision for a trust account. I feel strongly that there ought to be such provision and, if possible, I would like the Attorney in his reply to indicate why there is no provision for a trust account and what are the reasons for the Government's agreeing to there not being such a provision in the Bill.

It is likely that I will want to move an amendment to require the keeping of a trust account according to procedures prescribed by regulation. That will be an opportunity for us to debate the desirability of trust accounts and whether or not they can be supported in this instance. Incidentally, the Consumers Association of South Australia takes the view that trust accounts are an important requirement and ought to be insisted upon in the conduct on a travel agency. I have been told that some, at least, of the major travel agents do keep clients' and customers' money separate in trust accounts so that it is not mixed with their own.

I wish to refer to several other matters. Clause 8 provides that, where a travel agent dies, the executor can carry on the business for up to six months or until the business is sold, whichever first occurs. It seems to me that that is unnecessarily restrictive. In other legislation, the period of 12 months is specified, with a provision enabling extension of that period by the licensing body. I propose that, unless there is some good reason for limiting it to six months, it be extended to 12 months, with power in the tribunal to authorise the continuation of the conduct of the business in the hands of an executor in the course of winding up an estate.

It is not always easy to get a grant of probate and sell off a business within six months. It is not easy sometimes, when the estate or business may be large, to do that even within 12 months. That is why some flexibility needs to be given to the Commercial Tribunal to grant an extension of the time period under clause 8.

Clause 10 provides that, if a travel agent is in contravention of part 2 of the Bill, the agent is not entitled to recover any fee, commission or other consideration for services performed. That can be a minor contravention and it seems to me that that sudden death provision is not in the best interests of the travel industry or, for that matter, the consuming public.

Some discretion ought to be available to the Commercial Tribunal, as I think there is to the Credit Tribunal in relation to credit charges, to allow a travel agent, who is in contravention of that part, to retain all or some portion of the commission or other consideration for arranging services for members of the travelling public. It is important to have that discretion available, rather than there being a sudden death provision.

In the Bill the tribunal has power under clause 11 to take disciplinary action where a travel agent has acted, among other things, negligently, fraudulently or unfairly, I have no objection at all to the concept of negligence or fraud as a basis for disciplinary action. I have some reservation about the concept of unfairness, because it may be that the travel agent has acted in accordance with the law and is not in breach of any law or the provisions of the Bill, but yet in a particular instance it may be perceived by the tribunal that the agent has acted unfairly.

That is a very subjective test; what may be unfair for one person may be fair for another. It seems to me to be unreasonable that an agent should be subject to disciplinary action on the basis of that subjective test where there is no breach of the law. I want to debate that issue in Committee, but I raise it now for the consideration of the Attorney.

Clause 16 provides that a person carrying on a business as a travel agent in pursuance of a licence shall, if the person is not present to supervise personally the day-to-day conduct of the business, employ a person with the prescribed qualifications personally to supervise the business.

That suggests to me that for every minute of every day that the doors are open for business someone must be present personally who has the prescribed qualifications. I think that is too onerous. All we need to have is a person responsible for the day-to-day conduct of the business, that person having the prescribed qualifications, without requiring the person to be present for every minute of every day that the doors are open. I will want to move amendments that clarify that without relieving the proprietor or supervisor from the general observations of the Bill. I can more appropriately deal with certain other matters within the Bill during the Committee stage.

Finally, I was surprised that the Consumers Association did not have a copy of the Bill and had not been consulted; nor does it appear that the Tourism Industry Development Council had a copy of the Bill or at least was alerted to the proposals in the Bill prior to its introduction. Suffice to say that that has now been remedied. The Tourism Industry Development Council has raised some concerns about the regulation of those selling accommodation and travel to inbound tourists to South Australia. I do not think that that can be adequately dealt with by legislation in South Australia. What happens in New York, London or some other place outside the jurisdiction is not something that we can regulate in this State. I think we must be content with some scheme that provides appropriate mechanisms to ensure that the travelling public entering into transactions in South Australia, for travel and accommodation outside South Australia principally, are as well covered as possible from the consequences of defalcation.

The Opposition supports the Bill, although a number of questions must be resolved in relation to it. During the Committee stage undoubtedly a number of amendments will be debated.

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

The Hon. C.M. HILL: I support the second reading of the Bill but have some queries which I would like to put before the Minister who introduced the measure. In my review of the legislation I circulated copies to some people involved in the industry, and they have raised three or four points which I want to put to the Minister and, hopefully, he can give his replies to these queries when he completes the second reading stage or, perhaps, during the Committee stage of the Bill.

My contacts within the industry were a little disappointed that they had not seen a copy of the Bill. They knew, of course, that the Government was going to introduce a measure to license and control travel agents.

The Hon. Barbara Wiese: They knew there was a national agreement. Everybody was happy with the provisions.

The Hon. C.M. HILL: They did not know the provisions that were in this Bill.

The Hon. Barbara Wiese: They may not have seen the actual words, but they knew what was going to be in the Bill.

The Hon. C.M. HILL: It is one thing to give a general precis of a measure to those within the particular industry, and it is another thing to give them a copy of the Bill and say, 'This is what we propose. Are you happy with it or have you any queries about it?'

The Hon. C.J. Sumner: You want to hold up the Bill.

The Hon. C.M. HILL: The Minister says that I want to hold up the Bill. I said three minutes ago that I support the second reading. The point I want to make is that when this Government brings in legislation affecting various industries it has a clear duty, if it has any respect at all for the people in those industries, to give them a copy of the measure and obtain either their approval or their comment about it before it comes into this final stage within the Parliament. Any Government which respects the views of the people out there and of the industry that is involved in the Bill will go to them in the first instance. That is why these people have associations. That is why they have their institute.

They are standing there, waiting for the Government of the day (whether it be Liberal or Labor) to tell them what is proposed in any measure affecting them and their industry, but this Government on this measure did not do that. It is not a very good start: the first Bill that the Minister introduces—No. 1 Bill on the Notice Paper of this Council in this session—is a Bill which affects people who are in business at the moment, yet they have not been consulted.

From time to time you hear from members on that side of the House, 'We are great ones on consulting the public.' You did not do it on this occasion, and you are at fault.

The Hon. C.J. Sumner: That is absolutely ludicrous and inaccurate.

The Hon. C.M. HILL: I can give you the names of those in the industry who have not seen this Bill and, indeed, one particular party (which, I understand, is the largest privately owned travel agency in this State) has not seen the Bill.

The Hon. C.J. Sumner: Are they members of AFTA?

The Hon. C.M HILL: Certainly, they are. The Minister likes to deal with the big people. The people down below (the membership of these groups) are not considered at all by the Minister, so I hope that in future, when this Government introduces measures which affect the livelihood of business people in this town—

The Hon. C.J. Sumner: They want this Bill. They have been wanting us to put it in for about five years.

The Hon. C.M. HILL: In general terms they want the Bill. The Minister should know that there is more to it than that. They did not know that there was a reverse onus of proof in this Bill.

The Hon. C.J. Sumner: They wanted it put off until August, you are suggesting.

The Hon. C.M. HILL: They did not tell me that. They told me that, in general terms, they support the measure but are very concerned about some aspects of it. They are even more concerned that this Government, which purports to consult with interests of this kind, did not consult with them.

The Hon. C.J. Sumner: They were consulted.

The Hon. C.M. HILL: You may have consulted with somebody who is supposed to represent them. I am not dealing with a part-time travel agent, I am not dealing with somebody who is a fly-by-nighter: I am dealing with the largest privately owned travel agency in this State.

The Hon. C.J. Sumner: Who is it?

The Hon. C.M. HILL: Never you mind! You should know who it is. If you knew about the business for which you are introducing this measure, you would know.

The Hon. C.J. Sumner: They are very happy with it.

The Hon. C.M HILL: They are not very happy with it at all. These are the matters which I have been asked to put to the Minister on their behalf, because they themselves have not had the chance to do it previously because they were not consulted. The first point is particularly relative to the tribunal hearing appeals, but also involves the question of the actual granting of licences by the tribunal.

These people want to know whether the Government wishes to ensure that people involved in the working of the industry will have any input in the tribunal particularly, as I said, in regard to the question of hearing of appeals. This is dealt with in clause 11 of the Bill. These contacts of mine believe that the industry representation on the tribunal should be a majority representation. I do not know that I want to push that point to the extreme, but it is my duty to bring it to the Minister because, of course, he has not been in direct contact with them.

The Hon. C.J. Sumner: That is ridiculous! They could have written to me: they could have come to see me.

The Hon. C.M. HILL: If the Minister thinks he can sit up in his office and expect all the underlings in this town to come and see him, he is getting too big for his boots. This is a fine start to the record of this Government. Four years of this, and where will we be? The Minister knows that, as a result of the excellent work of Mr Burdett and the previous Liberal Government, we have on the Statute Book the Commercial Tribunal Act 1982. Section 8 of that Act provides:

> The Governor may, in relation to each of the relevant Acts—

let me interpose and say that this is a relevant Act under the definition clauses of this Bill—

> establish a panel consisting of members representative of the interests of the class or classes of persons who are licensed or registered under the relevant Act, or whose conduct is otherwise regulated under the relevant Act.

This provides the machinery whereby some representation from the industry can have input into the tribunal and its workings. I ask the Minister whether in his reply, he will indicate that he intends to provide for representation from the industry relative to that particular tribunal.

The next point that was raised with me deals with clause 16, and the question is posed to me: what will be a prescribed qualification? It is pointed out that there are many competent people either managing or owning a travel agency who do not hold 'formal qualifications' but have 20-odd

years, in some cases, of practical experience in this complex industry. Can the Minister, therefore, explain in his reply, in his prescription relative to this matter, what actual qualifications will be defined in regard to clause 16, which deals with the supervision of the conduct of a business. That point, I think, is one which indicates the pragmatism, with which, naturally, the industry is looking at this Bill.

They would like to know before the Bill finally passes what qualifications will be prescribed for people who act in lieu of licensees relative to their ability to supervise the business of managers, and so forth.

The third point deals with part III and the compensation fund. I have been asked to try to ascertain whether the contribution by a travel agent to the fund will be a percentage of turnover or a set fee per annum. Also, if it is to be a set fee per annum, will it in any way be scaled so that small operators (for instance, those in country towns where a few international or national bookings might be made each year) will not have to pay the same fee as a large travel agent in metropolitan Adelaide.

The last point raised deals with clause 32 and the reverse onus of proof. I know that there are occasions on which legislation passes the Parliament containing a reverse onus of proof, but I think that all members on both sides agree that we should try to avoid this form of legislation because it is contrary to the established British system of justice under which any citizen is innocent until proven guilty. This particular clause, which deals with offences by bodies corporate, says at the moment that every member of a governing body is guilty until those members prove that they could not by the exercise of reasonable diligence have prevented any commission occurring. Will the Minister comment on that point so that it can be considered further during the later stages of this debate? From my observations, and after contact with these people, I believe that there is a general consensus of support for the measure.

The Hon. C.J. Sumner: You commend the Government?

The Hon. C.M. HILL: I am happy to give commendation where it is due. Simply introducing a Bill does not necessarily satisfy me in totality, because in this place we are supposed to look at the fine print in Bills and to review the sorts of points that I have put to the Minister tonight. I hope that in due course a satisfactory explanation will come from the Minister with regard to those points.

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

CRIMES (CONFISCATION OF PROFITS) BILL

Adjourned debate on second reading.

(Continued from 12 February. Page 61.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill. Prior to the State election a similar Bill was before this Council and I had an opportunity to express views on that Bill and to raise questions, one of which has been attended to by the Attorney-General in bringing this Bill before us in this new Parliament. There are matters which I raised in that debate on the 1985 Bill but which have not been addressed in the second reading. I would like to briefly put them on record so that at an appropriate time during the debate the Attorney-General can address those issues.

The most significant issue to which I refer is the definition of 'prescribed offence' in clause 3(1) of the Bill. I have no difficulty with the confiscation of profits legislation applying to indictable offences because we know what they are—they are on the record. The difficulty with the other part of the definition is that it is to apply to summary offences declared by regulation to be prescribed offences. The difficulty with that is that this Parliament does not know what summary offences will attract the very onerous provisions of the Bill until they are prescribed by regulation. That regulation comes before us only for review by the Joint Committee on Subordinate Legislation, being subject only to disallowance by either House if the numbers can be mustered to disallow in the circumstances where the summary offence may be regarded as an inappropriate offence to which to attach this legislation.

I have always been of the view that where penalties are to be imposed, except for breaches of regulations, those penalties ought to be imposed by the Parliament for offences which have been created by the Parliament and which have been debated by the Parliament. Regulations do not give us that opportunity. The legislation before us provides for confiscation of assets by order of the court, for sequestration orders to be made and for profits obtained from ill-gotten gains to be sold and the proceeds appropriated by the Crown for the purposes outlined in the Bill.

That is a very serious consequence of criminal activity, particularly if it is a summary offence established by statute, that is, generally speaking; dealt with by a magistrate without a jury and for what one might regard to be a less serious offence than any of the indictable offences to which the Bill also applies. I raised this question when we debated the Controlled Substances Bill, which the Government introduced in 1984, because in that Bill the confiscation of assets provisions, as well as the classification of offences to which differing penalties were to be attached, were all to be implemented by regulation. The Parliament had no control over, or even input into, the nature of the offences which would, under that legislation, attract penalties of up to 25 years or monetary fines to a maximum of $250 000.

It would seem to me quite inappropriate as a matter of principle that that sort of decision ought to be made by regulation by the executive arm of government. I have maintained consistently that view: where there are heavy penalties imposed Parliament ought to be the body which decides on which offences those penalties ought to be imposed.

As it turned out with the controlled substances legislation in 1984 the Liberal Opposition was not able to gain a majority on the floor of the Council to insist upon specific offences attracting those massive penalties and the Bill went through largely unamended. We saw last year the classification of offences to which the penalties of the Controlled Substances Bill applied set out in regulations and there was really no opportunity for Parliament to influence that decision.

The Hon. C.J. Sumner: You can debate them.

The Hon. K.T. GRIFFIN: One can debate a motion for disallowance, but the problem as the Attorney-General knows is that one cannot disallow part only of a regulation. One cannot amend a regulation: one can only disallow the whole. For example, the regulations brought in under the Controlled Substances Act were 30, 40 or 50 pages. They not only dealt with classification of offences, they dealt with categorisation of certain poisons and a whole range of other matters—form filling and other such administrative matters. To have moved to disallow in relation to one aspect of the regulations would have meant disallowance of the whole scheme.

It is frequently not appropriate for that to be done. The same applies in the context of this legislation. Sure, the regulations will be reviewed by the Joint Committee on Subordinate Legislation; sure, a motion for disallowance can be moved in either or both Houses of Parliament; sure, the regulations can be debated. But, in the end the only remedy is to disallow in whole. One cannot disallow in part

or amend. That is the disadvantage. I know we have had it under the Subordinate Legislation Act for many years, but it is something on which I have consistently maintained an attitude—and I have not departed from that view—that it is inappropriate for the sorts of penal sanctions imposed by this Bill, by the Controlled Substances Bill and by other legislation to be imposed by regulation. They should be imposed by Parliament.

The Hon. C.J. Sumner: The penalty is not imposed.

The Hon. K.T. GRIFFIN: The penalties are specified in the Bill, but the actual application of the penalties is being done in part by regulation. One has indictable offences; sure, they are identifiable. We have the opportunity to move for some to be excluded if we want to. They are known. We are creating a power in the court to confiscate assets of those who are convicted of indictable offences. There is no argument about that.

But, the other aspect is that we are proposing to pass a statute which gives to the courts power to confiscate assets in relation to some sorts of summary offences which are not identified. That is the problem. It may be, taking an extreme example—

The Hon. C.J. Sumner: It is not a problem.

The Hon. K.T. GRIFFIN: It is a problem because the Government has not identified the summary offences to which it is to apply and it is possible to prescribe a whole range of offences—some of which might be minor, some of which might be major. We do not know and it is that aspect which, in my view, imposes the penalty for offences which are not identified. It is a major problem of principle. If one is to introduce draconian legislation—I am not arguing with the concept but it is very severe legislation imposing quite extraordinary penalties and giving the courts quite wide powers—

The Hon. C.J. Sumner: It is just saying that if you have gained some asset out of your criminal activity you should give it up. There is nothing particularly dramatic about that.

The Hon. K.T. GRIFFIN: I have no argument with the principle but everybody has a right to know the offences to which that power is to be attached.

The Hon. C.J. Sumner: You'll know.

The Hon. K.T. GRIFFIN: I am saying that we do not know. If the Attorney-General has some detail later he can identify that. If he has got the specific offences why not put them in the Bill itself and identify them so that Parliament makes the decision and everybody in the community knows where they stand? I am not arguing against the power; I am arguing that it is the imposition of quite extraordinary penalties over and above the statutory maximum monetary penalties and the maximum periods of imprisonment which are being imposed by this Bill.

I do not think at this stage that I can take it any further. Suffice to say that as a matter of principle I have argued against it in the past. I will continue to argue against it because of the breadth and seriousness of the power which is given to the courts in relation to confiscation. I have argued for confiscation of assets of offenders for a long time. I introduced a private member's Bill in I think 1983. It was part of Liberal Party policy in the lead up to the 1982 election in relation to—

The Hon. C.J. Sumner: What offence?

The Hon. K.T. GRIFFIN: At that stage it was in relation to drug trafficking. When my private member's Bill was being debated the Labor Government said it would not support it but it would enact its own legislation, which it did. It subsequently came into effect some 15 months after mine could have been in operation and used by the courts against drug traffickers.

Be that as it may, I have on the record the sequence of events which occured. I am happy to support, as I indicated, the extension of the confiscation power to indictable offences and a question mark about summary offences. That is my major concern about the Bill. I hope we can clarify it during the Committee stages.

I want to refer to several other matters. During the course of the debate on the 1985 Bill I made the point that under clause 4, which deals with the potential to acquire accretions to a person's property in consequence of the commission of a prescribed offence, there is a need to ensure that there is no injustice created as a result of that. The criminal may well have frittered away the ill-gotten gains from criminal activities leaving, as I indicated on that previous occasion, a home in which a spouse and children reside.

I am not sure how the courts would treat that—whether they would regard that as part of the proceeds of the criminal activity even though it may have been owned by the criminal and spouse prior to that criminal activity. But, the proceeds from the criminal activity having been dissipated there may be nothing else upon which the court can issue a sequestration order. I would like the Attorney-General to explore the sorts of assets which might be the subject of a sequestration order in those sorts of circumstances.

The other question I raised on the previous occasion related to the mechanism for tracing the proceeds of a criminal's ill-gotten gains. I raised the question whether the opportunity to trace property extends to a corporation in which the criminal may have some interest—whether controlling or otherwise—and whether it also extended to related corporations, family trusts, unit trusts or some other scheme by which the proceeds of the criminal activity could be dissipated to the control of others, at least on a trustee basis.

I would like that aspect of the Bill clarified. I am pleased that one of the points that I raised on the last occasion has now been picked up and clarified, namely, the point relating to the lapsing of a sesquetration order. I raised a question also about the hours within which a search warrant could be issued. Clause 8 of the Bill provides:

> A search warrant shall not be executed between the hours of 7 o'clock in the evening and 7 o'clock the following morning unless the magistrate by whom the warrant is issued expressly authorises its execution between those hours.

I presume that the issue of search warrants is really related only to the carrying out of the functions sufficient to enable compliance with this legislation. I do not think it extends to other search warrants but I would like that matter clarified, too. In the execution of a search warrant I wonder why there is a limit to the hours to which I have referred. There may be some good and valid reason for it, but at the moment I am not able to see that.

Subject to those comments, I certainly support the legislation. Its implementation will need to be watched carefully to ensure that no injustice is done. That is not to say that I have weakened in my resolve to see the ill-gotten gains equipped from criminal activities confiscated for the benefit of the people of South Australia but merely to say that in the application of this sort of legislation one must always have justice in view, and I do not want to see injustice created as a result of the stringent and technical application of this legislation. I repeat: the principle of empowering the courts to confiscate goods is certainly supported by the Liberal Party. I support the second reading.

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

ADDRESS IN REPLY

Adjourned debate on motion for adoption (resumed on motion).

(Continued from page 194.)

The Hon. J.C. BURDETT: I support the motion. I thank the Governor for the speech with which he opened this forty-sixth Parliament. Madam President, I congratulate you on your election to high office. I do not know that I can altogether wish you a long term of office, but I do wish you a happy and rewarding one. I congratulate the new members on their election to the Council and on the speeches that they have made. A number of members who have spoken previously in this debate expressed their thanks to members of this Council who retired at the last election for their services to the State. Some members went into the history of those members in some detail, and I do not propose to do that again.

I shall just say that the Hon. Ren DeGaris has been my friend and mentor since I first aspired to political office. I hold as a dear friend the Hon. Arthur Whyte. The Hon. Cec Creedon I always found to be a most friendly and sincere person. The Hon. Frank Blevins brought to this Council a very high degree of ability, and I am sure that he will continue to exert that ability in another place, and I wish him well for the rest of his political career. On a personal basis the Hon. Lance Milne was universally popular, although on a political basis his popularity depended on who he had voted with last. However, I do pay a tribute to the Hon. Lance Milne, particularly for his service during his first three years as a member of this Council when he was the only member in a Council consisting of 22 members who was not politically aligned. He had a pretty difficult task and I think that he did his job pretty well.

Tonight I intend to speak on the matter of subordinate legislation, also, and perhaps more accurately, referred to as delegated legislation. In South Australia delegated legislation comprises regulations made by the Governor (which is by the Government), by-laws made usually by local government bodies, and rules made by specified authorities, usually the courts. In all cases the power to make the legislation is derived from Acts of Parliament. That is to say, the Parliament delegates its power within set parameters to other bodies to make laws.

Delegated legislation, once it is in place, and so long as it remains in force, is just as binding as laws made by the Parliament itself. It may deal with matters of the greatest importance; it may impose very severe penalties for breaches; and, in fact, comprises the great bulk of legislation passed in this country. I recall that when I was an articled law clerk one of my principals said, 'We aren't governed by Parliament; we are governed by so and so regulations.' Very frequently, of course, that is the case. The 1952 report of the Committee on Ministers' Powers (the Donoughmore Committee) cited an Act concerning merchants of the Staple passed in 1585 as the earliest example in England of an Act empowering the making of delegated legislation. The most famous of the early statutes delegating legislative power to an authority was the Statute of Proclamations passed in 1589. The main provisions of that Act stated:

> The King for the time being with the advice of his Council, or the more part of them, may set forth proclamations under such penalties and pains as to him or them shall seem necessary which shall be observed as though they were Acts of Parliament.

This example will show that when we talk of the apparently humble subject of subordinate legislation or delegated legislation, we are really dealing with the very stuff of democracy. It was the use of powers of delegated legislation such as this which largely provoked the conflict between King and Parliament. The blatant setting up of such sweeping powers and their blatant abuse makes a nonsense of the doctrine of the separation of powers between the legislature which makes the law, the executive which carries out the law, and the judiciary which adjudicates in individual cases of dispute according to law. This doctrine has come to be regarded as the main bastion of freedom in a British democracy.

Acts such as the Statute of Proclamations give the bulk of the legislative power to the executive and destroy the doctrine of the separation of powers. It is worth noting that Adolf Hitler set up his dictatorship, not by bloody revolution, but constitutionally, when he was given the power to govern by decree, that is, to pass laws which had all the force of law but which had never been to the Parliament.

One of the matters to which the Donoughmore Committee directed particular attention was the inclusion in an Act of a power to amend either that Act or other Acts by regulation. Such clauses are known as "Henry VIII clauses". The committee recommended that the use of clauses of this kind should be abandoned in all but the most exceptional cases and then only for the purpose of bringing an Act into operation.

The Hon. C.J. Sumner interjecting:

The Hon. J.C. BURDETT: I am coming to that very shortly. Even then the clause should be subject to a time limit of one year from the passing of the Act, and the reason is obvious.

The Hon. C.J. Sumner: When was this report—1933?

The Hon. J.C. BURDETT: It was a 1952 report. Henry VIII clauses vest enormous legislative power in the Executive Government. A provision which, on the face of it, extended a most startling power to make regulations amending Acts was included in the South Australian Acts Interpretation Act Amendment Act 1975. So do not let the Attorney-General or anyone tell me that Henry VIII clauses are old hat or cannot happen now or cannot happen here. This happened during the parliamentary careers of several present members of this Chamber. The Bill proposed a new section 51 (1). I will read it, although I acknowledge that it is fairly hard to pick up, when just hearing it read, exactly what it means. The section provides:

> Where, in consequence of a provision of any Act or of any proclamation, regulation, rule, by-law or other instrument, the making of which has been authorised by or under any Act, or in consequence of the exercise of any power conferred by or under any Act on any person, body (whether incorporated or not) or authority of any kind, a provision, word or passage in an enactment which had previously been in operation and capable of application and interpretation has become inoperative or incapable of application or interpretation or has become inconsistent with that Act or instrument or with any action taken or anything done in exercise of that power, the Governor may, to the extent only necessary to make such provision as is consequential on and consistent with the first mentioned provision or with the act taken or thing done in exercise of that power, by regulation (which he is hereby empowered to make) direct that any specified provision, word, passage or reference in any such enactment shall be read as some other provision, word, passage or reference, as the case requires, and as shall be specified in the regulation and any such direction shall have effect according to the tenor thereof as if it had been expressly enacted by the Act in which the enactment occurs.

As I have said, it is very difficult on a reading for members of the Council to apprehend what it means, but it clearly does, particularly from its last words, enable an Act to be amended by regulation.

The Hon. C.J. Sumner: Where was that from?

The Hon. J.C. BURDETT: The Acts Interpretation Act Amendment Bill 1975. We have, with some guidelines, a power to change any Act by regulation. This startling provision was said to be introduced for the apparently innocuous and laudable purpose of facilitating the reprinting of the South Australian Acts as in force up to 1975 and to tidy up inconsistencies but the power given certainly was much wider than that. When the Bill was debated in the Council, I said in my second reading speech (*Hansard,* page

1867) after commending the reprint—that was most laudable and should happen more often:

> This Bill would enable the Government by regulation to change, in certain circumstances and with certain safeguards, words in statutes, and that really is a fundamental matter of parliamentary government. It is alarming that the Government should in any circumstance be able by regulation to change the words in Acts of Parliament. As I have said before, I do not doubt the sincerity of the Government in this matter but it seems to me possible that in, say, 10 years time—

which has now elapsed—

> some other Government may find this legislation a handy way of changing the law by way of regulation only, and at that time some of the safeguards, as pointed out in the second reading explanation, may well not come to the minds of the people concerned. So I think there should be an expiry date for this measure.

I moved the amendment to place a time limit on the legislation and, after a satisfactory expiry date had been discussed and agreed on, the amendment was accepted by the Government and passed and became subsection (2) of the section in question, as it now stands.

This concern of mine about powers of amendment of Acts of Parliament by regulation was not merely an academic or pedantic fantasy. It is highlighted by Pearce in his book *Delegated Legislation in Australia and New Zealand.* He refers to the provision on page 7 as 'on the face of it extending a most startling power to the executive to make regulations amending Acts'. He says on page 8:

> While the Opposition in the House of Assembly expressed some doubts about this method of procedure, the Bill was not opposed. However, in the Legislative Council, the present subsection (2) was added to the section. It was pointed out that the consolidation could be finished by then and that, without such a provision, regulations could be made at any time in the future to amend Acts. If the provision is indeed used for the purpose stated by the Attorney-General, undue objection cannot be taken to it. However, it does vest an extensive power in the executive, the use of which will need to be scrutinised most carefully.

I might add that our astute press, while giving wide publicity to legislation which did not affect our constitutional liberties, said absolutely nothing about this provision which could have given a Government of the day startingly wide powers and which could, if not amended, be still effective and still available for a government to use.

The matter of Henry VIII clauses is by no means something that is forgotten or not worried about, as the Attorney, by interjection, seemed to imply. The Commonwealth Conference on Delegated Legislation Committees held in Canberra in 1980 and the second Commonwealth Conference on Delegated Legislation held in Ottawa in 1980 both devoted considerable time to Henry VIII clauses.

There is no doubt that regulations and other delegated legislation are necessary. Detailed laws need to be made which would completely bog Parliament down if all detailed provisions were made by Act of Parliament. No one believes that there should be no regulations, only Acts of Parliament, and at the other end of the spectrum no one believes that the Government should have almost unlimited power to make and change the law by regulation. No one wants to return to the statute of proclamations—or if anyone does that person needs the very closest scrutiny.

In order to maintain a proper balance between on the one hand not giving undue power to the executive and on the other hand not burdening Parliament with what really are ancillary matters of detail, it is first necessary for the Parliament itself carefully to scrutinise clauses which delegate legislative power to other than the Parliament. It is necessary, first, to determine that the power is not one which should or could conveniently be exercised by Parliament rather than being delegated to the executive or some other body. The power must be necessary or convenient to the administration of the Act in question, and it must not give powers which are more properly exercised by the Parliament itself.

It is true, of course, that regulations are more easily changed than Acts of Parliament and there are areas where it is necessary for the Government to be able to act quickly by way of regulation. However, it is tempting to a draftsman when he has difficulty in defining just exactly what needs to be addressed in a Bill to provide wide regulation-making powers instead of addressing the matter in the Bill itself.

Unfortunately, the regulation making power in a Bill is usually tucked away at the end of the Bill. By the time members have ploughed their way through the rest of the Bill they are too often prepared to turn off when they get to the regulation making power and regard it as merely administrative. I intend to give some examples of Bills which did give unduly wide powers to the executive government and which are more properly exercised by Parliament.

The first was the Consumer Credit Act Amendment Bill 1975. In the second reading explanation of this Bill in the House of Assembly the then Attorney-General explained that the Bill was necessary in order to provide controls over credit cards. Instead of spelling out the powers in the Bill, the controls were to be exercised by regulation and, at least arguably, the Bill would enable the Government to control almost the whole of credit provision including the whole banking system, the provision of credit by insurance companies and the provision of credit by at least some stock firms. This could be done under the Bill by regulation. That Bill was strongly opposed by the Opposition in the House of Assembly. It lapsed on the prorogation of Parliament in 1975 and, fortunately, has not raised its ugly head again.

I next refer—and for the second time this evening, because the Hon. Trevor Griffin referred to it when speaking on the Crimes (Confiscation of Profits) Bill—to the Controlled Substances Bill 1984. Section 32(3) of the resulting Act provides:

> For the purposes of this section, a person who knowingly has in his possession more than a prescribed amount of a drug of dependence or a prohibited substance, being an amount that is prescribed for the purposes of this subsection, shall, in the absence of proof to the contrary, be deemed to have that drug or substance in his possession for the purpose of the sale or supply of that drug or substance to another person.

So, we have here a regulation actually able to alter the standard of proof or alter the circumstances which relate to the standard of proof. Section 32(5) of the same Act provides:

> A person who contravenes this section shall be guilty of an offence and shall, subject to subsection (6), be liable to a penalty as follows:
>
> *(a)* Where the substance the subject of the offence is cannabis or cannabis resin—
>
> (i) If the quantity of the cannabis or cannabis resin involved in the commission of the offence equals or exceeds the amount prescribed in respect of cannabis or cannabis resin for the purposes of this subsection—a penalty of both a fine not exceeding two hundred and fifty thousand dollars and imprisonment for a term not exceeding twenty-five years;
>
> or
>
> (ii) In any other case—a penalty not exceeding four thousand dollars or imprisonment for ten years, or both.

Here we have the penalties able to be very dramatically altered by the executive government by regulation—a difference between $250 000 and $4 000. There are other examples in the Act, and the complaints of the Opposition about such radical matters being left to regulation in the same Act went unheeded.

One of the other examples in the same Act was referred to by the Hon. Mr Griffin this evening, and that was in relation to the matter of confiscation. Of course, we have

before this Council at the present time the Crimes (Confiscation of Profits) Bill. As the Hon. Mr Griffin said, it very properly provides for the confiscation of the profits of crime, and it defines the crimes to which the Bill applies as being indictable offences. We know what they are, as has been said, and we have no argument with that. It also says that the Bill should apply to summary offences—offences punishable summarily which are prescribed by regulation.

As did the Hon. Mr Griffin, so do I commend legislation of a type which he introduced as a private member's Bill to enable the profits of crime to be confiscated and properly used. It certainly is a wide power and we ought to know to which crimes or offences it relates. It should not be possible for the Government simply to prescribe those crimes by regulation; they should be spelt out in the Bill.

Therefore, it behoves the legislature to look very carefully at the powers which it delegates to the executive or some other body, Labor Governments are particularly prone to take unto themselves very sweeping power to legislate by regulation rather than by Act of Parliament.

I next refer to the question of when you do have powers of delegated legislation in place (and, as I have said, much of that is proper), what is done by the Parliament to scrutinise the exercise of the power which it has delegated. In South Australia this matter is now governed by the Subordinate Legislation Act 1978—it was formerly governed by section 38 of the Acts Interpretation Act. As members of the Council well know, regulations and other delegated legislation like council by-laws and rules must be tabled in both Houses of Parliament. Members of the Council well know that subordinate legislation may be disallowed by either House of Parliament. Although Pearce notes that unlike some other Australian jurisdictions including the civil, no sanction, for example, invalidity, is provided if this is not done. The regulations have the force of law when they are made but may be disallowed by either House of Parliament by motion moved within 14 sitting days of tabling. In the case of local government by-laws, the by-laws do not take effect until this procedure has been exhausted. Parliament has no power to amend regulations—only to disallow or leave the regulations intact. It has also been accepted that Parliament has no power to disallow one or more regulations in a set of regulations. It may only disallow the regulations *in toto* or allow them to stand *in toto*. The Joint Committee on Subordinate Legislation is charged with the task of scrutinising regulations and it may recommend to the Houses of Parliament that subordinate legislation be disallowed. Joint Standing Order 26 states:

> The committee shall with respect to any regulations consider—
> *(a)* whether the regulations are in accord with the general objects of the Act, pursuant to which they are made;
> *(b)* whether the regulations unduly trespass on rights previously established by law;
> *(c)* whether the regulations unduly make rights dependent upon administrative and not upon judicial decisions; and
> *(d)* whether the regulations contain matter which, in the opinion of the committee, should properly be dealt with in an Act of Parliament.

All legislatures in Australia have some powers of disallowance and generally the powers are negative only—as in South Australia, the legislature may only disallow what already has the force of law. The options for parliamentary review or delegated legislation are set out in Pearce as follows:

> *(a)* requiring the legislation to be laid before the Parliament and not to come into operation unless the Parliament approves it;
> *(b)* allowing the legislation to come into force immediately but providing that its continuance in operation is dependent upon a resolution of the Parliament permitting that continuance;
> *(c)* providing for the legislation to be tabled in the Parliament and for it to come into force after a specified number of days unless the Parliament resolves that it not come into operation;
> *(d)* allowing the legislation to commence immediately it is made, but providing for its tabling and for the right of the Parliament to disallow the legislation by resolution at any time or within a specified time.

Of course, we adopt option *(d)*, the weakest of the options, except in regard to local government by-laws. All Parliaments in Australia have some form of committee charged with the review of delegated legislation. Pearce at page 140 in dealing with the South Australian committee says:

> The composition of the committee under recent Labor Governments has been two Labor Party members and one Liberal Party member from the House of Assembly and one Labor Party member and two Liberal Party members from the Legislative Council.

That doubtless was in the times when the Liberal Party had a large majority in the Legislative Council—a position which has been rectified by electoral reform—and it was a reform. From before the time when I first became a member of the committee, the pattern had been set at two Government members from both Assembly and Council and one Opposition from each, a position which was maintained through the time of the Tonkin Government. I think it must be said that this in its nature must weaken the effectiveness of the committee as a watchdog over Government regulations.

Obviously, a Government-dominated committee of either political Party—and it has happened under both Administrations—a committee with Government majority of four to two is going to tend to favour the Government at whose regulations it is looking. Pearce also comments:

> The committee does not vote on Party lines, its decision usually being reached by consensus.

Without revealing the deliberations of the committee, the minutes of the proceedings tabled in the Parliament will indicate that there have quite often been divisions, which in the time of the last Parliament were always resolved on Party lines; that is to say, in favour of the Government. The only thing I would say about the proceedings of the committee is that they have always been conducted with the greatest of goodwill.

The inability of the Parliament to amend regulations or even disallow one regulation in a set is a serious defect in parliamentary review of regulations. Giving Parliament—even both Houses—the power to amend Government regulations may be arguable, but either House should have the power to disallow one or more regulations in a set. This was a matter also referred to by the Hon. Mr Griffin when he was speaking earlier on the Crimes (Confiscation of Profits) Bill. This problem is referred to in Pearce at page 149 (referring to South Australia). He said:

> On another occasion in the period mentioned, a motion for disallowance of a zoning scheme was also defeated. This case pointed up a difficulty in the disallowance procedure. Objection was taken to one aspect only of the whole scheme. However, the view was taken that it was not possible to disallow part only of a scheme (similarly, part only of a set of regulations cannot be disallowed). Accordingly, it would have been necessary to disallow the whole scheme to get rid of the objectionable portions. A motion to that effect was moved following an adverse report from the committee, but, before it was dealt with, the committee in a second report apparently recommended that there be no disallowance of the scheme. The motion to disallow was defeated in both the Legislative Assembly and the Legislative Council (S.A. Parl. Deb. 1972 vol. 2 at 2190 and vol. 3 at 3310, respectively). In the Legislative Council the motion resulted in cross-party voting.

It is ridiculous that unsatisfactory individual regulations should be disallowed to stand just because the committee and the Houses of Parliament are not willing to strike down the whole of otherwise satisfactory regulations. This is a matter that I think should be remedied. It should be possible for either House of Parliament to disallow one regulation

or more in a set of regulations. The committee does have some, I would say limited, ability to make representations to departments with a view to having unsatisfactory regulations amended. I would suggest that the committee in future should upgrade its efforts in this regard. In summary, the parliamentary surveillance of delegated legislation could be improved by:

1. In some cases at least having draft subordinate legislation submitted to the committee before it is made (draft regulations).
2. Either House of Parliament having the power to disallow one or more of a set of regulations.
3. The possibility of the Parliament, in lieu of the power to amend (about which I have some doubts), having a power to call on the Government to make a formal review of the regulations within a specified time.
4. The provision of independent legal assistance to the committee to present an independent assessment to the committee.

A discussion of the review of delegated legislation would not be complete without mentioning that such legislation is reviewed by the courts which may decide on whether or not the delegated legislation is within the powers of delegation given in the relevant Act of Parliament. However, I have confined my remarks to parliamentary review. I believe, therefore, that in the first place it is incumbent on Parliament carefully to scrutinise the regulation-making power in Bills, and secondly, that the powers of Parliament to scutinise delegated legislation once made should be strengthened. I support the motion.

The Hon. PETER DUNN: I thank His Excellency the Governor for his speech, and I hope that this Parliament can put the short list of the things that he mentioned in his speech to the betterment of this State. In so doing, can I thank those retiring members who served this Parliament so well: in particular, the Hon. Arthur Whyte, who came from my area and who was very well respected, and of whom I took some notice because he was a man who had not had a great education but had an ability to perceive the effect of what the legislation we passed did.

The Hon. Ren DeGaris was another man who served the State well. He spent a long time in Parliament. He had ideas of his own, and he always projected them very clearly and concisely. The Hon. Cec Creedon was another very honest, delightful man to meet, and I wish him well in his retirement.

The Hon. Frank Blevins has moved to another House, and I dare say we do not farewell him, but I have no doubt that he will have some impact down there. Also, the Hon. Lance Milne, who was always a very friendly, honest and open man—so open that, I believe, he could always be influenced by a nice block of dark chocolate. However, he always gave what his ideas were to the Parliament and to the people of South Australia. I thank all of them for their contribution. I congratulate you, Madam President, on your elevation to this high office, and hope that the impartiality that has been afforded this place continues. I am sure that you will do that.

I congratulate the new members and, in particular, the Hon. Jamie Irwin, the new member on this side of the Council who, I know, will contribute greatly to the workings of the Parliament. He comes from good stock. He has worked hard, and knows a little bit about life. I think he will indeed add something to the Parliament.

I welcome the Hon. Michael Elliott, because he is filling the shoes of the Hon. Lance Milne and will have a reputation to live up to. To the Hon. Carolyn Pickles; to the Hon. Terry Roberts and to the Hon. George Weatherill: I wish them well in their endeavours in this Council. They will find it most satisfactory and will gain some great friendships in this place.

I note with interest the remarks of the new member, the Hon. Terry Roberts, in his opening address. He said:

> I would also like to thank those people both inside and outside the Parliament who transformed the electoral system to allow me to stand before you today with dignity. In the knowledge of having been popularly elected by full adult franchise and not because of wealth, power and influence among the kingmakers of this community.

I wonder whether Mrs Colleen Hutchinson would agree with that statement now that the Hon. George Weatherill is with us. However, I congratulate the Government on winning office. I hope that in doing so their consciences are quite clear, because we saw in 1982 some very bold promises made by the previous Bannon Government. In particular, the Premier promised that taxes and charges would not increase. However, it did not take very long before we had new taxes and also increases in the taxes and charges that were surrounding us.

It seems that the public memory is very short and that that did not seem to worry them. We saw the Labor Government returned with an increased majority, particularly in the city. The last election campaign appeared to be much the same as the 1982 election campaign—that is, plenty of promises. Whether they can be delivered is another thing. We have already seen those promises negated. If anybody reads the paper they will remember that the Premier promised that there would not be increases in the housing loan interest rate of building societies. He said that they were being subsidised by a small amount to keep them down and that they would not rise until April of this year. However, on 8 February an article appeared in the *News* as follows:

> Building society mortgage interest rates will rise by a hefty 1.5 per cent to a maximum of 17 per cent on Monday.

So the Government has not honoured its promises. It appears that the public are prepared to put up with that happening. This makes us, as a Parliament, look like fools—we are accused of being fools and crooks by the public.

It saddens me when a person in that high office makes such promises and does not carry them out because it causes the Parliament to be looked upon with disrespect. I suppose that the submarine project is in the same category. We saw some very glitzy television ads, and they were good. I do not know who the public relations people are, but they were certainly very good ads. But were they honest?

They sucked in the young and the gullible—the ads got their vote, and that is for sure. The implication of those ads was that if we did not return the Labor Government we would not get the submarine project. I hope that we do get it. I hope like mad that we get that submarine project, but our chances are negligible.

I read in today's paper that Western Australia has a new project through which it will be training people for release and rescue from submarines. There, I believe, lies the rub. The Government of Western Australia will get that submarine project. I will look with interest to see what happens when the Federal Government makes its decision. I ask honourable members to mark my words.

An honourable member interjecting:

The Hon. PETER DUNN: Any odds that the honourable member likes: if he has them, I will take them. The South Australian Government will not make the decision where the contract goes; the Federal Government will. However, the ads implied that this Government would be making that decision. As I said before, I hope that they are correct. As I have also said before, when we do not get the contract we will suffer from the image that we cannot deliver the goods.

The Governor, in his speech, mentioned concern for rural industry. I have rural origins and background. Every paper and newspaper article one reads today contains some implication that the rural sector is in terrible straits at the moment. This period appears to be lasting longer than other downturns since the war.

Rural industry is looking down the barrel of financial disaster at the moment. To prove my point, members should look at the Outlook Conference and see what the Bureau of Agricultural Economics has had to say about matters. I admit that it tends to be somewhat pessimistic. I am the first to admit that, but its figures are usually very accurate. It can only go on past history and figures to date. Those figures project a very gloomy future. They forecast a 5 per cent decline in terms of trade and, along with that, a projected increase in costs of 9 per cent—higher even than the inflation rate for 1985-86.

These costs will impact on an already meagre return to the average primary producer of $6 700 for this year. The Bureau of Agricultural Economics has said that approximately one third of family farms will have a negative income in the forthcoming year. I pose to members the question: could they take a negative wage? Could they say, 'I will live this year without any income at all?' That is what many of these people are looking at. That is a recipe for disaster, not only for the families in the situation but also for those communities relying on the farming community to buy their goods so that they may make a modest profit to live on. I use the word 'profit' in the same way as I would use the word 'wage', because that is what industries and small businesses do: they make a small profit and that becomes their wage.

The cost of essential inputs for the manufacture of good primary products are such that they are rapidly eroding the competitive advantage that we once had when selling to overseas markets. For example, the cost of super-phosphate has risen by 11 per cent, chemicals by 8 per cent, wages by 8 per cent and fuel prices by 12 per cent. They are all Bureau of Agricultural Economics figures again.

Fuel has become one of the key factors in the cost price squeeze. It has become a focal point for the man on the land for several reasons. First, when he travels to the city he sees his urban cousin paying from 5 to 15c per litre less for petrol than he has to pay at home. He has read that a barrel of oil on the spot market (and that spot market is usually in a ship at sea) has been steadily dropping in value and at the moment could be as much as 45 per cent lower than it was 18 months to two years ago, yet fuel prices rose 12 per cent in 1984-85.

The rural dweller can see that Federal and State Governments are using this most essential commodity as a general taxing avenue. If it were a fair means of raising revenue it would, I venture to say, be accepted by the community at large. But it is not a fair tax and discriminates against those who live farthest from the fuel supply depot or those who use the most fuel. The lifeblood of rural Australia is petroleum products and should the Government try to resist their use (and that may be the case) it may cause great rises in food prices.

Fuel has a direct impact on horsepower. Let us think about horsepower. Horsepower to many young people is an equation used to determine how fast they can go or how powerful their vehicle is. That is the right analogy. We cannot return to the horse for farm power, although some farmers who have spent a lifetime paying for a property only to be told that they will receive $3 800 for each working person on their property this year must feel very much like doing just that when they have to pay their fuel bill.

Allow me to illustrate the impact of the cost of fuel by using myself as an example. I live 1 200 kilometres from here by road—a shorter distance by air. I travel to a modest number of points in the State. I have flown approximately 200 hours in my aircraft (in fact it is more than that), which has a fuel consumption of 45 litres an hour. If one multiplies that out, one reaches a consumption figure for the year of 9 000 litres of fuel.

A litre of Avgas costs 65 cents, which gives me a fuel bill of $5 850. Add to that two cars, because I need one at home and one here, which use approximately 2 400 litres for 20 000 kilometres. That costs on average 55 cents a litre, which equals $1 320 and totals $7 100 for me alone.

I suggest to members in the Chamber that none of them would spend so many dollars on petroleum products. That is a small figure compared to what many farmers spend on fuel used in putting in their crops—a legitimate expense to gain some return. In fact, my share farmer has a fuel bill in the order of about $18 000 to $21 000, so one can see what a impost that is on his operation. I can cut that cost if I stay put, but farmers cannot do that.

We must use fuel for everyday farm activities. When petrol is being used on the farm and there is no wearing out of roads involved it is no wonder that the primary producer complains of the tax component in the price of a litre of petrol. Rural dwellers were great supporters of the bicentennial road grants. As we know, they were funded by a special levy on fuel from 1982 to 1986. The Hawke Government, in its wisdom, then because of double digit inflation used that argument to index the levy but made the indexed portion a general revenue raiser. Once again the roads were not funded and users paid more dearly for that privilege of travel on a dirt or substandard highway.

I hope that the Bannon Government and its officers can influence the Hawke Government to be realistic in its approach to fuel pricing. I am fully aware that the agreements made with unions for tax cuts will have to be honoured, but in doing so we may see such a poor rural community that there is no export income, first, to raise the standard of living of the Australian worker and, secondly, to meet the rising overseas debt that grows by the minute.

Certainly, secondary industry is not able to trade this nation out of trouble. South Australia, in particular, relies very heavily on rural products for export income; in fact, it was 60 per cent in the past five years. Our mining industry is but a whimper when compared to that industry in Western Australia, Queensland and New South Wales.

This State once boasted that it was the biggest vehicle manufacturer and had the largest proportion of whitegoods industry manufacture. That was at the end of the Playford era. We seem to have exported the car industry, the whitegoods industry and their ancillaries interstate and replaced them with a social experiment. In fact, the rural component of this State's exportable wealth is out of kilter with the rest of Australia, when rural exports represent approximately 45 per cent of total exports. However, in South Australia, as I said, 60 per cent is rural with 40 per cent industrial.

So, the impact of seasonal changes has a more marked effect on the State's economy than is desirable. If a season of lower than normal yields is experienced with low monetary returns, particularly in grains but also in dairy products, dried and canned fruits and sheep meats, there will be very little money to be sucked in by the metropolitan area to keep these manufacturers, service industries and public servants in a manner to which they are accustomed.

While listening to a tirade on the radio about a week ago about even distribution of wealth, I heard the commentator point out that people of means usually wear their wealth on their bodies or around them. If that is so, I suggest a drive to Renmark, Port Lincoln, Burra or Mount Gambier to look at the cars people are now driving. A modest middle

of the range six cylinder Australian car is now the most luxurious car seen to be owned by the rural dweller.

Members should compare that with the urban car scene. If one cannot afford a European car costing between $20 000 and $40 000 it is usually a four-wheel drive vehicle—for what reason I cannot understand. It must be an indication that country roads are impassible by two-wheel drive vehicles. However, the wealth of the city community is showing clearly, and the opposite is true in the country. Country towns comprise a cross-section of public servants, service industries and retired people, but one of the biggest employers of people are machinery retailers and repairers. The downturn in rural profits is having a marked effect on this industry and on the towns in which it is established.

The Hon. T.G. Roberts: It is the directors of IXL in the four-wheel drives.

The Hon. PETER DUNN: Drive down Unley Road, Greenhill Road or South Road and see how many there are. The first thing a bank manager says to a client who is asking for a loan is, 'Perhaps you don't need the new tractor, seeder, harvester or car.' So, the farmer uses his money, put aside as depreciation for his tractor, seeder or header for other things, for example, paying for the super to keep up soil fertility or for expensive fuel.

So, the farm machinery industry is the first to feel the cuts. That can be well demonstrated by the downturn in local manufucturing as witnessed by Horwood Bagshaw, a local manaufacturer, which sadly has had to put off skilled employees. The devaluation of the Australian dollar has caused a dramatic rise in the cost of imported machinery but as yet that has not had much effect on the price to consumers. However, in 1986 we will see a steep rise in those costs and a further reduction in sales of farm machinery can be expected.

The indebtedness of the farmer and the cost of money is at the moment his greatest worry. Dr George Reeves of the Bureau of Agricultural Economics (a former South Australian) has said that the farm debt will blow out by $1 000 million to $8 000 million. This extra debt, with the present bizarre interest rates, will increase by 64 per cent the total interest payments by farmers in the two years ending June 1986. That is staggering!

So, I can sum up this extremely gloomy picture of rural industry over the past five years by saying that in that time, inflation has been running at three times the increase in farmers' returns; major cost rises in this period, including interest charges, are up 84 per cent; Government rates and charges are up 71 per cent; electricity is up by 64 per cent; fuel is up 63 per cent: and, by contrast, cropping returns are up 6 per cent.

I will tell a short story at this point. As we arrived rather late on the evening before the start of Parliament, rather than cooking tea my wife and I went to a restaurant for dinner. We had an entree, main course and a bottle of wine—not extravagant—which cost us $52. I thought that was fairly reasonable but do members realise that that cost me exactly one tonne of barley! The net return to me this year was $52 on a tonne of barley or less than the cost of one half tonne of fertiliser. That gives some indication of what returns are being proposed for the rural industry at the moment. To take that analogy even further, one tonne of barley will buy less than three cartons of stubbies in the country, where costs are higher. It demonstrates quite clearly what is happening in the bush.

The net value of rural production is expected to fall by 26 per cent this financial year, with the result that land sales are down. Traditionally, land sales are the barometer, and in South Australia for the last quarter of 1985 there were 14 sales compared to an average of 200 for previous quarter, and although the figures for actual values are hard to read when sales are few they appear to be 20 per cent lower than 12 to 18 months ago. In fact, in today's *Advertiser* a Mr Kaleski, an economist with a business advisory firm, was quoted as saying:

> Land prices will fall 30 per cent but only to that figure if input costs are halved and real incomes are maintained.

This will result in a drastic rationalisation of the rural population. People may have to get off their farms and join the unemployed. They would finish up in the cities. European countries realised that to invoke that action would put great pressure on the social benefits available and the amounts that would have to be doled out. Maybe Europe has overdone it, but countries there supported rural industry, recognising the value of a strong rural community. So successful has this subsidising of European farmers been that the rest of the world is trying to combat the resultant pressure on the traditional markets of Australia and America.

The fact that America has taken drastic action with its 1986 Farm Bill, thus making the purchase of their farm products, in particular grain, very attractive to purchasers over the next two to five years, means that Australia's chances of obtaining more markets for primary products or higher prices for them from overseas markets seem remote indeed. We are therefore left with one action, namely, to reduce inputs for production. They must either remain static or be reduced.

The overall picture for the rural community is certainly grim, and every commentator and every scribe agrees with that. However, I have seen a similar situation, though not as potentially damaging as the present situation appears to be, in the late 1960s and early 1970s. Rural profits were small, if not minuscule: however, a drought plus disease (in the form of blight in maize) in the northern hemisphere quickly caused grain shortage and prices for primary products rose rapidly and soon made debts into credits and put smiles on the faces of country people. That money subsequently finished up in the cities, thus raising the standard of living there as well. In the meantime, while waiting for world stocks to subside what can governments do to maintain the rural force in place?

First, I think governments can show some compassion to those people who are disadvantaged by the distances involved and the lack of centralised services. Comments about their having a 'warm inner glow' because they come together to register their concerns do nothing to give them any hope in relation to the present Labor Government fighting on their behalf, and this is particularly in the light of the organisation of labour intensive industries and the great play put on solidarity.

Secondly, in this regard probably the most important factor is that governments must not put further impositions on the rural community in the form of further legislation and regulation. Much of the legislation from this Parliament impacts on the rural community and a lot of it is directly aimed at the farmer—and I cite the native vegetation clearance legislation, which was introduced in 1983 and which primarily was instituted to appease people who had little or no input into rural production, although it curtailed their activities and hurt many of them enormously.

So, I ask the State and Federal Governments not to withdraw their life supports while farmers are in such a weak position. Farmers are resilient: history shows that they will recover, and pay their debts. Therefore, they should be given a chance to help themselves; they should be given hope, and in the next few years farmers will repay the community which will be better served in that way. I support the motion.

The Hon. B.A. CHATTERTON: I support the motion moved by the Hon. Ms Pickles. In his speech His Excellency drew attention to the Jubilee 150 and I congratulate the Government on the organisation of this event. During 1986 much attention will be given to the various celebrations but many projects will have a permanent value for the State. The Government should be praised for its support of the big sundial at Glenelg. This is an art form which was first developed in the eastern States with the big banana and the big pineapple in Queensland and the big ram at Yass in New South Wales. In South Australia we can be proud of the big lobster at Kingston, the big orange at Renmark and more recently the big bunyip and the big pelican. The big sundial will be a worthy addition to these monuments.

There has been some criticism that the sundial is not a particularly South Australian symbol and that it would be more appropriate to have a big formula one car. I support the concept but would point out in defence of the big sundial that it had to be planned long before the success of the Grand Prix in putting South Australia on the map was achieved. The value of the Grand Prix in promoting South Australia is supported by hard research carried out by the Department of State Development. According to the Director-General, Mr Keith Smith, a survey of Japanese early in 1985 showed that a majority thought that Adelaide was, and I quote, 'somewhere south of Alice Springs'.

This was a remarkably astute observation given the paucity of geographical information at the time. Contrast this with the views of two former South Australian Premiers who had the advantage of going to one of Adelaide's best schools: yet one thought Adelaide was a southern suburb of Athens and the other that it was in the State of Texas. According to the Department of State Development that confusion has now disappeared and Adelaide is marked on Japanese and other international maps. In fact, Adelaide has become a familiar household word like Kyalami. It is only appropriate that such an important event should be commemorated, and what could be more suitable than a big racing car. A suitable location would be Victoria Square, where we already have a road network that is an imitation of a Grand Prix track.

The Jubilee 150 has brought many additional jobs to South Australia and for this reason the Government should seriously consider making it a permanent statutory authority. It could find other jubilees to celebrate which would provide employment in the manufacture of period costumes and fireworks. We could also export these skills on a consultancy basis. For example, I believe that Shandong Province in China will be celebrating its Jubilee 2350 in 1990 and I am sure that South Australia could provide them with valuable advice.

In any events of this kind there are more worthy projects than there are resources to fund them. One particular example is the Farm Machinery Museum at Kadina which has brought together a remarkable collection of South Australian agricultural invention but which is struggling to do anything more than store them. There is an urgent need to provide more buildings so that the collection can be properly displayed. While they are supported by the farming community through the Yorke Peninsula field days, they receive little Government assistance. Of course, in the past the South Australian Parliaments voted special grants to such famous inventors as Smith and Bull, but now with our extremely urban population most people think that a stripper is someone who works in a nightclub and not Bull's famous machine.

There are few people who are aware that South Australia has been a centre of agricultural innovation for 150 years and that many of the most famous innovations were developed by the farmers of Yorke Peninsula. It would therefore be most appropriate to develop the Kadina museum as a centre for recording South Australia's agricultural innovation. I would even suggest—and here I must be careful as this has become an article of faith—that some of the innovations developed on Yorke Peninsula are better known household words in other parts of the world than the Adelaide or Kyalami Grand Prix. Unfortunately, their links with Yorke Peninsula are rarely recognised and it would be an excellent promotion both for Yorke Peninsula and South Australia as a whole to firmly link the name of the Yorke Peninsula and its innovative farmers. I believe that the Government is instead considering a cricket museum. Personally, I would prefer that cricket was in a museum and not on our TV screens but, in terms of its overall importance to the South Australian economy, I would suggest that a centre recording agricultural innovation should have a higher priority. I support the motion.

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

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

Adjourned debate on second reading.

(Continued from 12 February. Page 60.)

The Hon. K.T. GRIFFIN: The Opposition supports the Bill. When the matter was first introduced prior to the 1985 State election the Attorney-General, as part of his second reading explanation, spent a considerable amount of time raising issues relative to a declaration of victims' rights. That is not in the present second reading explanation—only because of the length of the declaration and emphasis upon victims' rights—but is picked up by reference to that previous second reading explanation.

Nevertheless, it is important to make some observations on it. I suppose it really was from the beginning of this decade—the 1980s—that the community at large seemed to develop a greater concern for victims of criminal activity and to attempt to redress the imbalance that appeared to be present in relation to criminal activity, where all of the emphasis was placed upon the accused, and no consideration was given to the victim, whether in the investigative process, the judicial process or after the conclusion of any judicial process.

The question of victims' welfare, apart from the Criminal Injuries Compensation Act, had been largely ignored before the 1980s. The Criminal Injuries Compensation Act, from memory, was an initiative of the now Mr Justice Millhouse when he was a Liberal Attorney-General. From memory, I believe that the Hon. Peter Duncan, when he was Attorney-General, was responsible for increasing the level of maximum compensation from $2 000 to $10 000. Apart from that, prior to the 1980s there was not a high level of community concern for victims of criminal activity. To a large extent it was the hard work and persistence of Mr Ray Whitrod, who took up the cause of victims and who established the Victims of Crime Association, that led to a greater public and political prominence being given to the welfare of victims of criminal activity.

In the early stages Mr Whitrod was largely a voice in the wilderness, but he was persistent and he and his wife attended a range of meetings, dinners and other events across South Australia in their own time and at their own expense promoting the cause of victims. Largely as a result of Mr Whitrod's initial activities there developed a groundswell of opinion demonstrating a much higher level of concern for victims of crime.

I am pleased to see that in the last budget the Government made $8 000 available through the Attorney's lines to assist the Victims of Crime Service, as it has now become, and I hope that that will be continued and increased in the future. I should say that it was my colleague the Hon. John Burdett, as then Minister of Community Welfare, who made the first South Australian Government grant to the Victims of Crime Service to support its voluntary work. It is still largely an organisation of volunteers and, while there is a need for paid staff within the organisation, I still hold very strongly to the view that the greatest level of support can best be given by volunteers—those with a particular experience of either being a victim or having been close to a victim of criminal activity.

The Victims of Crime Service now provides a valuable court companion service to support and counsel people who are victims of criminal activity as the accused moves through the criminal justice system and as the victims are required to attend preliminary hearings and trials of those accused of criminal activity. One of the limitations on the Victims of Crime Service is undoubtedly reflected in the inability to provide a wider range of services to victims. I speak particularly here of the support for those who might be the victims of crimes such as house breaking and burglary—those sorts of crimes that create a considerable amount of trauma for the persons who have been the victims and who have contact with insurance companies and perhaps the police, if the breaking and entering has resulted in some substantial theft of valuables.

It was my hope in the policy that the Liberal Party announced in August last year prior to the State election that, if we had been successful at the election, there would have been a higher level of support to the Victims of Crime Service to broaden the scope of its services to encompass those who were the victims of property crimes in circumstances where trauma was experienced as well as to encompass the victims of crimes against the person.

I hope that the present Government will pick up and pursue some of those initiatives with respect to victims because at least in the past several years it has been a concern of both Parties that the rights of victims be recognised and enhanced and that they receive a higher level of support through the criminal justice system, if it goes that far, and certainly at the investigative level.

The Bill before us in fact establishes the Criminal Injuries Compensation Fund. It is different in concept from the fund which the Liberal Party proposed prior to the election to the extent that it will be administered only by the Attorney-General; and it is somewhat more limited in the extent of the emergency aid which can be given. I hope that in the administration of it the Attorney-General might again consider the Liberal Party policy on this subject with a view to involving the Victims of Crime Service in the administration of the fund or, if not that, then in an advisory capacity as to the way in which the fund could be used, in the payment of emergency assistance, in the provision of emergency assistance, and in the providing of additional financial resources to the Victims of Crime Service to expand its own services to the victims of crime.

Quite obviously, we will be watching very carefully the extent of the Criminal Injuries Compensation Fund and the uses to which the funds are put over the next year or two as the Government implements its victims of crime policy. With respect to that fund I notice that it will comprise, among other things, a percentage of fines determined by regulation from year to year. When some consideration was given to this concept by the Liberal Party there was some reservation about fines such as parking fines and traffic fines—the fines from so-called victimless offences—being used to fund services for victims of crime. I really had no objection to that course of conduct, and I raise no objection to what the Attorney-General has proposed in this legislation. However, it would be helpful to know what sorts of fines are to be included within the scheme, if it is not all fines, and the extent of any levy or prescribed amount which will be transferred from fines to the Criminal Injuries Compensation Fund, and the mechanism by which the offender will be made aware of the fact that portion of a fine is to be used for victims' services.

I always thought that it was an important feature of any emergency fund or Criminal Injuries Compensation Fund, if a proportion of fines were to be applied to that fund, that the defendant should be aware of the fact that a portion of the fine was being applied to victims' services and how much. I do not think there is much value in it in terms of heightened awareness by defendants of the way in which fines will be applied, if they are not informed that part of the fine will go to victims' services. It is a very convenient Treasury device to apply a proportion, but it assures the fund of some resources.

I think we must still take it back to the defendant, the person who committed the criminal behaviour. That is one of the objectives of the community service order scheme, to endeavour to get the defendant to be more alert to the implications of his or her criminal activity on victims and to try to use it as a rehabilitative device as much as a penal device. I hope that some aspect of this could be incorporated into the Government scheme. During the course of the debate I would like to know whether that is envisaged and the way that it will be implemented.

There is no doubt that victims of crime as they are taken through the criminal justice process are overwhelmed by court appearances, by procedures and by all of the associated mystery which surrounds the criminal process. I am not suggesting that the mystery is ill conceived; I am saying that to the ordinary lay person with perhaps no other appearance in court even for a traffic offence the appearance in a criminal trial is an overwhelming and awesome experience. Until the Victims of Crime Service implemented a court companion scheme I would suggest that the majority of victims were totally unfamiliar with what was expected of them and of the criminal justice system, their place in it, and their responsibility in it.

I am pleased to see that in the Attorney-General's presentation of this Bill on a previous occasion that the declaration of victims' rights is designed to focus more upon overcoming the problems for a victim in the criminal justice system; and also at the point where an offender is released from gaol. A number of examples have been brought to my attention where frequently the first that a victim has heard of release on bail, penalty after conviction or release on parole has been when the victim has read about it in a newspaper. That is not good enough. I am pleased that the declaration of victims' rights seeks in principle to overcome that problem: for example, No. 2 refers to the right for a victim to be informed about the progress of investigations being conducted by police, except where such disclosure might jeopardise the investigation.

Quite frequently a victim has been interviewed by the police about, say, an assault and the first that the victim has known about a charge being laid is when there has been a request to appear at a preliminary hearing. I am pleased that that is now going to be changed. There is a right for a victim to be advised of the charges to be laid and of any justification for accepting a plea of guilty to a lesser charge, or to be advised of justification for entering a *nolle prosequi*—the withdrawing of charges—the right to be informed about the trial process and of the rights and responsibilities of witnesses.

All are important components of the criminal justice system which, to the ordinary lay person, are really a mystery. Also, there is the matter of some preparedness for cross-examination: one of the major complaints about the unsworn statement—when it was in use—was that the alleged victims had to give evidence-in-chief and were then subject to the most searching cross-examination.

I do not object to that: I think that is part of the criminal justice process, but it often left alleged victims bamboozled, distraught and destroyed, whereas the accused person was able to get into the dock and make a statement—unsworn, untested—which may make the most outrageous allegations but not be subject to any sort of probing or searching cross-examination.

The abolition of the unsworn statement, in that respect, has done a considerable amount for those persons who are victims of criminal activity, where an accused person desires to put a different perspective on the series of events alleged by the Crown and now has to get into the witness box and give evidence on oath. The abolition was something for which I fought for well over six years and to which, reluctantly, the Government changed its attitude just prior to the election and, I am pleased to say, finally supported total abolition. It could see the writing on the wall.

Several aspects of the declaration of victims' rights need some further attention by way of being included in legislation. For example, I think that something needs to be in the relevant statute to ensure that, as far as it is practicable, the victim of criminal behaviour is informed of the outcome of any parole proceedings. That is a right included in the declaration, but I believe that it is more important to have it recognised in the statute, so that those who are dealing on a day-to-day basis with the statute are constantly reminded of their obligation. Although there is a right in the declaration for a victim to be informed of the outcome of all bail applications and to have his or her perceived need for physical protection put before a bail authority, I have argued before and I will argue again that it is important to have that sort of requirement included in the relevant statute.

The Hon. C.J. Sumner: It's there.

The Hon. K.T. GRIFFIN: It is not there in the Bail Act. What is in the Bail Act is for the bail authority—wherever practicable—to have before it the need for physical protection of the alleged victim, but there is no obligation—as far as it is reasonably practicable to do so—for the victim to be consulted and to be informed, particularly of the outcome of bail proceedings. There is nothing in the statute. The Attorney-General has rejected it previously. I am going to keep persisting with it.

The Hon. C.J. Sumner: It is a non-issue. If the bail authority has to take it into account or can take it into account, it is beholden on the prosecutors to make sure that they have the information in order to take it into account: the two go together.

The Hon. K.T. GRIFFIN: Not necessarily. If the Attorney looks carefully at the Bail Act, he will see that it is a limited provision which we moved and which the Government, on that occasion, accepted, but it would not go so far as to make it a requirement for consultation with the victim wherever that was reasonably practicable, or for the outcome to be communicated to the victim. They are the areas on which I want to focus during the Committee stage.

The Hon. C.J. Sumner: They are in the declaration.

The Hon. K.T. GRIFFIN: They are in the declaration but the declaration is not a binding document. It is a document which, as the Attorney-General has said, has been circulated to the relevant authorities for implementation. It is an administrative thing. What I am saying is that there ought to be some greater statutory emphasis given to those rights. I am not criticising the declaration: I am saying that there needs to be statutory recognition of some of those obligations. The Attorney-General can argue about the form of it if he likes: I am expressing a view that I think it needs to be there on the face of the statute, so that it is there for all to see, and for those who work with a particular statute to be aware of and be constantly reminded of on all occasions that they are dealing with bail applications or parole procedures.

In relation to paragraphs 11 and 12 of the declaration of victims' rights, suggestions are made by one lawyer to whom I referred back in October 1985 that there ought to be a reference to the Crown, so that not only is the defence referred to but the Crown is also. Paragraph 11 is a right not to be required to appear at preliminary hearings or committal proceedings unless deemed material to the defence. The point has been made to me that there ought to be a provision also for attendance if it is deemed material to the Crown.

The same situation applies in relation to paragraph 12. I am not saying that we can amend it: I am merely suggesting to the Attorney-General that the matter has been drawn to my attention and he might care to consider it.

The Hon. C.J. Sumner: It goes without saying.

The Hon. K.T. GRIFFIN: Yes, but the Attorney-General has put this declaration down as something which is going to all relevant authorities. If there is a need for the Crown to be referred to in two places, maybe it ought to be amended to that extent to ensure that, again, on the face of the document there can be no misunderstanding about it; that is all I am saying. It is important, I think, for that to be noted.

The other area to which I want to make some reference and to which I have already referred to some extent is the Criminal Injuries Compensation Fund. I would like to have clarified, as I have indicated, the extent to which emergency financial support can be made available. It seems from the legislation that, if a criminal injuries claim is not made or is not successful, emergency financial support can be recovered. There may be occasions on which emergency financial support appears reasonable at the time, and I would like to think that there will be some discretion exercised as to whether or not the emergency financial support will be recovered if, later, a criminal injuries compensation claim is not successful or is not proceeded with for one reason or another.

I am pleased to see that there is a substantial redraft of the relevant provisions of the Criminal Law Consolidation Act with respect to compensation and restitution by offenders. I am pleased also to see that victim impact statements are to be provided, although I question whether the provision of victim impact statements is wide enough and should not also go to other cases where the Crown deems it relevant to make submissions on penalty to the Court. Victim impact statements are to be required only in the context of a pre-sentence report being—

The Hon. C.J. Sumner: That's not quite right.

The Hon. K.T. GRIFFIN: That is what the Bill says.

The Hon. C.J. Sumner: The declaration is that the situation of the victim should be put to the court. All we are saying is that, where there is a formal pre-sentence report outlining the situation of the defendant, there should at least be a formal report. With respect to other cases, it will be a matter for the prosecution's discretion, depending upon the nature of the case, to put the victim's position to the court in accordance with the declaration.

The Hon. K.T. GRIFFIN: If that is the position, I think that it is important and I support it at both levels. I have argued that the prosecutor ought to be able—and in fact be required—in relevant cases to make the impact on the victim known to the sentencing judge.

I have no difficulty with the amendments to the Criminal Injuries Compensation Act. It is interesting to note that, in relation to section 11 of the Criminal Injuries Compensation Act, an amendment to which is included in clause 10 of the Bill, the Attorney-General is now to have an absolute discretion to make payments in circumstances where there is an acquittal, but where the acquittal appears to the Attorney-General to have been given in the case of rape on the ground of a lack of *mens rea* or in any other case on the ground of a lack of *mens rea* by reason of duress, drunkenness or automatism.

One of the difficulties with the Act prior to the 1982 amendments was that it was virtually impossible to say what was the basis on which a jury convicted, but the formula which is now in the Bill, giving the Attorney-General an absolute discretion, will largely overcome the problem—although I suspect that it will add to the pressure upon an Attorney-General by those who believe themselves to be entitled to an *ex gratia* payment in presenting that entitlement to the Attorney-General. Therefore, rather than avoiding uncertainties and pressures, I think that it will increase them.

Those are the major areas on which I wish to comment on this Bill. In summary, we support the Bill; we support the principle for the recognition of the rights of victims of crime; we support the added emphasis on support for them at all stages of the criminal justice system and hope that it will be effective in enhancing their position in the criminal justice system *vis-a-vis* an accused person. I support the second reading.

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

ADJOURNMENT

At 10 p.m. the Council adjourned until Wednesday 19 February at 2.15 p.m.